

VA reverses denial of benefits for veteran in Agent Orange-related case.

By [Steve Vogel](#), Published: August 7, 2013 [E-mail the writer](#)

The Department of Veterans Affairs has reversed its denial of Agent Orange-related disability benefits for an Air Force veteran who flew on potentially contaminated C-123 aircraft after the Vietnam War, a decision advocates describe as the first of its kind for veterans seeking compensation for postwar exposure to the toxic defoliant.

Paul Bailey, a retired Air Force lieutenant colonel who is gravely ill with cancer, received notice Monday that he would receive “a total grant of benefits” for cancer associated with his 1970s-era service in the United States aboard the aircraft, which had been used to spray the toxic defoliant during the war.



Paul Bailey, a retired Air Force lieutenant colonel who is gravely ill with cancer, attends a veterans memorial in Concord, N.H. (Courtesy of Bailey family)

“The preponderance of the evidence suggests that you were exposed to herbicide onboard U.S. Air Force C-123K aircrafts,” said the VA decision, dated July 31. “Reasonable doubt in regards to the exposure to certain herbicide, to include Agent Orange, as the result of occupational hazards onboard C-123K aircrafts is resolved in your favor.”

Bailey was featured in a recent [Washington Post article](#) about a controversy concerning C-123 aircraft, many of which were destroyed in 2010 by the Air Force. Tests in the 1990s showed that some of the planes might still be contaminated with TCDD dioxin, a carcinogen associated with Agent Orange.

Bailey, 67, who suffers from prostate cancer and metastatic cancer of the pelvis and ribs, said the disability compensation will allow his wife to stay in their New Hampshire home after he dies. “The financial and emotional support this provides is just tremendous,” he said in a telephone interview Wednesday. “It takes a huge burden off me.”

The decision is “greatly significant,” said Wes Carter, a retired Air Force major and friend of Bailey’s who heads the C-123 Veterans

Association. The organization contends that postwar crews should be eligible for the same disability compensation for Agent Orange exposure provided to military veterans who served in Vietnam during the war.

Several C-123 veterans in recent years have been granted disability benefits after appealing denials to the Board of Veterans' Appeals, an administrative tribunal. But Bailey's case marks "the first time an award has been made short of the BVA," Carter said.

VA said there is no policy against C-123 claims. The department said in a statement that it does not track whether there have been previous claims granted for C-123 crew members but that the ruling in the Bailey case does not establish a precedent.

"Where cases are not clear cut, reasonable doubt is always decided in the claimant's favor," the agency said.

Rick Weidman, executive director for policy and government affairs for the Vietnam Veterans of America, called the decision "fantastic news" and added: "That's the first case we've heard of that's been successful."

Sen. Richard Burr (N.C.), the ranking Republican on the Veterans' Affairs Committee, was also pleased with the reversal.

"I hope this is a sign that VA will start to make decisions on these claims based on the weight of information submitted in each case, rather than blanket-denying every claim from C-123 veterans," he said.

Burr and Sen. Jeff Merkley (D-Ore.) had asked the VA Office of Inspector General to review whether the department is "inappropriately" denying disability compensation to veterans who say they were sickened by postwar contamination. "It appears that [VA] does, in fact, plan to deny any C-123 claims regardless of the evidence submitted in a particular case," the senators wrote in a June letter requesting the inquiry.

While stationed at Westover Air Force Base in Massachusetts in the 1970s, Bailey often flew the most famous of the C-123s, known as Patches for the holes left by enemy fire. After it was retired to a museum, tests by Air Force toxicologists in 1994 found that Patches was "heavily contaminated" with dioxin.

Bailey's claim for disability benefits was denied in February by the office in Manchester, N.H., which wrote that "VA regulations do not allow us to concede exposure to herbicides for Veterans who claim they were exposed to herbicides after the Vietnam war while flying in aircraft used to spray these chemicals."

Bailey appealed the decision in April.

In a statement Wednesday addressing the VA reversal, Brad Mayes, director of the Manchester office, said "the issues described in Lt. Col. Bailey's claim illustrate the difficulty VA faces when evaluating whether a particular veteran's claim of Agent Orange exposure outside of Vietnam has merit. VA considers these issues on an individual basis, along with any other evidence available."

Burr said he is "concerned that there are other veterans who did not receive this same level of attention to their claims."