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***If Veterans don't help Veterans, who will?***

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Redeeming The Promise Of A Square Deal



# **New Update In VA Lawfare Against Blue Water Vietnam War Veterans**

**By Benjamin Krause | June 7, 2019**

The Department of Justice decided not to continue VA's lawfare against Vietnam War veterans called Blue Water Navy veterans who are now eligible for certain benefits based on herbicide exposure off the coast of Vietnam.

The herbicides in question are known to cause respiratory cancers, Parkinson's disease, heart disease, and a garden variety of other terminal problems. Rather than fight the claim until all Blue Water veterans die, the government will now own up for the cost of war.

With the DOJ stepping aside, up to 90,000 veterans will be eligible to receive valuable VA benefits that could be worth thousands each month. While the new benefits will cost taxpayers an estimated \$1.1 billion, perhaps taxpayers should think twice about supporting wars where we harm our troops using poisons.

This is great news for veterans, even though rumor has it the agency is in no position to give up its pattern and practice of using meritless claims to oppose these veterans.

## **January Decision**

In January, the Court of Appeals for the Federal Circuit ruled 9-2 in favor of the Navy veterans affected by herbicide exposure but who did not set foot on Vietnam soil or travel in its inland waterways. The decision broadened what it means to have "served in the Republic of Vietnam."

The underlying case, *Procopio v. Wilkie*, was that of a veteran named Alfred Procopio, Jr., who sought service-connection for his prostate cancer and diabetes.

The agency put forth an argument against Procopio that the court's majority concluded had "no merit". How about that? The agency fought Procopio, a 73-year-old veteran with terminal illnesses, for over ten years based on an argument that lacked merit.

## **Lawfare Against Vietnam War Veterans**

How much money did taxpayers save by the agency fighting a claim with a meritless argument? Should VA be allowed to pocket the interest they earned on the money that otherwise should have gone to veterans including Procopio?

All Americans should look hard and long at the process of paying out disability backpay if they want to solve any backlog.

Presently, government finance gurus have an incentive to fight claims using meritless arguments because the agency does not pay interest on the money it wrongly withholds.

There is no penalty for this behavior other than possibly paying severely discounted attorney fees if the veteran is successful in an appeal at court.

After thirty years, the veteran may receive his backpay, if he lives long enough, but the backpay is paid out using yesterday's dollars – – not today's dollars – – and not today's dollars plus interest.

Basically, the veteran may still win the benefits, but the benefits are literally worth a lot less the longer VA denies the benefits.

## **How It Works**

If you were denied benefits at 100% in 1974, wrongly, that meant you missed out on \$554 per month. That amount would have increased incrementally each year, and you would have the enjoyment and use of that money during that time.

If denied for 45 years, like a Blue Water veteran, you are now entitled to \$3,057 per month. If you win the benefits now, you are NOT ENTITLED, the backpay at the current value of 100%. Oh no, but our court system has long held that such a decision is akin to charging VA interest.

Here is a quick breakdown of the difference:

- Payment @ today's dollars: \$1,650,780
- Payment @ yesterday's dollars: a lot less

Okay, I am not going to calculate that because it would take forever to tally each year for 45 years, but just note that it is substantially less, perhaps less than half, what the veteran would receive at today's dollars.

Meanwhile, any savvy finance guru could invest the money withheld from veterans in capital markets to earn revenue while veterans go without benefits for 45 years. The interest off the money withheld is essentially how large insurance companies earn revenue for shareholders each year literally using the "Delay, Deny, Defend" model of insurance claim adjudication.

Sounds a lot like "Delay, Deny, Hope that I die," right?

Does that seem like an All-American approach to how we treat those we call on to protect our interests abroad and at home?

## Where Are The Lawmakers?

Each year we hear lawmakers come up with the next big thing to help veterans, but they never address the underlying incentive that is truly creating the most perverse, anti-American incentive harming vets each and every day.

What do you think? Is it time to penalize the federal government when it acts in an anti-American way against veterans?

We focus a lot of attention on other matters, but it seems that disincentivizing the use of meritless litigation should be at the time of the list.

Oh, and in case you think VA will now do the right thing – – I have heard the agency is already developing a battle plan to block these claimants with yet another meritless argument even more nonsensical than the last.

But, since there exists an incentive to maintain this course of lawfare, why not?

