

IACVAC 2019 Annual Training and Conference



Blue Water Navy Cases

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2019 Blue Water Navy Timeline

**Procopio v
Wilkie Federal
Circuit Decision**

January 29th

**BVA Removes
Stay on
Adjudicating
BWN Claims**

April 1st

**Secretary Wilkie
Imposes Stay on
ALL BWN Cases
Until 1/1/2020**

July 1st

**Oral Arguments
Re: Lifting of
BWN Stay**

November 8th

2019

2019

2019

2019

2019

2019

2019

March 29th

**VA General Counsel
Advises BVA to
Grant Claims Within
12 miles of SHORE
and Bays/Harbors**

June 25th

**Blue Water Navy
Vietnam Veterans
Act (HR299)
signed into Law**

July 25th

**Military Veterans
Advocacy
Petitions Federal
Circuit to Lift
BWN Stay**



Procopio v. Wilkie – U.S. Court of Appeals for the Federal Circuit

- Decided January 29, 2019
- Overturned *Haas v. Nicholson* (2006)
- Covers “12 nautical mile territorial sea of the Republic of Vietnam”
- Court did not specify where the 12 nautical miles began
- VA interpreted as 12 nm from shore
- Court did not address earlier effective dates



Blue Water Navy Vietnam Veterans Act (HR299)

- Takes effect January 1st, 2020
- Covers 12 nm from RVN baseline
- Baseline as much as 80 nm from shore
- Has earlier effective date provision
- VA must conduct outreach to Veterans about the new law but limited to posting on VA website and notifying VSOs of the ability of Veterans to submit or resubmit claims.

HR299 Effective Dates

EFFECTIVE DATE OF AWARD.—(1) Except as provided by paragraph (2), the effective date of an award under this section shall be determined in accordance with section 5110 of this title.

“(2)(A) Notwithstanding subsection (g) of section 5110 of this title, the Secretary shall determine the effective date of an award based on a claim under this section for an individual described in subparagraph (B) by treating the date on which the individual filed the prior claim specified in clause (i) of such subparagraph as the date on which the individual filed the claim so awarded under this section.

HR299 Effective Dates

(B) An individual described in this subparagraph is a veteran, or a survivor of a veteran, who meets the following criteria:

“(i) The veteran or survivor submitted a claim for disability compensation on or after September 25, 1985, and before January 1, 2020, for a disease covered by this section, and the claim was denied by reason of the claim not establishing that the disease was incurred or aggravated by the service of the veteran.

“(ii) The veteran or survivor submits a claim for disability compensation on or after January 1, 2020, for the same condition covered by the prior claim under clause (i), and the claim is approved pursuant to this section.

HR299 Effective Dates

38 U.S. Code § 5110 (g):

Subject to the provisions of section 5101 of this title, where compensation, dependency and indemnity compensation, or pension is awarded or increased pursuant to any Act or administrative issue, the effective date of such award or increase shall be fixed in accordance with the facts found but *shall not be earlier than the effective date of the Act or administrative issue*. In no event shall such award or increase be retroactive for more than one year from the date of application therefor or the date of administrative determination of entitlement, whichever is earlier.

HR299 Effective Dates

38 U.S. Code § 5110 (a):

(1) Unless specifically provided otherwise in this chapter, the effective date of an award based on an initial claim, or a supplemental claim, of compensation, dependency and indemnity compensation, or pension, shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor.

(2) “For purposes of determining the effective date of an award under this section, the date of application shall be considered the date of the filing of the initial application for a benefit if the claim is ***continuously pursued...***”

HR299 Effective Dates

What will the effective date for Benefits be for Blue Water Navy Veteran claims?

Presumptive Agent Orange conditions granted for Blue Water Navy Veterans ***may*** be retroactive to the date VA received your original claim. If you had a previously denied claim and you resubmit your claim, the effective date will be determined on a ***case-by-case*** basis. (from VA Fact Sheet)

HR299 Effective Dates

How will the previously denied claims be handled?

If you had an Agent Orange claim with one or more presumptive conditions denied in the past, you are urged to file a new claim. Provide any new and relevant information regarding your claim such as dates you believe your ship traveled within 12 nautical miles of the Republic of Vietnam or updated medical information. Claims that are currently in the VA review process or under appeal will be reviewed under the new policy (from VA Fact Sheet)

HR299 Effective Dates

What if I'm a Blue Water Navy Veteran, and VA denied my claim in the past?

If we denied your claim because we determined that your disability wasn't caused—or made worse—by your active-duty service, you can file a new claim based on the change in law.

In certain cases, if we approve your claim, we'll pay you back to the date when you submitted your original claim. We refer to this as retroactive payment. (from VA website)

HR299 Effective Dates

Possible Interpretations?

1. **Pro-Veteran Interpretation:** Effective date goes all the way back to the very first (original) claim *regardless* of whether the claim was continuously pursued or not (similar to *Nehmer* claims)
2. **Pro-VA Interpretation:** Effective date goes back to the *prior* claim. If an earlier claim (before prior claim) is final (i.e. wasn't appealed within allowable time-frame), it will not count for effective date.

Mapping BWN Ships

BWNV Master List as of 11 August 2019

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100% View only

Prepared by: RMC(SW) Ed Ball, edball40@gmail.com (937) 710-5377 not for sale, strictly for public use only

Email: archives2reference@nara.gov

First Section is known Dixie/Yankee Station ships, Second Section is those known to provide NGFS Support (in zone), Final Section is Coastal Patrol Ships (in zone)

AFEM/VSM Awarded	Blue Water Navy Ship	# Crew	Date/Time of Posit	Lat/Long	Naval Gunfire Support Missions	Market Time Dates	VA Ships Presumptive List Remarks
Vietnam era (February 28, 1961 – May 7, 1975 for Veterans who served in the Republic of Vietnam during that period; otherwise August 5, 1964 – May 7, 1975)							
Months to search for Deck Logs	To request Deck Logs Email: archives2reference@nara.gov			Eligible for Presumptive Exposure IAW Procopio v Wilkie and HR299			You are eligible if you served on: Mobile Riverine Force; AGP (Assault Group Patrol/Patrol Craft Tender) LCM (Landing Craft Mechanized); LCU (Landing Craft Utility); LCVP (Landing Craft Vehicle Personnel); LST (Landing Ship Tank); PBR (Patrol Boat River); PCF (Patrol Craft Fast or Swift Boat); STABS (Strike Assault Boats); YFU (Harbor Utility Craft) VA Ship List as of 04 September 2018
↓	<u>OPNAVNOTE 1650</u> (opening OPNAVNOTE; search for ship; will give you dates of the award [AE or VS] to narrow search for Deck Logs)						
		Crew #					

Ships Links of Interest

https://docs.google.com/spreadsheets/d/1HgMdr-pW2kGMNvkZ1Tm88JoC-f6LovPuq-NOyRakMU/edit?fbclid=IwARoTX_deEltjmsrlFEI-NXQRQz3rDu23-KfvSbmGLMG8g-xhAhN-BaoN2W8#gid=1774056468

Mapping BWN Ships

Veteran was aboard the USS Kitty Hawk February to May 1972:

1. Type Ctrl F to open search box
2. Type in Kitty Hawk
3. Look through Kitty Hawk listing for above dates

BWNVV Master List as of 11 August 2019

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Kitty Hawk

1 of 11

AFEM/VSM Awarded	Blue Water Navy Ship	# Crew	Date/Time of Posit	Lat/Long	Naval Gunfire Support Missions	Market Time Dates	VA Ships Presumptive List Remarks
Dec 66; Jan-Apr 67; Nov 67; Feb-Mar 68; May 68;	USS Kishwaukee AOG-9	127					Ships operating primarily or exclusively on Vietnam's inland waterways
May 75;	USS Kiska AE-35	400	27Dec73 2000	08 44.6N 107 11.7E			
Dec 62; May - Jun 64; Nov 65-May 66; Dec 66 - May 67; Dec 67-Jun 68; Jan -Aug 69; Dec 70-Jun 71; Mar-Apr 72; Jun-Oct 72;	USS Kitty Hawk CVA-63	4580	26Nov65 1200	10 28.0N 109 19.1E			

Ships Links of Interest

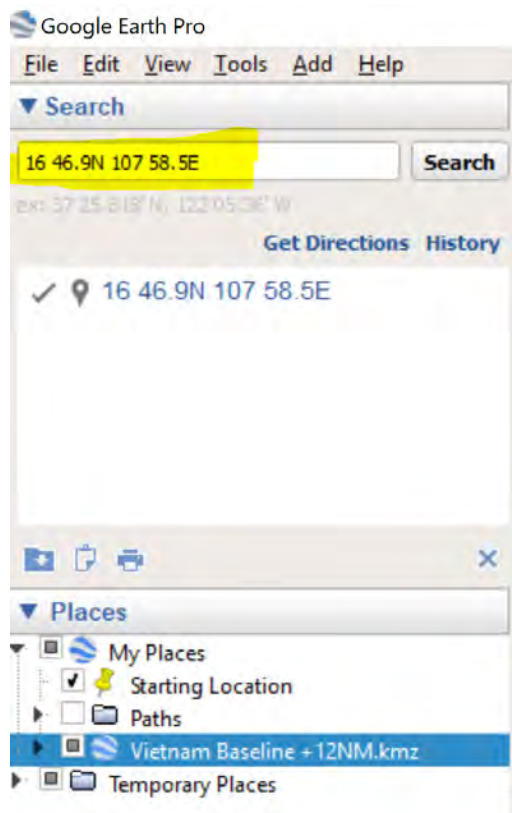
Mapping BWN Ships

Find date(s) when Veteran was aboard the ship:

	USS Kitty Hawk CVA-63		24Feb66 0800	09 33.0N 108 31.0E in company with USS Samuel N Moore DD-747 USS O'Bannon DD-450
	USS Kitty Hawk CVA-63		18Dec70 2000	16 42.4N 107 30.5E
	USS Kitty Hawk CVA-63		05Mar71 1200	16 17.3N 108 21.5E
	USS Kitty Hawk CVA-63		06Apr72 1200	16 46.9N 107 58.5E

Mapping BWN Ships

1. Install Google Earth Pro
2. Open this URL:
<https://drive.google.com/open?id=1RmnNPv8MXpYlBugOMOPumtq6ZLyBWepw>
3. Click Download, then open file with Google Earth Pro
4. Type in Lat/Long in Search Box



Mapping BWN Ships

Quick Reference For Republic of Vietnam Territorial Waters

LAT (N)	LONG (E)	COMMENTS
8° 10.887'N	104 50.556	Southernmost latitude limit of Republic of Vietnam Territorial Waters
9 00.0	107 42.418	
10 00.0	109 16.840	
11 00.0	109 25.678	
12 00.0	109 34.576	
13 00.0	109 38.910	
14 00.0	109 32.544	
15 00.0	109 23.675	
16 00.0	108 49.168	
17 00.0	107 48.448	
17 10.0	107 38.238	Northernmost latitude limit of Republic of Vietnam Territorial Waters

Obtaining Deck Logs

Search for deck logs National Archives website:

<https://www.archives.gov/research/military/logbooks/navy-online>

(NOTE: Deck logs not always listed in perfect chronological order so check all listings)



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Navy Deck Logs Available in the National Archives Catalog



Obtaining Deck Logs

NAVPERS 3100/2 (1-66)
(Formerly NAVPERS 719)

DECK LOG—REMARKS SHEET

0105 904 1020

USS KITTY HAWK (CVA 63) ZONE DESCRIPTION - 8 H DATE THURSDAY 6 APRIL 19 72
(Day) (Date) (Month)
AT/PASSAGE FROM YANKEE STATION, GULF OF TO TONKIN.

POSITION	ZONE	TIME
0800		
L <u>17° 04.4' N</u>	BY <u>2.4</u>	
λ <u>109° 16.0 E</u>	BY <u>2.4</u>	

POSITION	ZONE	TIME
1200		
L <u>16° 46.9 N</u>	BY <u>2.4</u>	
λ <u>107° 58.5 E</u>	BY <u>2.4</u>	

POSITION	ZONE	TIME
2000		
L <u>16° 55.6 N</u>	BY <u>2.4</u>	
λ <u>107° 52.9 E</u>	BY <u>2.4</u>	

LEGEND: 1-CELESTIAL
2-ELECTRONIC
3-VISUAL
4-D. R.

REMARKS

00-04 Steaming as a unit of TG 77.7 in company with the USS ROARK (DE 1053) and the USS PARSONS (DDG 33) while conducting special operations on Yankee Station Gulf of Tonkin in accordance with COMSEVENTHFLT quarterly operations schedule. The ship is on course 325°T and

Use deck logs and screenshots from Google Earth Pro as new & relevant evidence for supplemental claims

Obtaining Deck Logs

- In August, the National Archives and VA entered into an agreement that will digitize more than 20 million pages of Vietnam-era U.S. Navy Deck Logs
- Expected to be completed by February 1, 2020
- Data contained in these digitized images will be used by VA to assist in determining Veteran's eligibility for benefits and to resolve claims filed with the VA
- During the digitization process, U.S. Navy Deck Logs will be in the custody of the VA and will be unavailable.

FAQs

- Should I file under Procopio or HR299?
- Should I wait until January 1, 2020 to file?
- What if my ship was outside 12 nm from the baseline?
- I read that Procopio covers an extra 12 nm past the baseline called the “Contiguous Zone”?
- What if my ship was in the zone but my disease isn’t presumptive?
- Is Yankee Station (or Dixie Station) covered?

Questions?

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