



Guidance for State and County Veteran Service Officers across this Nation; Procopio v Wilkie

ED BALL-FRIDAY, MARCH 29, 2019
 304 Reads

Let me introduce myself, I'm Ed Ball, RMC(SW) USN Retired, and CVSO Retired, I spent 18 years filing VA Claims and benefits for our veterans and widows in the great state of Ohio, having retired 01 May 2018. I went on to become a volunteer as the Military Veterans Advocacy Deputy Chief of Staff for Research, into Blue Water Navy, Central Pacific Herbicide issues, and we're also working the comprehensive Toxic Chemical Exposure Bill that will be introduced into Congress in the near future. It is our

agency that represented Alfredo Procopio v Wilkie into the Federal Circuit Courts and won an overwhelming precedent setting decision 9-2 through an en banc hearing on Dec 7, 2018. Am also on the Board for Blue Water Navy Association.

So allow me to provide you with the much needed information to better serve your veterans, because we both know the VA is all about saving tax payers dollars while veterans have to scratch and bite for every crumb that falls from the table. If you wait until the VA provides guidance, some poor veteran can easily be out tens of thousands of dollars by not being given the opportunity to establish an effective date of claim under Procopio v Wilkie.

Here's where we are today!

Procopio v Wilkie Dec 7, 2018, en banc hearing with a panel of 10 judges and 1 absentee you can download and [listen to the hearing here](#):, provided on [29 Jan 2019](#) a 9-2 decision in Blue Water Navy's Favor. The [Courts Mandate](#) was issued 22 Mar 2019 making it law of the land.

On 26 Mar 2019, VA Secretary Wilkie went before the [Senate Committee of Veteran Affairs](#), and informed the committee the VA would not petition the Supreme Court to overturn Procopio v Wilkie. (Begin @ 26mins with the Chairman's remarks)

Reading through the Federal Circuit Courts of Appeals, on the surface, the issue of territorial waters appears ambiguous at best. But when you factor in the evidence, in this case which reflects on:

1. [The Agent Orange Act of 1991](#) - Congress original intent
2. [UN Convention and Law of the Sea 1982](#) - Part II
3. [USS Intrepid CVS-11 July 1966](#) deck logs on which the Courts found his ship in the territorial waters of the Republic of Vietnam. (No where near 12nm from shore) Your Proof if needed in an Appeal to rebuke VA's future misinterpretation. If you have such a case, let us know.

4. The Federal Circuit Courts own erroneous decision which is **overturned** in [Haas v Peake](#)

The VA Secretary directed his Under Secretary of Veterans Benefits Administration, Dr. Lawrance to issue a [Stay on all Blue Water Navy Claims](#) whose outcome may be affected by the Procopio v Wilkie decision until further notice.

We have been encouraging all Blue Water Navy veterans/widows to file or reopen their claims with deck logs showing the ship operating in the territorial waters and or the Republic of Vietnam, to establish an effective date of claim for presumptive exposure to Agent Orange. Requirements for boots on soil or ship entering an inner waterway is no more. This gives them the opportunity to take full advantage of their entitlements to VA Benefits, to include maximizing their retroactive checks.

[Reopen VA Claim under Procopio v Wilkie](#) - feel free to utilize it to your benefit and disseminate freely, to include filing for Hypertension; the Chemical of Interest was dioxin/TCDD that provides sufficient evidence for the link to Hypertension in the Conclusion section of Veterans and Agent Orange Update 11 (2018).

To deny veterans their right to file a claim, denies them their access and rights to the very benefits and compensation they have been fighting for over 17 years, when VA Secretary Principi erroneously took them away in 2002 through misinterpretation of inner waterways, and the original intent of Congress in The Agent Orange Act of 1991. Liability in Civil Courts becomes a major concern for those local State and County Veteran Service Officers, who admittedly are veterans advocates and fail to render services to veterans and widows. Most of which is based on the simple fear of the unknown, and requires further education. But let us recognize Procopio v Wilkie is the law of the land today!

What defines the territorial waters? IAW Procopio v Wilkie, the Federal Circuit Courts recognized the definitions as established in the U.N Convention and Law of the Sea of 1982.

Therefore using the straight baseline method, and an additional 12nm beyond the baseline further out to sea we end up with **the following image**.

The actual coordinates for the baseline depicted by the red line, that encircles the Republic of Vietnam and north to 17 10N is found declared and filed with the [State Department](#) by Vietnam, as a red lettered box on the map in the final page. As well as included in [HR 299](#) with the 116th Congress.

Keep in mind, *Procopio v Wilkie* takes care of those claims currently open or in Appeal with the BVA, and those that are reopened based on the Courts decision and those with presumptive conditions will be awarded accordingly. There is no look back provision cited by the Courts.

In HR299, once it becomes law, of which we have monumental support in Congress, put to a vote it shall pass this Congress, does indeed have such a provision:

"(2) (A) Notwithstanding subsection (g) of section 5110 of this title, the Secretary shall determine the effective date of an award based on a claim under this section for an individual described in subparagraph (B) by treating the date on which the individual filed the prior claim specified in clause (i) of such subparagraph as the date on which the individual filed the claim so awarded under this section.

“(B) An individual described in this subparagraph is a veteran, or a survivor of a veteran, who meets the following criteria:

“(i) The veteran or survivor submitted a claim for disability compensation on or after September 25, 1985, and before January 1, 2020, for a disease covered by this section, and the claim was denied by reason of the claim not establishing that the disease was incurred or aggravated by the service of the veteran.”

[Blue Water Navy Vietnam Veteran Assoc Master List](#) are deck logs known to qualify for service in the Republic of Vietnam. (a work in progress); gives you access to email address to request deck logs from the National Archives, the CONGA (NGFS) database online at NARA, dates of deployments based on AFEM or VSM medals found in OPNAVNOTE 1650, and much more. Broke down into three sections:

1. Ships initially noted to be in territorial waters
2. Naval Gunfire Support Ships - had to be in close proximity ashore due to limited range of shipboard gunmounts and therefore are eligible.
3. Operation Market Time Ships - coastal patrols of RVN

[Military Installation Contaminant List](#) - used to identify toxic chemical exposures in and around the U.S. at military installations in CONUS. Great for identifying additional direct exposures for the Gulf of Tonkin sailors that never served in the waters of the Republic of Vietnam. (work in progress) as of this writing there are 20 installations contaminated with dioxin/TCDD.

Recommend bookmarking these two documents to see the latest updates/revisions in the future.

I put this same information out in the OSACVSO Winter Quarterly training in February, which was more information than the VARO Cleveland office had to share. Don't recommend waiting on the VA to disseminate information in a timely manner.

Feel free to share this information with your peers across your state and nation.

If you have any questions, feel free to contact me directly.

Best regards,

Ed Ball, RMC(SW), USN, Ret. CVSO Shelby Co., Ohio Ret.
Military Veterans Advocacy Inc., Deputy COS of Research
Sidney, Ohio
(937) 710-5377