

Important information if you are a Blue Water Navy Vietnam Veterans or a surviving spouse you are entitled to VA benefit starting 1 January 2020, in accordance with P.L. 116-23. Please read the FAQs below provided by the National Veterans Legal Service Program (NVLSP). For legal assistance go to: <https://www.va.gov/ogc/apps/ac-creditation/index.asp> and search for Accredited Attorneys, Claims Agents, or Veterans Service Organizations (VSO) Representatives.

A major change in law occurred in 2019 that should enable thousands of veterans who served on ships in the waters offshore Vietnam to obtain VA disability benefits for diseases associated with exposure to Agent Orange. The change in law should also enable survivors of these veterans to obtain VA death compensation for deaths due to diseases associated with Agent Orange exposure.

Frequently Asked Questions (FAQs): This document provides answers to the most frequently asked questions we are getting from Blue Water Vietnam Veterans (as those who served in the waters offshore Vietnam are commonly called) and their survivors about the recent change in law.

1) What is this change in law and how did it come about?

Earlier this year in a case called Procopio v. Wilkie, the U.S. Court of Appeals for the Federal Circuit concluded that the Agent Orange Act of 1991 requires VA to presume that those who served in the territorial waters offshore Vietnam were exposed to Agent Orange. The Court ruled that this presumption applies to all veterans who served within 12 nautical miles of Vietnam during the Vietnam War.

Congress then enacted the Blue Water Navy Vietnam Veterans Act of 2019 Public Law 116-23 and incorporated the Procopio decision. The Act states that a veteran who, during active military, naval, or air service, served offshore of the Republic of Vietnam during the period of beginning on January 9, 1962, and ending on May 7, 1975, shall be presumed to have been exposed to Agent Orange. The term offshore is defined as no more than 12 nautical miles seaward of a line commencing on the southwestern demarcation line of the waters of Vietnam and Cambodia.

The full Procopio decision can be read here: <http://www.ca9.uscourts.gov/sites/default/files/opinions-orders/17-1821.Opinion.1-29-2019.pdf>

The entire Blue Water Navy Vietnam Veterans Act of 2019 can be read here: <https://www.congress.gov/bills/116/congress/house-bill/299/text>

2) What does this change in law mean for Blue Water Vietnam Veterans?

It means that a veteran covered by Procopio and the Blue Water Navy Vietnam Veterans Act of 2019 should become entitled to service-connected disability benefits if the veteran (1) files a claim for disability benefits with the VA and (2) suffers from one of the diseases that VA recognizes as associated with Agent Orange exposure.

3) What does this change in law mean for survivors of deceased Blue Water Vietnam Veterans?

It means that a qualifying survivor, such as a surviving spouse, of a veteran who (1) is covered by Procopio and the Blue Water Navy Vietnam Veterans Act of 2019 and (2) died from a disease that VA recognizes as associated with Agent Orange exposure, should become entitled to service-connected death compensation (known as DIC) if the survivor files a DIC claim.

4) What diseases are now recognized by the VA as associated with Agent Orange?

A full list of diseases recognized by VA as associated with Agent Orange can be found here: <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/agent-orange/related-diseases>

These diseases include:

- Cancer of the larynx
- Lung cancer
- Prostate cancer
- Cancer of the trachea
- Hodgkin's disease
- Multiple myeloma
- Non-Hodgkin's lymphoma
- Chronic lymphocytic leukemia
- Hairy cell leukemia
- Ischemic heart disease (including, but not limited to: acute, subacute and old myocardial infarction; atherosclerotic cardiovascular disease, including coronary artery disease (including coronary spasm) and coronary bypass surgery; and stable, unstable, and Prinzmetal's angina)
- Type 2 diabetes (also known as adult-onset diabetes, non-insulin dependent diabetes mellitus, and type II diabetes mellitus)
- AL amyloidosis (also known as primary amyloidosis)
- Parkinson's disease
- Soft tissue sarcomas
- Acute lymphoblastic leukemia, mature B-cell type
- B-cell prolymphocytic leukemia
- Precursor B lymphoblastic leukemia
- Diffuse large B-cell lymphoma
- Follicular lymphoma
- Mucosa-associated lymphatic tissue lymphoma (MALT)
- Small cell lymphocytic lymphoma
- Mantle cell lymphoma (MCL)
- Burkitt lymphoma
- Mediastinal large B-cell lymphoma
- Waldenström macroglobulinemia
- Nodal marginal zone B-cell lymphoma
- Splenic marginal zone lymphoma
- Extranodal marginal zone B-cell lymphoma
- Intravascular large B-cell lymphoma
- Primary effusion lymphoma
- Lymphomatoid granulomatosis
- Early-onset peripheral neuropathy
- Chloracne
- Porphyria cutanea tarda

5) Do I need to file another claim if I already filed a VA claim for benefits for an Agent Orange-related disease and that claim is still pending at the VA?

No. If you are sure that your claim for an Agent Orange-related disease is still pending, you do not need to file another claim. However, you may wish to file a statement with VA in support of your pending claim stating that you are entitled to benefits under Procopio and the Blue Water Navy Vietnam Veterans Act of 2019.

6) Do I need to file another claim if my previous claim for an Agent Orange-related disease was finally denied by the VA and is no longer pending?

Yes. You need to file another claim.

7) How do I file a VA claim for service-connected disability benefits?

If you have not previously filed a disability claim for a disease VA now recognizes as associated with Agent Orange, you should file a claim for these benefits using VA Form 21-526EZ (available here: <https://www.vba.va.gov/pubs/forms/VBA-21-526EZ-ARE.pdf>).

If you previously filed a disability claim for a disease VA now recognizes as associated with Agent Orange and the VA finally denied that claim, you should file a supplemental claim for disability compensation for that disease using VA Form 20-0995 (available here: <https://www.vba.va.gov/pubs/forms/VBA-20-0995-ARE.pdf>). On that form, you should check the box for “compensation” in block 12, and write the following language in box 13A: “I am entitled to disability benefits for [put in name of your Agent Orange related disease] under the Blue Water Navy Vietnam Veterans Act of 2019 and Procopio.” In block 13B of that form, you should write the date of the VA decision that denied you benefits for that disease. If you don’t know the date, we suggest that you write the following language in block 13B: “See my claims file for date of denial of my claim for [put in name of your Agent Orange related disease].”

In order to help ensure you are awarded the earliest possible effective date for benefits, you should not delay in filing a VA claim.

8) How do I file a DIC claim?

If you have not previously filed a claim for DIC, you should file an initial claim for DIC using a VA Form 21P-534EZ (available here: <https://www.vba.va.gov/pubs/forms/VBA-21P-534EZ-ARE.pdf>).

If you previously filed a claim for DIC and the VA finally denied that claim, you should file a supplemental claim for DIC using a VA Form 20-0995 (available here: <https://www.vba.va.gov/pubs/forms/VBA-20-0995-ARE.pdf>). On that form you should check the box for “pension/survivors benefits” in block 12, and write the following language in box 13A: “Because of the Blue Water Navy Vietnam Veterans Act of 2019 and Procopio, I am entitled to DIC given that [put in name of the Agent Orange related disease that led to the veteran’s death] led to the veteran’s death.” In block 13B of that form, you should write the date of the VA decision that denied you DIC benefits. If you don’t know the date, we suggest that you write the following language in block 13B: “See my claims file for date VA denied DIC.”

In order to help ensure you are awarded the earliest possible effective date for benefits, you should not delay in filing a VA claim.

9) If my claim is granted, how much will I be entitled to in retroactive benefits?

The effective date assigned by the VA to awards of disability and DIC benefits is usually the date the claim was received by the VA. For example, if VA grants benefits based on the veteran’s first claim for an Agent Orange-related disease and that claim was filed in January 2019, the veteran will be assigned an effective date in (and will be paid retroactive compensation to) January 2019.

However, if the VA grants benefits based on a veteran’s second or third claim for the same Agent Orange-related disease, the effective date of the award should be retroactive to the date the VA received the veteran’s first claim for that disease – as long that claim was received by VA after September 24, 1985.

This means, for example, that if a veteran filed a disability claim for type 2 diabetes that VA received in 2003 and

the VA denied it, and the veteran now files a second disability claim for type 2 diabetes, the veterans should receive disability compensation retroactive to 2003 – as long as the veteran served within the 12 nautical mile limit and has suffered from diabetes since at least 2003.

10) Do I need to add evidence to my claim to prove that I served within 12 nautical miles of Vietnam?

Maybe yes. Maybe no. VA has a duty to veterans (and survivors) who apply for VA benefits to assist them in obtaining the evidence necessary to substantiate their claims. In many cases, it may be clear to the VA from the military service and VA documents already in your claims file that you served within 12 nautical miles of the shore. For example, if these records show you served on a ship when it was located in a harbor of Vietnam, then it will be obvious to the VA that you served within the 12 nautical mile limit.

In other cases, it may not be obvious from a review of the documents in your VA claims file. In these cases, you should inform the VA of the name of the ship on which you served and the dates you were on the ship, and ask the VA to obtain a copy of the deck logs of the ship. You should also ask the VA to send you a copy of the deck logs that they obtain.

11) What if the VA is unable to obtain the deck logs of my ship?

In the unlikely event that the VA is unable to obtain the deck logs of your ship, you should submit a statement to the VA with your claim explaining why you believe your ship was within 12 nautical miles of the shore (for example, “during our deployment in 1967, we could see the landmass of Vietnam. My division officer informed me that the land we saw was Vietnam;” or, “I was a quartermaster and know from our plotted position on navigation charts that the ship was within 12 nautical miles of the coast of Vietnam.”). You should also try to obtain written statements from fellow crewmembers who were aware that the ship was within 12 nautical miles of the coast and submit them to the VA.

12) How long will it take for VA to decide my claim for a disease recognized by VA as associated with Agent Orange?

In June 2019, VA Secretary Wilkie ordered the VA regional offices and the Board of Veterans’ Appeals to hold off making any decisions on claims that are based on service in the offshore waters of Vietnam and a disease that VA recognizes as associated with Agent Orange exposure. This includes disability compensation and DIC claims. This moratorium on deciding claims will remain in effect until January 1, 2020. Therefore, do not expect a decision on your claim until next year.

13) Will NVLSP be able to represent veterans and their surviving family members before the VA on their Agent Orange claims?

We regret that the answer is no. We advise you to obtain a representative from a veterans service organization located in your state. You can find a veterans service organization that will assist you for free at <https://www.benefits.va.gov/vso/varo.asp>

For more information on the legal services NVLSP provides please go to:

<https://www.nvlsp.org/what-we-do/lawyers-serving-warriors>

<https://www.nvlsp.org/what-we-do/class-actions>

Source: <https://www.nvlsp.org/news-and-events/news-articles/nvlsp-faqs-for-blue-water-vietnam-veterans>

Vietnam Veterans of America (VVA) is the only national Vietnam veterans organization congressionally chartered and exclusively dedicated to Vietnam-era veterans and their families.

Click the link below to sign the petition: <https://www.voterveice.net/BroadcastLinks/esp9kkI368KKBThUa0He6g>