

**STATEMENT OF  
THE AMERICAN LEGION  
BEFORE THE  
SUBCOMMITTEE ON DISABILITY ASSISTANCE & MEMORIAL AFFAIRS  
HOUSE COMMITTEE ON VETERANS' AFFAIRS  
ON  
"PREPARING FOR BLUE WATER CLAIMS - VA STATUS UPDATE ON  
IMPLEMENTATION"**

**OCTOBER 30, 2019**

Chairman Luria, Ranking Member Bost, and distinguished members who proudly serve on this subcommittee; on behalf of our National Commander, James W. "Bill" Oxford, thank you for the opportunity to comment on the important issue of the Department of Veterans Affairs' (VA) preparations to implement Blue Water Navy (BWN) Vietnam Veterans Act of 2019. It is our duty and honor to assist this committee in better understanding this issue, how it impacts our veterans, and provide recommendations for improvement. It is imperative that we address these implementation issues ensuring that long delayed benefits are delivered in the most expeditious manner possible. BWN veterans who are experiencing health issues as a result of herbicide exposure during their service have been suffering for too long without the benefit and assistance warranted by their service. It is incumbent upon VA to ensure that every effort is made to ensure that BWN claims are processed and adjudicated in a swift, fair, and efficient manner.

**Update From Previous Hearing**

The American Legion last testified before this subcommittee on the issue of BWN on February 27, 2019.<sup>1</sup> Consistent with our long history of championing the cause of veterans harmed by exposure to herbicides in Vietnam, we called for the passage of H.R. 299, "*Blue Water Navy Vietnam Veterans Act of 2019*" to extend benefits to BWN veterans.

Four months later, on June 25, 2019, President Donald Trump signed into law H.R. 299, which became Public Law (P.L.) 116-23. This law states that veterans who served offshore of the Republic of Vietnam between January 9, 1962, and May 7, 1975, are presumed to have been exposed to herbicides such as Agent Orange and may be entitled to service connection for conditions related to that exposure. To be eligible for presumption of service connection based on herbicide exposure, the veteran must have served in the offshore waters of the Republic of Vietnam not more than 12-nautical miles seaward of a line commencing on the southwestern demarcation of the waters of Vietnam and Cambodia. Additionally, it affords spouses of certain veterans whose death was caused by a service-connected disability access to pension benefits, and expands benefits to the children of veterans of covered service in Thailand who suffer from spina bifida.

On July 1, 2019, VA Secretary Robert Wilkie issued a "Stay of Pending Claims under the Blue Water Navy Vietnam Veterans Act of 2019," citing authority granted by the law. Secretary Wilkie

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<sup>1</sup> <https://docs.house.gov/meetings/VR/VR00/20190227/108928/HHRG-116-VR00-20190227-SD012.pdf>

directed the Veterans Benefits Administration (VBA) and Board of Veterans' Appeals "to stay decisions regarding claims for disability compensation that are based on service in the offshore waters of the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, and which claim disability resulting from at least one of the diseases listed in 38 C.F.R. § 3.309(e)." The stay also applies to claims for disability compensation based on service in or near the Korean Demilitarized Zone (DMZ) and claims for benefits for spina bifida for children of Veterans who were allegedly exposed to herbicides while serving in Thailand. The stay will remain in place until January 1, 2020.

On July 5, 2019, VA issued a press release titled, "VA Extends Agent Orange Presumption to 'Blue Water Navy' Veterans."<sup>2</sup> The press release encouraged applicants to "submit disability compensation claims for conditions presumed to be related to Agent Orange exposure," adding that veterans over age 85, or with life-threatening illnesses, will have priority in claims processing. The press release also called for veterans who were previously denied for an Agent Orange compensation claims to re-submit a claim under P.L. 116-23. However, the invitation to file, or re-submit, was prefaced by the statement that "the bipartisan Blue Water Navy Vietnam Veterans Act gives VA until January 1, 2020, to begin deciding Blue Water Navy related claims" and that "by staying claims decisions until that date, VA is complying with the law that Congress wrote and passed."

On July 24, 2019, The American Legion and eight other Veteran Service Organizations issued a joint letter to Secretary Wilkie on behalf of the millions of veterans, service members, their families, and survivors asking him to lift the July 1, 2019, stay on BWN claims that were eligible for benefits as a result of the *Procopio v Wilkie* ruling.<sup>3</sup> The joint letter echoed calls from a July 15, 2019, letter from the Senate Veterans' Affairs Committee Ranking Member Jon Tester and nine other Senators calling for similar action by VA.<sup>4</sup> The American Legion remains concerned for the urgent needs of these vulnerable veterans and continues to urge VA to begin adjudicating those claims made eligible by the *Procopio v Wilkie* ruling immediately.

### **Current Challenges**

VA has estimated that 420,000 to 560,000 Vietnam-era veterans may be considered BWN veterans, not including survivors and dependents. Additionally, VA will undoubtedly receive claims from veterans who believe they were exposed to Agent Orange by ships returning from the regions in and around Vietnam, without concern for the offshore zone determined by H.R. 299. This could easily add thousands of applicants to the numbers cited by VA and overwhelm regional offices, healthcare facilities, and the Board of Veterans' Appeals. VA already faces difficulties maintaining proper resources to provide the service, care, and support of veterans without this additional influx of veterans requiring services.

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<sup>2</sup> <https://www.va.gov/opa/pressrel/includes/viewPDF.cfm?id=5280>

<sup>3</sup> <https://www.moaa.org/content/publications-and-media/news-articles/2019-news-articles/moaa-and-fellow-vsos-request-sit-down-with-president-trump-to-help-blue-water-navy-vets/>

<sup>4</sup> [https://www.testersenate.gov/?p=press\\_release&id=6876](https://www.testersenate.gov/?p=press_release&id=6876)

The Government Accountability Office (GAO) cited concerns regarding VA's ability to provide timely access to safe, high-quality health care for veterans.<sup>5</sup> It also reported that "VA has made limited progress toward addressing information technology (IT) system modernization challenges."<sup>6</sup> Adding to this, additional claims are being generated while the stay is in effect, further contributing to the already strained VA resource pool. The Undersecretary for Benefits, Dr. Paul Lawrence, has ensured The American Legion that VBA is working to ensure proper resources are in place to meet the needs of BWN veteran community.

The VBA is currently undertaking a massive effort to identify, retrieve, and scan ships logs to determine which ships operated within the 12 nautical miles of the Republic of Vietnam and identify which veterans will be eligible for additional benefits under P.L. 116-23. As a part of these efforts, VA has scanned more than 4 million records to date and will ultimately scan approximately 20 million. Also, they are building a ship locator tool to validate a veteran's service in the offshore waters of the Republic of Vietnam.

These efforts are underway in the shadow of another GAO report challenging the accuracy of Agent Orange testing and storage locations.<sup>7</sup> According to the report, "While the logbooks GAO reviewed identify when vessels left various ports as they traveled to and from Vietnam, they do not show whether and how much cargo was loaded or unloaded at those ports. [Department of Defense's] official list of herbicide testing and storage locations outside of Vietnam that is posted on the Department of Veterans Affairs' (VA) website is inaccurate and incomplete."

## **Recommendations to Address Preparation for Blue Water Claims**

### **Internal Repairs**

The American Legion supports the plan and effort of VA to ensure the right resources and systems are in place before issuing decisions on BWN claims. However, the blanket stay is an exaggerated reaction that has the potential to result in a self-inflicted resource deficit. The American Legion calls on VA to accede to the joint VSO request to grant BWN claims for those who are currently eligible as a result of the *Procopio v Wilkie* ruling. By doing so, VA will simultaneously prevent additional backlogs and ensure that veterans receive their long overdue benefits as quickly as possible.

The efforts made by VA to ensure that proper resources have been allocated to BWN implementation is commendable and The American Legion urges VA to continue its ceaseless efforts on this front. Additionally, we welcome the use of the ship locator tool and its potential to swiftly and accurately adjudicate claims. This will be integral to ensuring that claims are processed in an expedient manner and resources are not needlessly diverted to backlogged claims.

We urge that VA not use the ship locator tool as the single determinant in denying a veteran's claim. As indicated by the aforementioned GAO report, there are significant information gaps that could result in a veteran being wrongly denied benefits if these lists are perceived to be exhaustive.

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<sup>5</sup> [https://www.gao.gov/key\\_issues/managing\\_risks\\_improving\\_va\\_health\\_care/issue\\_summary](https://www.gao.gov/key_issues/managing_risks_improving_va_health_care/issue_summary)

<sup>6</sup> <https://www.gao.gov/assets/700/698164.pdf>

<sup>7</sup> <https://www.gao.gov/assets/700/695560.pdf>

We call on VA to remain cognizant of this fact and to ensure that every veteran's claim receives the appropriate due diligence. The ship locator tool should be utilized as an expedient means to validating claims, not disputing them. The American Legion looks forward to the scheduled demonstration of this tool by the VBA on November 18, 2019.

### **External Repairs**

VBA has been hosting webcasts to inform the veteran community about the various projects underway. We encourage VA to adopt more of these types of outreach efforts and to work with The American Legion to host live watch parties at posts across the country. This would bridge the gap between the generation of veterans who embrace mobile technology and those who don't to reach a broader audience. VA should develop a more interactive working relationship with VSOs for the welfare of veterans; to include more candid communication about internal challenges and envisioned projects.

The American Legion has and will continue to play a pivotal role in educating and advocating for all veterans and their families. However, it is also incumbent on VA to better educate veterans and family members about H.R. 299 implementation. Specifically, information about qualifications, resources, and the claims process. We encourage VA to take advantage of American Legion town halls and events as a venue to communicate with veterans.

### **CONCLUSION**

The American Legion thanks this committee for the opportunity to elucidate the position of the nearly 2 million veteran members of this organization. It is imperative that VA implement the Blue Water Navy Vietnam Veterans Act of 2019 in the most expeditious and fair manner possible. The American Legion looks forward to hearing from our members who have been affected by these issues and will be closely monitoring the implementation process. For additional information regarding this testimony, please contact Mr. Lawrence Montreuil, Legislative Associate, at [LMontreuil@legion.org](mailto:LMontreuil@legion.org) or (202) 861-2700.