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NEWS-01: USSVI Veteran Service Bulletin
Submitted by: John Dudas, USSVI VSO on 6/4/2019

The VA Care Mission Act

This new VA Program goes into effect early June and has many changes to what the VA can provide for medical treatment such as outside doctors, outside urgent care, etc. Please read the program notes at the below link to see what has changed and what is now available to veterans.

<https://nam04.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.blogs.va.gov%2FVAntage%2F57722%2Fva-mission-act-what-is-the-latest-on-community-care%2F&data=02%7C01%7C%7Cf39b9cd82a6d4cce88be08d6e8e3238f%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C636952459578874210&sdata=sr%2BIWZjIXEE1GdenTqopQx3QnRjLx5TqHt%2FN2bUzIFo%3D&reserved=0>

Blue Water Veterans Now Get Agent Orange Rights

January 29, 2019 | in Agent Orange, Blue Water, Veterans, | by Shannon Brewer, Senior Attorney for HILL & Ponton Disability Attorneys

Today, January 29, 2019, the Court of Appeals for the Federal Circuit released a decision which marks a seismic shift in the field of veteran's law. A decade ago, the Haas Case allowed the Department of Veterans Affairs to exclude Blue Water veterans from receiving the same benefits as other veterans who served in the Vietnam theater. Today, in Procopio v. Wilkie, the Federal Circuit undid the damage done by Haas and restored those benefits to the Blue Water veterans.

As a little bit of background, veterans who served "boots on the ground" in the Republic of Vietnam are entitled to a Presumption that they were exposed to Agent Orange a herbicide which is known to cause a host of health concerns such as cancers, diabetes mellitus, and ischemic heart disease. This presumption of exposure was extended to veterans who served on the rivers or "brown waters" in Vietnam. The VA determined that so-called Blue Water veterans, those who served aboard ships in the territorial seas of the Republic of Vietnam which did not enter the rivers, were not entitled to that presumption of exposure.

"Blue Water and Brown Water" Distinctions

Blue Water veterans were exposed to Agent Orange, and they were plagued by the same diseases and disabilities as the veterans who served on the ground and in brown water

The Haas Court found that the VA was allowed to draw a line determining where brown water becomes blue water, to clarify the intent of Congress, and that the Court had to give deference to that line. The line was supposed to be based on the likelihood of exposure. However, as the Blue Water veterans are painfully aware, the dividing line was an arbitrary line, excluding veterans whose ships anchored in harbors into which those rivers flowed and excluding veterans whose ships came so close to the shore that they described bouncing off of the sand. As Blue Water veterans are also aware, the drinking water on those "blue water" ships and the very air drifting from the shore was likely contaminated with Agent Orange as well. The Blue Water veterans were exposed to Agent Orange, and they were plagued by the same diseases and disabilities as the veteran who served on the ground and in the brown water, but they were not allowed the presumption of exposure which would allow them to receive benefits for their disabilities. Today, the Procopio case attempts to right the wrong done to the Blue Water sailors.

Blue Water Sailors Today

The Procopio Court looked back to the plain language of the 1991 Agent Orange Act and determined that the legislation which provides a presumption of exposure to veterans who served in the Republic of Vietnam unambiguously includes those veterans who served in the territorial seas of Vietnam. Any ambiguity in that language was created by the VA itself. Where the language Congress included in the Agent Orange Act was clear, the Procopio Court held that the VA's interpretation was not needed and, thus, owed no deference by the Court.

The Federal Circuit decision speaks directly to the point, "Congress has spoken directly to the question of whether those who served in the 12 nautical mile territorial sea of the 'Republic of Vietnam' are entitled to the presumption. They are. Because 'the intent of Congress is clear, that is the end of the matter.'" The fight for Blue Water veterans to get their benefits has been long and hard, but they are now finally legally entitled to the presumption of exposure to Agent Orange...as they should have been all along.

I have gotten a multitude of contacts asking about this issue and the article fully explains what has happened.

The Navy will have to update approved ships who were exposed in the waters of Vietnam and that will happen when the VA asks for a ship that you were on and the Navy will have to respond, so if you think you have a claim, all you have to do is to submit it through the VA. Please remember the claim is not for exposure to Agent Orange, but for a medical diagnosis to one of

the diseases Presumptive to exposure to Agent Orange. The VA and the Navy will have to do the rest to support the claim. Please use a local County Veterans Service Officer or state Veterans Service Officer to help with your claim. There is NO charge for them to submit it for you and they will support you throughout the claims process. Good Luck with your claim,
John Dudas
USSVI VSO

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