Script Blue Water Navy – Final 11/24/19

Slide 1 – Title Slide

Hello, this training will be covering the new Blue Water Navy Vietnam Veterans Act of 2019. We will be discussing the changes that come along with this law, as well as the policies and procedures that will be implemented across VBA in order to develop these claims.

Slide 2 – Objectives

Our objectives for today’s training will be to fully understand what this law means for Navy Veterans who served within the Republic of Vietnam. We will cover how to develop these claims going forward, to include who is responsible for this new centralized development process. We will also talk about what tools to use, and what to look for within a Veteran’s records in order to verify service in the Republic of Vietnam.

Upon completion of the training, you will be able to:

(1) identify the types of Vietnam nautical service

(2) develop for required evidence and categorize Vietnam nautical service

(3) identify the presumptive conditions associated with herbicide exposure

(4) verify herbicide exposure using the Ship Locator Tool

(5) complete steps required to route the claim to the Records Research Specialists for further exposure verification

Slide 3 – References

These are the references regarding the new law, to include the law itself, Public Law (PL) 116-23, which we will be going over in today’s training.

Slide 4 – Recognition of Herbicide Exposure by VA

Before this new law change (to go into effect January 1, 2020), VA considered herbicide exposure when a Veteran showed to have served on the ground or inland waterways of Vietnam. However, with the new changes put forth by PL 116-23, VA will extend a presumption of herbicide to even more Veterans who qualify based off the new law changes we will discuss throughout this training. This will now include Veterans serving aboard ships operating in Vietnam’s offshore waters.

Slide 5 – Recognition of Herbicide Exposure by VA – cont.

These changes began with the case Procopio V. Wilkie (2019), which sought to extend the presumption of herbicide exposure to those Veterans who served in the offshore waters of Vietnam. On January 29, 2019, the Federal Circuit held that his was defined as serving in the territorial sea of the Republic of Vietnam, or 12 nautical miles from the land mass. This was the beginning of the extension of presumption that we are discussing throughout today’s training.

Slide 6 – Recognition of Herbicide Exposure by VA – cont

Following this, PL 116-23, or the Blue Water Navy Vietnam Veterans Act of 2019, was enacted on June 25, 2019. This put into law the main components of Procopio V. Wilkie. It expanded the definition of what qualifies as nautical service in Vietnam, to include the offshore waters. This new expanded definition sought to open herbicide presumption to a greater number of Navy Veterans affected by herbicide exposure within the Republic of Vietnam. These changes are set to go into effect on January 1, 2020. We will explore this law further throughout today’s training.

Slide 7 – Definitions

So what do we mean when we say inland and offshore waters? Inland waterways are those that would be freshwater, such as rivers and streams around the mainland. However, offshore waters (as referred to in the new law) constitute the waters within 12 nautical miles seaward of a line commencing on the southwestern demarcation line of the waters of Vietnam and Cambodia, and intersecting the coordinates that can be found in PL 116-23.

Slide 8 – Component of the New Law

As discussed in the last slide, the law will consider vessels operating within those 12 nautical miles. It will also move the start date of presumption of herbicide exposure in the Korean Demilitarized zone 7 months earlier (from 4/1/1968 to 9/1/1967), which will also effect many claims as well. Also, make note that the law covers benefits for spina bifida as well (except spina bifida occulta), which may be provided to a Veteran’s children, as long as they have the applicable Thailand service as covered on this slide (1/9/1962 to 5/7/1975).

Slide 9 – Identifying Blue Water Claims

So how do we identify these claims? Our first step would be to try and follow our normal development procedures for claims based on herbicide presumption, to see if we can establish RVN service through those means. This will instruct us to order the Veteran’s personnel records for review, as well our resources that we can use in attempts to verify whether the ship that the Veteran served on traveled on inland waterways, docked at a pier on the shore of the Republic of Vietnam or if the crew was sent ashore. For claims based off nautical service within the Republic of Vietnam, our central processing teams will begin development, and transfer the claim to a Records Research Specialist for any needed additional research.

Slide 10 – Centralized Processing

So now that we have an idea on what the law is addressing, the question becomes: who is responsible for processing these claims? Well, there will be centralized processing within VBA, in which these cases will be assigned to specific ROs to determine if the Veteran has the eligible service within the inland waterways, eligible offshore waters, or any eligible service within Thailand.

Slide 11 – Centralized Processing – cont.

These are 8 designated sites that will provide the centralized processing. For the most part, the cases should be properly routed to these sites by the National Work Queue (NWQ).

Slide 12 – Centralized Processing Team Development Responsibilities

These are the responsibilities of these development teams. They will use VBA-approved tools and sites to research the Veteran’s service, and to determine if the applicable Republic of Vietnam Service exists, much as we do now. This will include any warranted examinations and development letters needed based off the facts and circumstances of the given case. The records research team will be utilized for additional research.

Slide 13 – Service in the Republic of Vietnam

This slide is an overview of what we have talked about thus far. How can we establish proof that a Veteran served in RVN? On-land service (also referred to as ‘boots on ground’), within inland waterways and the offshore waters, as covered by the new law PL 116-23.

Slide 14 – Nautical Vietnam Service

As we’ve discussed, we will try and verify the Veteran’s Vietnam service using any avenues we can. We will start by reviewing our basic qualifications, as we discussed in the previous slide. If we cannot concede herbicide exposure after a standard review of the Veteran’s records, we must take additional development actions in order to determine which type of nautical service the Veteran has: inland waterways or service within eligible offshore waters put forth under the new law.

Slide 15 – Specific Geographic Locations Determined to be Inland Waterways

We’ve referred a lot to ‘inland waterways,’ and this slide explains what that would constitute. These are simply waterways that would be within the perimeter of land-type vegetation or within the land mass itself. The slide makes special note of the marshes found in the Run Sat Special Zone and other Vietnam coastal areas as constituting as inland waterways.

Slide 16 – Specific Geographic Locations Determined to be Eligible Offshore Waters

These list shows geographic names for offshore waters which are eligible, to include their coordinates. This list can be found within PL 116-23 for your reference. On our next slide, we will also cover some of the bays and harbors which would be eligible as well.

Slide 17 – Bays and Harbors

This slide contains a list of specific bays and harbors in which we can concede the Veteran’s RVN service, if the evidence supports these locations were visited. In further slides, we will go over what tools we can use, and what to look for within a Veteran’s records in attempts to find service at such locations.

Slide 18 – Bays and Harbors – cont.

VA will now consider these qualifying bays and harbors as eligible offshore waters. Upon conceding a Veteran’s Republic of Vietnam service/Agent Orange exposure due to visitation to one of these locations, our centralized processing teams will continue to our normal development procedures, as applicable. These claims will be placed under EP control as an EP 335 once evidence of nautical service in the Republic of Vietnam is obtained.

Slide 19 – Ship Locator Tool

The Ship Locator Tool will be used to determine whether or not we can concede herbicide exposure. The tool utilizes both Navy and Coast Guard vessel deck logs to determine ship location, based on the Veteran’s nautical service. In the next few slides, we will go over what you can look for within a Veteran’s records, such as ship deck logs, when reviewing for eligible nautical service.

Slide 20-21 – Reviewing Service Records – Ship Deck Log

Here we see an example of a ship deck log, showing visitation Da Nang Harbor, as highlighted in the record.

Slide 22 – Reviewing Service Records – Ship History

Here we see Da Nang also listed within the ship history as well.

Slide 23 – Reviewing Service Records – Ship Chronology

This is a great example, as Da Nang, RVN is clearly listed within the ship chronology, making it relatively easy to find within the Veteran’s records.

Slide 24 – Tracking Claims Based on RVN Nautical Service

All claims based on herbicide exposure during the Vietnam Era will be initially controlled under the appropriate rating end product (EP).

Claims that are based on nautical service will be tracked under an EP 335. As the claim moves through the process, it is crucial that the appropriate EPs, corporate flashes, and special issues are assigned *at the appropriate time*.

Slide 25 – Reviewing the Claims Folder Proof of RVN Service

The military records must be requested by the non BWN RO before it is forwarded to **Centralized Processing Team.**

Slide 26 – Definition of Eligible Offshore Waters

VA will recognize service in the eligible offshore waters as service in the Republic of Vietnam effective January 1, 2020. The eligible offshore waters include the seas of the Republic of Vietnam, which, under international law extends 12-nautical miles from an established baseline.

Service in the eligible offshore waters of Vietnam during the time period beginning on January 9, 1962 through May 7, 1975, now qualifies a Veteran for presumption of herbicide exposure based on service in the Republic of Vietnam as defined in 38 CFR 3.313.

This function of determining eligible offshore waters service is designated solely to the Records Review Specialists for consistency and recordkeeping purposes, and their determination is binding on Regional Offices.

Slide 27 – Developing Claims based on RVN Nautical Service

* Claims processors must ensure any records used to concede exposure are uploaded to the Veteran’s eFolder and documented
* Centralized processing teams must follow existing procedures, to include reviewing personnel records, ships lists, and other relevant evidence to determine if presumption of exposure is established.
* If the RO is unable to establish if a Veteran’s RVN nautical service qualifies for exposure, the claim must be routed to the Records Research Specialist (RRS)Team for an evidence-based certification of location.

Slide 28 – How to Document Qualifying Eligible Offshore Service

If we can concede, exposure the following procedures must be followed:

Upload a PDF image of the deck logs to the Veteran’s VBMS eFolder using the following subject line: Service Personnel Records: Logbooks.

Complete exposure verification memo

Upload memo to the Veteran’s VBMS eFolder using the following subject line: Eligible Offshore Service confirmed.

***Note:*** In order for the claim to be rated under the correct provisions, the exposure verification memo must include the exact location for conceding exposure.

Slide 29 – Presumptive Conditions

Here are some of the Presumptive conditions per 3.309 (e) for service connection for agent orange to include BWN are:

* AL amyloidosis
* Chloracne or other acneiform disease consistent with chloracne
* Type 2 diabetes
* Hodgkin's disease
* Ischemic heart disease (including coronary artery disease)
* All chronic B-cell leukemias
* Multiple myeloma
* Non-Hodgkin's lymphoma
* Parkinson's disease

Slide 30 – Presumptive Conditions – cont.

Additional - Presumptive conditions per 3.309 (e) for service connection for agent orange to include BWN.

* Early-onset peripheral neuropathy (PN)
* Porphyria cutanea tarda (PCT)
* Prostate cancer
* Respiratory cancers
* Soft-tissue sarcoma

Slide 31 – Presumptive Conditions (Time Limits)

These presumptive conditions have to manifest within one year of the veteran’s last exposure to herbicides time limit. There is no time limit for the other presumptive diseases.

* + Chloracne or other acne-form disease consistent with chloracne
  + Porphyria cutanea tarda (PCT), and
  + Early-onset peripheral neuropathy (PN)

Slide 32 – Disability Compensation and Survivor Claims

In order, for veteran to be considered for benefits under the new law, the veteran must file a claim on a standard claim form, VA Form 526ez for service-connected disability.  substantially complete.

Survivors must file a claim on a standard claim form, VA Form 534ez, for DIC and accured benefits.

Note: Dependency and Indemnity Compensation (DIC), Survivors Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation if Applicable).

Note: A claim for accrued benefits must be filed within one year of the Veteran’s death to be timely

Slide 33 – Disability Compensation and Survivor Claims – cont.

Claims that have been previously adjudicated and are received on or after February 19, 2019. (the date of the Appeals Modernization Act- AMA). The claim must be file on the appropriate form, such as VA Form 20-0995, Decision Review Request: Supplemental Claim or VA Form 20-0996, Decision Review Request: Higher Level Review.

Slide 34 – End Product Control

The claim must be put under control by the respective EP 110, 010 – an original claim; 020 for an non original claim; 140/ 165 - for survivors’ claimant and 030/ 040 for a supplemental claim.

As stated above supplemental claims for PMC accrued is controlled with an EP 165 and 335

Slide 35 – Evidentiary Development

Per policy, all regional offices are responsible for the initial processing phrase of claims on herbicide exposure. Once it is identified as BWN it is then routed by NWQ to one of the eight regional offices, which is mentioned as the Central Processing Team.

Slide 36 – Service In Thailand/Korea

These are the steps to take if the claimant is claiming exposure in either Thailand or Korea and service is identified, or the **answer is yes,** remove the blue water agent orange flash special issue for all contentions.

At this point the VSR can schedule any necessary examination and look over all additional development to make ready for decision. Once the Rating decision is completed the award can be promulgated, authorized and the decision notice sent. At this point the case is completed.

Slide 37 – In-Country Service Conceded

While reviewing the claim folder and in-country service is conceded, remove the blue water agent orange flash special issue for all contentions and complete exposure memo.

Here we are repeating the step mentioned in the above slide.

VSR may schedule any necessary examination and look over all additional development to make ready for decision. Once the Rating decision is completed the award can be promulgated, authorized and the decision notice sent. At this point the case is completed

Slide 38 – Nautical Service

Does the evidence show nautical service? If yes. if the claim is a supplemental claim

(EP 040) – CEST a companion EP 335.

If the ep is not a supplemental claim (EP 040) Pchange rating ep to an EP 335

Slide 39 – Bays and Harbors – No Service

Did the veteran serve in Bay or Harbor? If no, search Ship Locator Tool for ship(s) and date ranges on veteran’s Official Military Personnel File (OMPF).

Can exposure be conceded? If no, send veteran subsequent development that includes agent orange related development actions. Add special 12-mile review special issue.

Slide 40 – Bays and Harbors – Service

When service is conceded, please follow the steps mentioned in this slide and script for Bays and Harbors.

1. Did the Veteran serve in a bay or harbor and herbicide exposure is conceded?
2. If yes, concede exposure as eligible offshore water service
3. Upload PDF images of deck logs to the Veteran’s eFolder using the following for the subject line: Service Personnel Records Logbooks
4. Complete exposure verification memo
5. Upload memo to Veteran’s VBMS eFolder using the following for the subject line: Eligible Offshore Service Confirmed
6. Proceed with all other required development, to include requesting any necessary examinations
7. Upon completion of development, refer the claim to the centralized processing team’s rating activity.
8. Proceed not further

Slide 41 – Records Research Specialist

Before referring a claim for action by the Records Research Specialist (RRS), centralized process teams must complete the necessary steps.

* + Ensure there is evidence of a condition under 38 CFR 3.309(e)
  + Determine if the Veteran had duty or visitation on the ground in Vietnam
  + Determine if the Veteran’s ship served in a qualifying bay or harbor
  + Ensure all required military records have been requested and obtained and,
  + Send a subsequent development letter to the claimant, requesting additional service details, if needed.

Slide 42 – Development – Veteran or Survivor

If claimant fail to provide required information to concede herbicide exposure take the following steps.

Develop to the Veteran or survivor if:

* 1. there is not sufficient evidence of record to concede herbicide exposure **and**
  2. the claimant has not provided any information
  3. Phone development is acceptable and encouraged

Slide 43 – Development cont.

When developing to the veteran or survivor, use the herbicide development paragraphs in VBMS to request information from the Veteran. For survivors claimants, use development paragraphs in MAPD. Allow the claimant 30 days to submit the requested evidence.

Slide 44 – Development Letter

This slide provides the paragraphs required when sending a development letter to the claimant to provide additional information to concede exposure to herbicide.

Slide 45 – Informing the Veteran of Agent Orange Registry Program\*

This section lets the veteran know that they can receive an examination at the VAMC for Agent Orange exposure. Follow the procedures on the slide and in the script.

If the development activity determines further development is necessary per current policies the development activity should also:

* + Inform the Veteran of the availability of hospital examinations and treatment as part of the Agent Orange Registry program, and

If the Veteran has already had the herbicide examination or been treated for herbicide exposure, request that the Veteran submit

* + A copy of the examination or treatment report, or
  + The name of the Department of Veterans Affairs (VA) facility performing the examination or treatment so that a copy of the report may be associated with the claims folder.

Slide 46 – Requesting Examination

Reminder: Employees should not be requesting examinations where there is no evidence of a diagnosis of cancer.

Slide 47 – Requesting Records Review Specialists Research

The routing of a claim to the Records Review Specialists should only be completed if the Regional Office is not able to establish that the Veteran’s service qualifies for exposure under existing procedures.

Do not route a claim to the Record Review Specialists if the Veteran is claiming a condition that is not listed as a presumptive condition under [38 CFR 3.309(e)](https://www.ecfr.gov/cgi-bin/text-idx?SID=9af5e29f461a98aeb34add867cc8ee45&mc=true&node=se38.1.3_1309&rgn=div8) or if evidence establishes that he or she did not serve aboard a vessel during the specified period.

Slide 48 – Questions

As a reminder there is a Standard Operating Procedure (SOP), that speaks specially to your duties as a Centralized Processing Team member. If you have questions or need clarification, please review the SOP.