

RESOLUTION

Resolution

19-15

Subject

Blue Water Navy Veterans Resolution

Referred to Convention Resolutions Committee

WHEREAS, the United States Court of Appeals for the Federal Circuit ruled 9-2 in favor of Mr. Alfred Procopio's disability claim for his prostate cancer and diabetes mellitus caused by the chemical herbicide Agent Orange while serving on the *USS Intrepid* during the Vietnam War, and

WHEREAS, this Court decision stated that Veterans who served aboard ships on the offshore waterways should receive the same presumption of herbicide exposure as any other in-country Vietnam War Veteran, and

WHEREAS, the majority opinion in this case provides no authority for the VA to treat a disability compensation claim from a Blue Water Navy Veteran differently than a disability compensation claim from any other in-country Vietnam War Veteran, and

WHEREAS, the Federal Circuit's decision in *Procopio v. Wilkie* did not grant the VA any latitude to delay adjudication of disability compensation claims submitted by Blue Water Navy Veterans, and

WHEREAS, the VA Secretary announced that the Department of Veterans Affairs will not appeal the January 2019 Federal Circuit ruling that ordered it to provide health care and disability benefits for Vietnam veterans who served on Navy ships during the Vietnam War, thereby conceding that Blue Water Navy Veterans merit the same legal presumption of Agent Orange exposure that every other in-country Vietnam War Veterans receive, and

WHEREAS, the Blue Water Vietnam Veterans Act of 2019, provides clarification of presumptions of exposure for veterans who served in vicinity of the Republic of Vietnam, beginning January 9, 1962 and ending on May 7, 1975, by amending eligibility criteria in Chapters 11 and Chapter 18 of Title 38, United States Code, by inserting new sections:

- § 1116A. Presumptions of service connection of exposure for veterans who served offshore of the Republic of Vietnam
- § 1116B. Presumptions of herbicide exposure for certain veterans who served in Korea

- § 1822. Benefits for children of certain Thailand service veterans born with spina bifida

WHEREAS, the amendments simply state that Blue Water Navy Vietnam veterans are eligible to claim disability resulting from at least one of the diseases listed in Title 38 C.F.R. § 3.309(e), and

WHEREAS, the Secretary of Veterans Affairs published a Memorandum on July 1, 2019, stating that the Blue Water Navy Vietnam Veterans Act of 2019 authorizes the stay of certain pending claims for benefits that might be affected by the Act until implementation of the statutory amendments Congress directed to go into effect on January 1, 2020, and

WHEREAS, the Memorandum ordering the Under Secretary for Benefits and the Chairman of the Board of Veterans' Appeals to stay decisions on certain claims for disability compensation that may be affected by the Act are not supported by the Federal Court decision to award the claim for compensation, and

WHEREAS, Blue Water Navy Veterans impacted by herbicide exposure suffer from Agent Orange-linked medical conditions such as prostate cancer, lung cancer, non-Hodgkin's lymphoma, Parkinson's disease, and other similarly severe disabilities where time is of the essence, meaning that justice delayed can become justice that is permanently denied for these Veterans who have already waited so long for the benefits that they have earned, and

WHEREAS, decades of statutes, regulations, court cases, and public statements affirm that the VA is designed to be a system that is "non-adversarial" and "pro-claimant," resolving all ambiguities in favor of the Veteran and seeking ways to assist the Veteran whenever possible, an objective that certainly is not reached by the VA further delaying the processing of these claims for Blue Water Navy Veterans, therefore, be it

RESOLVED, that the American Legion urges the Secretary of Veterans Affairs to rescind the Memorandum ordering the stay decisions on certain claims for disability compensation that may be affected by the Blue Water Navy Vietnam Veterans Act of 2019 and, be it further

RESOLVED, that the American Legion urge Congress to provide oversight to ensure disability claims under the Blue Water Navy Vietnam Veterans Act of 2019 be adjudicated immediately to ensure no more delays to this veteran population, therefore be it finally,

RESOLVED, that if approved by the Department of New York at its Convention in Buffalo, New York on July 18-20, 2019, this resolution be forwarded to the National Organization for consideration at the National Convention August 27-29, 2019 in Indianapolis, Indiana.

FOR CONVENTION COMMITTEE USE

Approved _____ Rejected _____

Approved with Amendments _____

Consolidated with _____

Referred to Standing Committee on _____

Received and Recorded _____

Other Action _____

Signature _____

(Chairman)

Adjutant Signature

County

Below section to be completed when resolution
is submitted from another authorized source.

Name

Department Resolutions Committee

Title