The Status of the Presumption of Exposure to Herbicides in RVN

Hypotheticals
RESOURCES

- Compensation and Pension Service Bulletins (January and June 2010)
- Training Letter 10-06: Adjudicating Disability Claims Based on Herbicide Exposure from U.S. Navy and Coast Guard Veterans of the Vietnam Era
- Senate List; List of Types of Ships and Individual Ships Identified in Vietnam Inland Waterways
- M21-1MR, Part IV, Subpart ii, Chapter 2, Section C, 2-C-10, VA Procedures for Adjudicating Claims based on Herbicide Exposure
Blue Water Naval Vessels verified as operating on inland waterways by C&P Bulletin January 2010

- USS Carronade (IFS-1)
- USS Clarion River (Landing Ship, medium, rocket) (LSMR 409)
- USS Francis River (LSMR 525)
- USS White River (LSMR 536)
- USS Ingersoll (DD-652), USS Mansfield (DD-728), USS Richard E. Kraus (DD-849), USS Basilone (DD-824), USS Hamner (DD-718), USS Conway (DD-507), USS Fiske (DD-842), USS Black (DD-666), USS Providence (CLG-6), USS Mahan (DLG-11), USS Okanogan (APA-220), USS Niagara Falls (AFS-3)

See also C&P Bulletin June 2010, Senate List
Other vessel types verified as operating on inland waterways by C&P Bulletin

- Inshore Fire Support, Division 93 (IFS-93)
- Landing Craft, vehicle, personnel (LCVP)
- Landing Ship, tank (LST)
- Patrol Boat, river (River Patrol Boars as part of the Mobile Riverine Forces) (PBR)
- Patrol Craft, fast (“Swift Boats”) (PCF)
- Coast Guard High Endurance Cutters (WHEC)
- Coast Guard Patrol Boat (WPB)
List of Types of Ships and Individual Ships Identified in Vietnam Inland Waterways

- If veteran served on ship listed, but not during dates specified, submit lay evidence and ensure proper JSRRC request made.

- Even if veteran’s records don’t establish service on listed ship, review “inland locations” on the list and see if there are common locations.

- Note: generally, if the veteran’s vessel was in Da Nang Harbor or Vung Tau Harbor, there must be evidence of docking to the shore or pier (lay evidence that veteran went ashore).
“The evidence of record clearly shows that Da Nang Harbor is well sheltered and surrounded on three sides by the shoreline of Vietnam. The harbor is nearly totally surrounded by land and that [sic] the entire harbor is located within the territorial boundaries of Vietnam. As such, given the location of the harbor as being surrounded by the land on three sides and the evidence that the harbor is within the territory of Vietnam, and resolving all doubt in the Veteran’s favor, the Board finds that Da Nang harbor is an inland waterway for the purposes of the regulation. “
Hypothetical #1

- The veteran died in April 2001 of squamous cell cancer (right lung).
- Thereafter, his widow filed a claim for service connection for the cause of the veteran’s death.
- The veteran served aboard the USS Mahan (DLG-11) from December 1962 until June 1968.
- The case was twice before the RO and on its second adjudication by the BVA in March 2011, the Board denied entitlement to service connection finding that the USS Mahan did not: 1) dock/anchor and have ship personnel who went ashore in RVN; or 2) navigate inland waterways, such that the presumption of herbicide exposure did not apply.
Results and Analysis

• This case was recently settled at the CAVC. The parties stipulated that service connection for the cause of the veteran’s death was granted, with an effective date of April 2001, the date of the veteran’s death.

• The VA has conceded that the USS Mahan was at the inland location of the Saigon River in October 1964, during which time the veteran was aboard.

• Although the DANFS may be a helpful resource, it cannot be relied on exclusively.

• The widow is expecting a retroactive check in excess of 100k.
Hypothetical #2

- The veteran sought entitlement to service connection for diabetes mellitus, type II, and for a heart disorder, as secondary to DMII.
- The veteran served from May 1965 to February 1968 aboard the USS Perkins (verified at the inland location of the Saigon River in June 1969).
- The Board acknowledges that the USS Perkins was “anchored off the coast... in Vung Gang Rai.” The veteran did not assert that he went ashore.
- The RO and the Board did not apply the presumption because “there is no objective support for the veteran’s account that the USS Perkins served in the brown waters of Vietnam while the veteran served upon the vessel....”
Results and Analysis

- Counsel is evaluating reversal versus remand.
- VA Training Letter 10-06 reads that “such locations as... ’Ganh Rai Bay’... are inland waterways.” Internet research suggests that Vung Gang Rai is Ganh Rai Bay.
- Senate List check reveals that USS Canberra was on the inland location of Vung Gang Rai.
- At the very least, the agency failed to explain why the presumption did not apply, when another ship on the Senate List was verified inland with presence in Vung Gang Rai.
Hypothetical #3

- The veteran sought entitlement to service connection for diabetes mellitus, type II, including as due to herbicide exposure.
- The veteran served aboard the USS Sumter (LST). Lay evidence includes the veteran’s statement that the USS Sumter docked at Da Nang and that he disembarked and went ashore. A fellow servicemember stated that he oversaw on-loading of materials while the Sumter was docked.
- The agency did not develop by seeking from JSRRC and denied because available records did not reveal that the ship docked at Da Nang Harbor.
Results and Analysis

• This case is being settled.
• First, this vessel is an LST.
• Second, even if not a recognized vessel type, VA should have sought deck logs/ship histories from JSRRC [the hearing examiner noted that “if you guys docked in Da Nang, there will be some indication [in] a ship’s log.”]
• **The veteran obtained deck logs himself during the pendency of the appeal, which reflect that the ship did dock in Da Nang Harbor. The deck logs, coupled with the credible lay evidence of going ashore, would be enough to establish presumption based on docking.**
In 2009, the veteran sought entitlement to service connection for diabetes mellitus, type II, including as due to herbicide exposure.

He served aboard the USS Passumpsic (fleet replenishment oiler), including in 1968. His MOS was that of electrical repairman.

The veteran testified that the ship anchored in open water harbor, he took a small vessel to the pier to pick up a part. He stepped on the pier, a servicemember handed him the part, and the veteran returned to his small vessel.

The Board denied the claim in a November 2011 decision, finding that “standing on a pier in DaNang Harbor is not sufficient presence in Vietnam for the presumption of exposure to herbicides.”
Results and Analysis

• NOA due at the end of March. This case has not yet been recommended for appeal.
• The BVA decision docket # 04-00 250 was not incorporated into the record.
• The veteran *did not allege* that he “went ashore.”
• VA did not seek deck logs, “since the veteran did not aver that he set foot on land.”
• Training Letter 10-06 notes that “aerial herbicide spraying was used within the land boundaries of Vietnam to create open security zones...” leaving room for argument that area just beyond land (including the pier/dock) may be implicated in presumption.
• What do you think?