



Major Progress For Blue Water Vietnam Veterans

May 2019

On January 29, 2019, the U.S. Court of Appeals for the Federal Circuit issued a landmark decision in [*Procopio v. Wilkie*](#) which extends the presumption of Agent Orange exposure to all veterans who served in the Republic of Vietnam, whether on land or on the territorial seas.

NVLSP hailed the decision because it unequivocally righted a terrible injustice to all veterans who were exposed to Agent Orange in the waters of Vietnam and recognized the legitimacy of the Blue Water Vietnam Veterans claims for disability benefits related to Agent Orange exposure.

NVLSP originally litigated the [*Haas v. Peake*](#) case in 2008 which challenged the U.S. Department of Veterans Affairs (VA) policy limiting the presumption of exposure to only Boots on the Ground. Unfortunately, the U.S. Court of Appeals for the Federal Circuit ruled by a vote of 2 to 1 in Haas that the statutory language whether a veteran “served in the Republic of Vietnam” was ambiguous. Due to the ambiguity, VA’s interpretation was allowed to stand and it remained the governing policy for determining Agent Orange disability benefits for the last 10 years until the Procopio decision overturned Haas. NVLSP filed an amicus curiae brief in the *Procopio v. Wilkie* case.

The Court specifically found the error in the Haas decision and overruled it, stating:

“Respectfully, the Haas court went astray when it found ambiguity in § 1116 based on ‘competing methods of defining the reaches of a sovereign nation’ and the government’s urged distinction between Regulations 311 and 313 As discussed above, international law uniformly confirms that the ‘Republic of Vietnam’ included its territorial sea. And we cannot read into § 1116 an ambiguity that relies on a distinction between Regulations 311 and 313 made by the government only after § 1116 was adopted. Haas is overruled.”

The government had 90 days to appeal the decision to the Supreme Court and has already requested one extension which was granted and gives them until May 29, 2019 to appeal. Secretary of Veterans Affairs Robert Wilkie announced at a Senate Veterans Affairs Committee hearing on March 26, 2019 his recommendation to not appeal the decision, but other federal officials may not accept his recommendation.

While the Federal Circuit’s decision in *Procopio v. Wilkie* is not final, it is currently the law of the land. During this time, *Procopio v. Wilkie* opens the door for tens of thousands of Blue Water Vietnam Veterans or their survivors to obtain service-connected VA disability or death benefits for diseases caused by Agent Orange exposure. Under *Procopio v. Wilkie*, veterans who served within 12 nautical miles of the land mass of Vietnam during the Vietnam era are entitled to service-connected disability benefits for diseases the VA presumes are associated with Agent Orange exposure. Those diseases include ischemic heart disease, type 2 diabetes, Parkinson’s disease, and numerous cancers. A full list of the diseases that the VA presumes are associated with exposure to Agent Orange can be found at <https://www.publichealth.va.gov/exposures/agentorange/conditions/>.

Survivors of Blue Water Vietnam veterans who died from one of these diseases are also entitled to service connected death benefits (known as DIC).

The battle for the rights of Blue Water Vietnam Veterans is also being waged in Congress. Last year, the House unanimously passed legislation that recognized the Blue Water Vietnam Veterans claims but could not get it passed in the Senate. Most recently, Rep. Mark Takano (D-Calif.), Chairman of the House Veterans Affairs Committee, introduced H.R. 299, the Blue Water Navy Vietnam Veterans Act of 2019 and Sen. Kristen Gillibrand (D-N.Y.) introduced S. 1195, Blue Water Navy Vietnam Veterans Act of 2019. The HVAC Disability Assistance and Memorial Affairs Subcommittee held a hearing on May 1 to review several bills including H.R. 299. At the time, Chairman Takano noted that he hoped to have the legislation done by the end of May. He also underscored that the Procopio decision is the law of the land and that the VA should be abiding by it. He expressed his disappointment at the fact that the VA did not send a witness to the hearing who could speak to H.R. 299 or the agency's activity regarding Procopio. On May 8, 2019 H.R. 299 was reported out of HVAC mark-up and proceeds to the full House for a vote.

NVLSP is monitoring the legislative and judicial developments and has also provided guidance for Blue Water Vietnam Veterans online. NVLSP has also been meeting with lawmakers to share its expertise on Agent Orange issues based on our historic victory in [*Nehmer v. U.S. Department of Veterans Affairs*](#).

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