

Testimony

of



Presented by

Rick Weidman
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Before the

House Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs

Regarding

**“Preparing for Blue Water Claims—
VA Status Update on Implementation”**

October 30 2019

Good afternoon Chairwoman Luria, Acting Ranking Member Bost, and other Representatives of this distinguished subcommittee. On behalf of the VVA National President, John Rowan, and the membership of Vietnam Veterans of America, I thank you for affording VVA the opportunity to testify today on the Blue Water Navy Vietnam Veterans Act of 2019 (“BWN Act”).

The passage of the BWN Act, shortly after the landmark *Procopio* decision, was a long time coming for tens of thousands of sailors and Marines afflicted by the toxic substance, Agent Orange, which was so liberally sprayed in South Vietnam during the years of our war there. The BWN Act recognizes those Vietnam veterans who served within 12 nautical miles seaward from the demarcation line of the waters of Vietnam and Cambodia between January 9, 1962 and May 7, 1975. Like their boots-on-the-ground counterparts, they are now presumed exposed to Agent Orange.

The new law also expands the recognized exposure dates from April 1, 1968 - August 31, 1971 to September 1, 1967 - August 31, 1971 for those veterans who served in or near the DMZ in Korea. Recognition of claims for children with spina bifida whose parents served in Thailand is now covered as well. Many have waited more than half a century to receive life-saving medical support, and disability compensation for Parkinson’s disease, prostate cancer, ischemic heart disease, Type 2 diabetes, and other conditions associated with exposure to Agent Orange.

Time is of the essence to swiftly and respectfully implement the life-saving provisions of the BWN Act. Unfortunately, the VA has failed to demonstrate any real recognition of the urgency of the new law’s provisions. The VA initially issued an overly broad and thoughtless stay that has resulted in denying health care benefits to terminally ill “Blue Water Navy” veterans. VA leadership seems unwilling to clarify in its disseminated information just what the BWN Act does and does not do, which could have the unfortunate effect of confusing eligible veterans, their family members and survivors whether or not they even qualify for benefits in the first place. VA has also been resistant to resolving identified form issues for new and previously denied claims, which will likely create additional roadblocks for eligible veterans and family members receiving the maximum benefits they are entitled to under the law.

Much still can be done to ensure that those entitled to benefits under the new law receive benefits as expeditiously and accurately as possible. VVA fully supports VA's request for additional funding to ensure that they have sufficient staffing and support to properly adjudicate claims under this law.

Here are the issues as we see them:

The VA Secretary's 1 July 2019 Stay Is Overly Broad and Is Harming Eligible Veterans, Their Families and Survivors.

At the forefront of all policy decisions, the VA must consider the specific population that is affected by the law. Today, the average age of a Vietnam Veteran is 73 years; hence, time is of the essence as a grant of benefits can mean obtaining life-saving health care. Under *Procopio*, the VA has the authority to grant claims now, as adjudicators had been doing for several months prior to the stay. Indeed, the Veterans Benefits Administration, the VBA, had the process and procedures in place to apply *Procopio* since June 4, 2019.

Nevertheless, the VA decided, in a 1 July 2019 memorandum, to issue an unnecessarily broad and arbitrary stay on all Blue Water Navy claims, Korean DMZ claims, and all claims for children with spina bifida whose parents served in Thailand. VVA recognizes that the BWN Act and *Procopio* are not identical and that VA will need time to prepare to implement the nuances that the BWN Act brings. Still, what is VA's rationale for staying decisions for those veterans who were along the Korean DMZ between April 1, 1968 and August 31, 1971, inasmuch as VBA raters had been adjudicating these claims for years prior to the stay? What is VA's rationale for staying claims for children with spina bifida whose parent served in Thailand? What is VA's rationale for staying claims that they can grant under *Procopio*?

This broad, overarching, and completely unnecessary stay is harming veterans. In one case, for example, the VA decided to stay a terminally ill veteran's appeal despite the fact that they had already conceded exposure to Agent Orange prior to the stay. There is a bit of hypocrisy here. The VA touts its mission of fulfilling President Lincoln's promise: "*To care for him who shall have borne the battle, and for his widow, and his orphan.*" Right now, the VA already has a pile of claims it is ready to grant on January 1, 2020. We wonder – as we trust you will as

well – just how many veterans in this stack of claims will die before January 1st? Why does the Secretary refuse to lift the stay and grant these claims immediately? The mission of the VA, after all, is to care for those who have served in uniform and not delay delivery of benefits so that VA can issue a press release on January 1st touting how much money they managed to award in a single day.

The VA’s Continual Misstatement of Just What the Law Establishes Threatens the Delivery of Benefits to Veterans.

VVA is concerned over some of the messaging thus far concerning the stipulations in the BWN Act. The law *does* establish that certain veterans who served offshore of the Republic of Vietnam and in or near the Korean Demilitarized Zone during specific time periods *shall* be presumed to have been exposed to an herbicide agent. The law, however, does *not* indicate that a claimant is only eligible for benefits if he or she has a disability that is recognized as a disease associated with exposure to certain herbicide agents noted in 38 C.F.R. § 3.309(e). Indeed, a veteran may provide a medical nexus to prove a health condition not enumerated in Section 3.309(e) is caused or aggravated by exposure to an herbicide agent. This is particularly relevant for veterans suffering from bladder cancer, hypothyroidism, Parkinson’s-like symptoms, and hypertension, as these disabilities have not yet been added to the recognized list of presumptions to service connection.

Nevertheless, and despite VVA and other VSOs clarifying this point on multiple occasions, the materials that have been released by the VA thus far seem to suggest that veterans will be eligible under the BWN Act for benefits only if they can provide evidence that they have a presumptive disability pursuant to Section 3.309(e). (*See, e.g.*, VA Letter to Previously Denied Compensation Claimants [With No EP-335 Pending]).

The VA’s Vietnam Blue Water Navy Veterans Fact Sheet (7-5-2019), which is available online, also states: “To be entitled to disability compensation benefits, these Veterans **must have one or more of the conditions associated with Agent Orange exposure that are listed in 38 Code of Federal Regulations section 3.309(e).**” (Vietnam Blue Water Navy Veterans, <https://www.va.gov/BWN-one-pager-7-5-2019-V4.pdf> [emphasis added]). We are concerned that the VA is failing to make this important distinction, thereby effectively deterring otherwise eligible claimants from filing a claim. The VA would do a lot better by listening and

incorporating VSOs' feedback and advice, so that all eligible beneficiaries are made aware to apply for benefits due to them under the law.

VVA is also concerned about the messaging to eligible survivors and dependents. VVA urges VA to pay special attention to the messaging and outreach to eligible survivors, as awareness of the benefits available and how to access these benefits must be prioritized. Unfortunately, proper recognition of the sacrifices of our veterans took multiple decades to be realized; we now have a responsibility to the families who also sacrificed so much. Accurate, helpful, and targeted messaging to eligible survivors and dependents is necessary and must be also prioritized.

The VA's Rigid and Harmful Policies Concerning Previously Filed Claims Threatens the Delivery of Benefits to Veterans.

VVA fears that new VA form requirements, as required pursuant to the Appeals Modernization Act (AMA) through regulations, will create additional barriers to eligible beneficiaries who seek to reopen previously-denied benefits claims. Specifically, for veterans who previously filed for a "same or similar benefit on the same or similar basis," must file for such benefit on VA Form 20-0995. Veterans filing for a new benefit, however, must file on VA Form 21-526EZ.

VVA believes that it is an unreasonable expectation for a veteran to determine how the VA will interpret "same or similar" when he or she seeks to file for a benefit. This is particularly true for those veterans who have applied for benefits many years ago. To ensure that a veteran or family or survivors do not lose any benefits, VVA's current practice requires veterans service representatives to often submit *both* Form 20-0995 and Form 21-526EZ; this creates unnecessary paperwork and administrative burdens for the VA as well.

Because VA Form 21-526EZ contains all of the same information VA would collect through VA Form 20-0995, VVA believes that the VA should accept any claim, original or supplemental, on the same form – VA Form 21-526EZ – after the one-year appeal period has elapsed. This would be particularly helpful for Blue Water Navy veterans.

Although the VA has pledged to amend its regulations so that ITFs – Intent To File – will also be accepted for supplemental claims, they have not made the same commitment to fix the form issue. VVA is thankful for the willingness of the VA to address the ITF issue; nevertheless, it is important to note that accepting ITFs for supplemental claims does not address the fundamental problem with the form issue.

For many BWN veterans who have previously submitted claims, perhaps even decades ago, VVA urges the VA to immediately address the form issue to ensure that veterans may be permitted to receive their maximum earned benefits. Notably, VVA believes that this issue may be further exacerbated due to VA's failure to include the 21-526EZ form in letters to BWN veterans with previously denied claims or to even mention or properly explain when a different form may be needed.

VVA is thankful that Congress has recognized at long last the sacrifices of Blue Water Navy veterans and veterans who served in or around the Korean DMZ and in Thailand. Much can still be done to ensure that these veterans and their families who should benefit by this law are treated with respect and dignity. VVA therefore calls on the VA to immediately lift the stay and adjudicate the "pile" of claims they already have "ready to go." VVA urges the VA to genuinely collaborate with the VSOs to help ensure that the messaging of what the BWN Act does and does *not* do is accurate, so that those who are eligible under the new law are not deterred from applying. Finally, VVA implores the VA to address the form issue so that these veterans and their families/survivors are not penalized unjustly for not correctly identifying "same or similar" benefits that they may have applied for decades ago.

VVA is committed to supporting the VA's request for additional funds from you in Congress. And we stand ready to work in partnership with the VA and our fellow VSOs to ensure that the Blue Water Navy law is implemented in a timely and respectful manner.

We thank the Subcommittee for the opportunity to testify here today, and we will of course respond to any questions members may ask of us.

VIETNAM VETERANS OF AMERICA
Funding Statement
October 30, 2019

The national organization Vietnam Veterans of America (VVA) is a non-profit veterans' membership organization registered as a 501(c) (19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

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RICK WEIDMAN

Richard F. “Rick” Weidman serves as Executive Director for Policy & Government Affairs on the National Staff of Vietnam Veterans of America (VVA). As such, he is the primary spokesperson for VVA in Washington. He served as a 1-A-O Army Medical Corpsman during the Vietnam War, including service with Company C, 23rd Med, AMERICAL Division, located in I Corps of Vietnam in 1969.

Mr. Weidman was part of the staff of VVA from 1979 to 1987, and from 1998 to the present, serving variously as Membership Services Director, Agency Liaison, Director of Government Relations, and now Executive Director for Policy & Government Affairs. He left VVA to serve in the Administration of Governor Mario M. Cuomo (NY) as statewide director of veterans’ employment & training (State Veterans Programs Administrator) for the New York State Department of Labor from 1987 to 1995.

Rick has served as Consultant on Legislative Affairs to the National Coalition for Homeless Veterans (NCHV), and served at various times on the VA Re-adjustment Advisory Committee, as a consumer liaison on the Secretary’s Advisory Committee on Serious Mental Illness at VA, the Secretary of Labor’s Advisory Committee on Veterans Employment & Training, the President’s Committee on Employment of Persons with Disabilities - Subcommittee on Disabled Veterans, Advisory Committee on veterans’ entrepreneurship at the Small Business Administration, and numerous other advocacy posts in veteran affairs. Weidman has been honored with awards for his work in veterans’ employment at the local, state and national levels many times over the last forty years. He is currently Chairman of the Veterans Entrepreneurship Task Force (VET-Force), which is the consortium of most of the major veterans’ service organizations and military service organizations regarding expanding opportunities for veterans, particularly disabled veterans to create, own, and successfully operate their own small business.

Mr. Weidman was an instructor and administrator at Johnson State College (Vermont) in the 1970s, where he was also active in community and veterans affairs. He attended Colgate University (B.A., 1967), and did graduate studies at the University of Vermont.

He is married and has four children.