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If Veterans don't help Veterans, who will?

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United States Senate

WASHINGTON, DC 20510

January 12, 2015

The Honorable Robert A. McDonald
Secretary of Veterans Affairs
810 Vermont Avenue, North West
Washington, DC 20420

Dear Secretary McDonald,

Thousands of veterans who served on Navy ships during the Vietnam War are suffering from significant health conditions associated with exposure to toxic herbicides. Although these “Blue Water Navy” veterans served only aboard ships in the territorial waters of Vietnam, many were nonetheless profoundly affected by Agent Orange and other chemicals used as defoliants.

When applying for VA-provided health care for the conditions that resulted from their exposure, Blue Water Navy veterans were initially afforded the same presumption of service connection under 38 U.S.C. § 1116 as those who served on the ground or in inland waterways. However, in 2002, VA implemented an exclusive policy that presumptive coverage would only be extended to veterans who could provide orders for “boots on the ground” in Vietnam. This change in policy effectively placed the burden of proof on the Blue Water Navy veterans despite their having suffered from the same cancers and illnesses as their fellow service members. We ask that you reconsider this policy and apply the presumption to all who served in the territorial waters of the Republic of Vietnam.

On September 29, 2015, the Senate Committee on Veterans Affairs held a hearing entitled “Examining the Impact of Exposure to Toxic Chemicals on Veterans and VA’s Response.” David McLenachen, Interim Deputy Under Secretary of Disability Assistance, testified at the hearing regarding the rationale for the 2002 regulatory change. Mr. McLenachen explained that the previous policy had been to grant presumptions of service connection to all those who were awarded the Vietnam Service Medal, but that VA had determined that this policy was over-inclusive because it included, for example, flight crews launching from and returning to Thailand.

Barring the presumption for anyone who did not serve within the land boundaries of Vietnam is too restrictive. In *Gray v. McDonald*, the Court of Appeals for Veterans Claims found VA’s exclusion of Da Nang Harbor from its definition of “inland waterways” to be arbitrary and capricious. In its decision, the Court wrote: “The Court will remand the matter for VA to reevaluate its definition of inland waterways—particularly as it applies to Da Nang Harbor—and exercise its fair and considered judgment to define inland waterways in a manner consistent with the regulation’s emphasis on probability of exposure.” VA must redefine “inland waterways” in maintaining compliance with the Court’s ruling. It has been more than seven months since the Court’s decision, and yet no new regulations have been issued.

The *Gray* case further highlights the futility and harm of seeking to draw lines around exposure to chemicals that entered waters – and affected service members – all around Vietnam. The irrationality of this distinction is particularly apparent in light of the fact that veterans who

set foot on islands off the coast are afforded the presumption of service – even if the islands were farther from the mainland than the ships on which Blue Water Navy veterans served.

The Committee also received testimony from Dr. Kenneth Ramos, Chair of the Institute of Medicine Committee on Veterans and Agent Orange. As Dr. Ramos noted, the passage of time and the lack of contemporaneous scientific evidence prevents definite determination as to whether Blue Water Navy veterans were exposed to Agent Orange. Nevertheless, his testimony also identified several scientifically plausible pathways of exposure, particularly on-board potable water distillation systems.

Dr. Ramos concluded that “whether or not the claims of [Blue Water Navy] veterans are to be processed like those of other Vietnam veterans is ultimately a policy decision.” There seems to be ample reason for you to make this policy decision in favor of the many veterans who are suffering from painful and debilitating diseases, and for whom justice is long overdue. As you did recently by extending the presumption to former reservists who had contact with contaminated C-123 aircraft used to spray herbicides in Vietnam, we urge you to use your rulemaking power to make it easier for Blue Water Navy veterans to find the care they need and deserve.


We respectfully request that you use your statutory authority to afford the presumption of service connection to veterans with Agent Orange-related diseases who served in the territorial seas of the Republic of Vietnam between January 9, 1962 and May 7, 1975. We implore you to implement this change to the regulations immediately, so that the thousands of Blue Water Navy veterans can begin receiving the benefits that they have heretofore been unjustly denied.

We thank you for your attention to this vital issue. We look forward to your actions on this matter.

Sincerely,



RICHARD BLUMENTHAL
United States Senate



JON TESTER
United States Senate



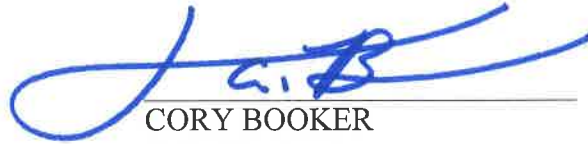
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