

‘Blue water’ Navy veterans from Vietnam-era win Agent Orange benefits case

Mike Yates, left, is one of the “blue water” Navy veterans who served on ships off the coast of Vietnam but did not qualify for the same disability benefits as other veterans. (Bill O’Leary/The Washington Post)

By [Ann E. Marimow](#)

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A federal appeals court in Washington sided Tuesday with thousands of Vietnam War veterans who were stationed offshore during the war and developed health problems linked to exposure to the toxic herbicide Agent Orange.

The U.S. Court of Appeals for the Federal Circuit ruled overwhelmingly for these sailors, finding they are eligible for the same disability benefits as those who put boots on the ground or patrolled Vietnam’s inland rivers.

The 9-to-2 decision reverses a decade-old ruling by the court and applies to an estimated 52,000 veterans nationwide. A court majority said Congress clearly intended to extend benefits to sailors who were stationed in the territorial seas and are known as “blue water” Navy veterans.

“We find no merit in the government’s arguments to the contrary,” Judge Kimberly A. Moore wrote for the majority.

The two dissenting judges warned against overturning the court’s previous decision and said such policy decisions should be reserved for lawmakers.

Similar efforts in Congress to broaden benefits have stalled in recent years. Veterans Affairs Secretary Robert Wilkie and four former secretaries opposed the legislation, citing cost and the need for further study.

“Recent debates in Congress, which required consideration of the significant cost of the proposed addition of Blue Water Navy veterans underscores why Congress, rather than the courts, should be the one to revisit our interpretation,” wrote Judge Raymond T. Chen, who was joined by Judge Timothy B. Dyk.

[\[The ‘blue water’ Navy veterans of the Vietnam War battle Agent Orange\]](#)

The appeal was brought by Alfred Procopio Jr., who served on the USS Intrepid, an aircraft carrier deployed off the coast of Vietnam. Procopio, 73, was denied benefits for claims related to his diabetes and prostate cancer. Both are ailments the U.S. government has linked to exposure to the infamous herbicide the U.S. military sprayed to destroy crops and reduce cover for enemy forces.

An administrative board found him ineligible because he was not “present on the landmass or the inland waters of Vietnam.”

The ruling Tuesday means Procopio and any other veteran who served within Vietnam’s territorial sea will now be presumed eligible for disability benefits if they have one of the diseases that is linked to the herbicide.

Procopio’s attorney Mel Bostwick called the decision “crucial and long overdue.”

“These Vietnam veterans sacrificed their own health and well-being for the good of the country, and the benefits that Congress provided — and which the court’s decision now secures — are part of the debt of gratitude we owe them for their service,” she said in a statement following the ruling.

“For years, Navy veterans have suffered with the effects of Agent Orange exposure while the VA remained recalcitrant,” attorney John B. Wells, a retired Navy commander, who has led lobbying efforts in Congress, said in a statement Tuesday.

The Department of Veterans Affairs will have to assess Procopio’s disabilities before calculating his benefits and evaluate other veterans like him with pending cases.

The government can seek review by the Supreme Court. A VA spokesman, Curt Cashour, said the department is “reviewing this decision and will determine an appropriate response.”

During the war, those patrolling Vietnam’s coastline like Procopio were referred to as the “blue water” Navy in contrast to the “brown water” sailors who operated on inland waterways.

Advocates for the blue water sailors point to studies that show exposure to Agent Orange occurred through contaminated water funneled into ships’ distillation systems and used for drinking, laundry and cleaning. Much of the spraying was on low-lying swamps of the Mekong River Delta that flows into the South China Sea, where they were stationed.

A three-judge panel of the court previously heard Procopio’s case but did not issue a decision. Instead, the court took the unusual step of rehearing the case as a full panel in December.

[\[Agent Orange’s reach beyond the Vietnam War\]](#)

The question before the full court was whether Congress intended to give the blue water sailors the benefit of the doubt when it comes to showing their medical conditions are connected to toxic exposure.

One disputed line in the statute that was persuasive to the majority says the presumption, entitling veterans to disability benefits, applies to any “veteran who, during active military, naval, or air service, served in the Republic of Vietnam.”

In her 19-page opinion, Moore wrote that the inclusion of that language reinforces “our conclusion that Congress was expressly extending the presumption to naval personnel who served in the territorial sea.