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Veterans' Benefits: Eligibility of Merchant Mariners

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Summary

Although merchant mariners have supported the Armed Forces in every war fought by the United States, they generally are not considered veterans for the purpose of eligibility for federal benefits. Pursuant to legislation enacted in 1977 (P.L. 95-202) and 1988 (P.L. 105-368) and to decisions made by the Secretary of the Air Force in 1985 and 1988, the following groups of World War II-era merchant mariners are the only merchant mariners eligible for veterans' benefits.

Eligible for all veterans' benefits:

- United States merchant seamen who served on blockships in support of Operation Mulberry.
- American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, and who meet the following qualifications:
  - employed by the War Shipping Administration or Office of Defense Transportation (or their agents) as a merchant seaman documented by the U.S. Coast Guard or the Department of Commerce (Merchant Mariner's Document/Certificate of Service) or as a civil servant employed by the U.S. Army Transport Service (later redesignated U.S. Army Transportation Corps, Water Division) or the Naval Transportation Service; and
  - served satisfactorily as a crew member during the period of armed conflict, December 7, 1941, to August 15, 1945, aboard
    - merchant vessels in oceangoing—that is, foreign, intercoastal, or coastwise—service (per 46 U.S.C. §§10301 and 10501) and further to include near foreign voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or
    - public vessels in oceangoing service or foreign waters.

Eligible for burial benefit and national cemetery interment only:

- Served between August 16, 1945, and December 31, 1946, as a member of the United States merchant marine (including the Army Transport Service and the Naval Transport Service), serving as a crewmember of a vessel that was
  - operated by the War Shipping Administration or the Office of Defense Transportation (or an agent of either);
  - operated in waters other than inland waters, the Great Lakes, and other lakes, bays, and harbors of the United States;
  - under contract or charter to, or property of, the government of the United States; and
  - serving the Armed Forces; and
    - while so serving, was licensed or otherwise documented for service as a crewmember of such a vessel by an officer or employee of the United States authorized to license or document the person for such service.

H.R. 154, the Honoring Our WWII Merchant Mariners Act of 2017, would provide one-time compensation of $25,000 to World War-II merchant mariners to account for benefits they were not able to access before being granted veterans' benefit eligibility.

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Introduction

In every war fought by the United States, civilian ships have supported military operations by transporting supplies and personnel. The civilians that have served on these vessels historically have worked in varying capacities either for private shipping companies under contract with the federal government or for the government itself. These civilians are collectively referred to as *merchant mariners*. In World War II, an estimated 8,500 merchant mariners were killed and 11,000 were wounded.[1] During Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF), it is estimated that 63% of the military cargo shipped to the Middle East and Afghanistan was delivered by U.S.-flagged commercial vessels crewed by merchant mariners and an additional 35% of military cargo was transported by government-owned vessels crewed by civilian federal employees and federal contractors.[2]

Although merchant mariners have always played an important role in support of U.S. war efforts, they generally have not been considered veterans for the purposes of federal benefits. Currently, only limited groups of World War II-era merchant mariners are eligible for benefits from the Department of Veterans Affairs (VA).[3]

Early Efforts to Secure Benefits for Merchant Mariners

After World War II, merchant mariners sought through legislation to gain recognition as veterans. Legislation was introduced either to provide benefits to merchant mariners comparable to those provided under the Servicemen's Readjustment Act of 1944 (P.L. 78-346), commonly known as the GI Bill, or to expand the employee benefits merchant mariners were receiving at that time.

During hearings in late 1945, the House Committee on Merchant Marine and Fisheries heard testimony on four bills that would have provided some benefits to merchant seamen.[4] One of these bills, H.R. 2346, would have provided benefits to merchant mariners comparable to those of other World War II veterans. Testimony in favor of H.R. 2346 was heard from a number of former merchant seamen and the Merchant Marine Veterans Association.

Testimony in opposition to H.R. 2346 came from various agencies, including the War Department, the Veterans Administration, and the American Legion. Opponents to granting veteran status to merchant mariners generally focused on the freedom of a merchant mariner to make decisions about whether or not to take a particular voyage or leave service. They also focused on the higher earnings of merchant mariners relative to uniformed Navy personnel.

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[1] Because merchant mariners in World War II worked for a variety of private companies and government agencies, there is no definitive casualty count. These estimates are provided by the Institute on World War II and the Human Experience at Florida State University and are available at http://ww2.fsu.edu/The-Merchant-Marine.

[2] U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, "Summary of Subject Matter," *The Status of the Merchant Marine*, 113th Cong., 2nd sess., September 10, 2014, at http://transportation.house.gov/uploadedfiles/2014-09-10-coast_guard_ssm.pdf.

[3] For additional information on who is eligible for veterans' benefits, see CRS Report R42324, *Who Is a "Veteran"?—Basic Eligibility for Veterans' Benefits*, by Scott D. Szymendera.

[4] U.S. Congress, House Merchant Marine and Fisheries, *Benefits to Merchant Seamen*, hearings on H.R. 2346, H.R. 2180, H.R. 2449, and H.R. 3500, 79th Cong., 1st sess., October 18-19, 1945; November 29-30, 1945; and December 4-5, 1945.

H.R. 476, introduced in 1947, would have expanded the existing benefits for merchant seamen related to health care and disability and introduced an education benefit.

Ultimately, no legislation was enacted in the immediate aftermath of World War II to grant veteran status to merchant mariners or to provide additional benefits to merchant mariners related to health care, disability, or education.

The GI Bill Improvement Act of 1977, P.L. 95-202

Section 401 of the GI Bill Improvement Act of 1977 (P.L. 95-202) granted veterans' benefit eligibility to civilians who served as Women's Air Forces Service Pilots (WASPS) during World War II. In addition, Section 401 of P.L. 95-202 provided the Secretary of Defense the authority to extend "active duty" status for the purpose of eligibility for federal veterans' benefits to other groups of civilian federal employees or contractors who rendered service to the Armed Forces and were "similarly situated" to the WASPS.

Regulations implementing P.L. 95-202, issued as Department of Defense Directive 1000.20, delegated the authority to grant active duty status to civilian groups to the Secretary of the Air Force.[5] In addition, Directive 1000.20 established the Department of Defense Civilian/Military Service Review Board to review each application for active duty status. The factors to be used in reviewing such applications included the uniqueness of service rendered by the group and whether or not the group was subject to military control, discipline, and justice.

A complete list of groups granted active duty status for the purpose of eligibility for veterans' benefits pursuant to P.L. 95-202 is provided in regulation.[6]

Active Duty Status Determinations of Merchant Mariners

In 1982, the Secretary of the Air Force rejected the application for active duty status for oceangoing merchant mariners who served during World War II.[7] In 1985, the Secretary rejected the applications of merchant mariners who served in contested waters in World War II, merchant mariners involved in any military invasion during World War II, and all merchant mariners involved in Operation Mulberry during World War II.[8] These rejections were recommended by the Civilian/Military Service Review Board. The rejection of the oceangoing merchant mariners was based on the Secretary of the Air Force's decision that these groups

- received only limited military training;
- did not render service exclusively for the Armed Forces;
- were not subject exclusively to military discipline;
- were not subject to "pervasive" military control;

[5] 32 C.F.R. Part 47, originally issued at Department of Defense, "DOD Directive 1000.20, Part 47-Determinations of Active Military Service and Discharge," 44 *Federal Register* 11220, February 28, 1979, with current version issued at Department of Defense, "DOD Directive 1000.20, Active Duty Service Determinations for Civilian or Contractual Groups," 54 *Federal Register* 3991, September 29, 1989.

[6] 38 C.F.R. §3.7.

[7] Department of Defense, "Determination of Active Military Service of Discharge; Civilian or Contractual Personnel," 47 *Federal Register* 5755, February 8, 1982.

[8] Department of Defense, "Determination of Active Military Service; Civilian or Contractual Personnel," 50 *Federal Register* 46332, November 7, 1985. Operation Mulberry involved the creation of artificial harbors to support the D-Day landings in France.

- had no reasonable expectation of "active military service" status, and
- were not part of a wartime organization formed for or because of a wartime need.[9]

In recommending the rejection of the application of the Operation Mulberry group, the Civilian/Military Service Review Board stated that this group "was too broad and diverse to make an adequate determination as to the roles played by the multitude of subgroups and members that made up Operation Mulberry."[10]

However, although the application of all merchant mariners that participated in Operation Mulberry was rejected, the application of those who served only on blockships during this operation was approved.[11] In recommending the approval of the blockship group's application, the Civilian/Military Review Board stated that

> [t]hese merchant marines performed a uniquely military mission in a combat zone that would not normally be considered a mission of the Merchant Marine. The merchant crews were not tasked with delivering a cargo, per se, but were asked to be a part of a team to create an artificial harbor a beachhead mission normally associated with military engineers for a military operation. This is not a mission that the Merchant Marine historically perform. This group, then, was a creation of World War II for that specific time and place, i.e., the Invasion of Normandy.[12]

Schumacher v. Aldridge: Litigation Contesting the Denials of Active Duty Status

Following the 1985 rejections of applications of merchant mariners for active duty status, a lawsuit was filed challenging the denial of active duty status for World War II oceangoing merchant mariners and those who participated in World War II invasions.[13] The plaintiffs argued that the merchant mariners included in these applications satisfied the established criteria to a greater extent than many of the previously approved groups and argued that the denials were inconsistent with the Secretary of the Air Force's prior decisions. The Secretary of the Air Force responded that the plaintiffs misunderstood the designation criteria and outlined characteristics that the approved groups shared.

The U.S. District Court for the District of Columbia ruled that the Secretary of the Air Force erred in rejecting the applications of the oceangoing merchant mariners and those that participated in World War II invasions. The court remanded these individuals' applications back to the Secretary of the Air Force for reconsideration.

Reconsideration of Denials of Active Duty Status

In 1988, following the *Schumacher* decision, the Secretary of the Air Force granted active duty status for the purpose of eligibility for veterans' benefits to World War II-era merchant mariners

[9] Schumacher v. Aldridge, 665 F. Supp. 50 (D.D.C. 1987).

[10] Ibid., 51.

[11] Blockships were deliberately sunk to provide breakwaters to support the D-Day landings in France.

[12] Schumacher v. Aldridge, 665 F. Supp. 51 (D.D.C. 1987).

[13] Ibid., 50. The rejection of the application of merchant mariners who served in Operation Mulberry, other than on blockships, was not challenged in this lawsuit.

who served on vessels engaged in oceangoing service from December 7, 1941, to August 15, 1945.[14]

The Veterans Programs Enhancement Act of 1988, P.L. 105-368

Section 402 of the Veterans Programs Enhancement Act of 1988 (P.L. 105-368) extended veterans' burial benefits and the right to interment in national cemeteries to merchant mariners who served on vessels engaged in oceangoing service from August 16, 1945, to December 31, 1946.

In 1999, the Secretary of the Air Force determined that the service of oceangoing merchant marines during the period from August 15, 1945, to December 31, 1946 (those covered by P.L. 105-368) is not considered active duty under the provisions of P.L. 95-202 for the purposes of other benefits administered by the VA.[15]

Current Eligibility Rules for Merchant Mariners

Under current law and regulations, only the following groups of merchant mariners are considered to have served on active duty or are otherwise eligible for veterans' benefits. No other merchant mariners are eligible for any veterans' benefits administered by the VA.

Considered Active Duty and Eligible for All Veterans' Benefits

- United States merchant seamen who served on blockships in support of Operation Mulberry.[16]
- American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, and who meet the following qualifications:
  - was employed by the War Shipping Administration or Office of Defense Transportation (or their agents) as a merchant seaman documented by the U.S. Coast Guard or the Department of Commerce (Merchant Mariner's Document/Certificate of Service) or as a civil servant employed by the U.S. Army Transport Service (later redesignated U.S. Army Transportation Corps, Water Division) or the Naval Transportation Service; and
  - served satisfactorily as a crew member during the period of armed conflict, December 7, 1941, to August 15, 1945, aboard
    - merchant vessels in oceangoing—that is, foreign, intercoastal, or coastwise—service (per 46 U.S.C. §§10301 and 10501) and further to

[14] Department of Defense, "Determinations of Active Military Service and Discharge; Civilian or Contractual Personnel," 53 *Federal Register* 2775, February 1, 1988. There was no specific decision made regarding merchant mariners who participated in invasions during World War II.

[15] Department of Defense, "Active Duty Service Determinations for Civilian or Contractual Groups," 64 *Federal Register* 48146, September 2, 1999.

[16] 38 C.F.R. §3.7(x)(14).

include near foreign voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or
- public vessels in oceangoing service or foreign waters.[17]

Eligible for Burial Benefits and National Cemetery Interment Only[18]

- Served between August 16, 1945, and December 31, 1946, as a member of the United States merchant marine (including the Army Transport Service and the Naval Transport Service) serving as a crewmember of a vessel that was
  - operated by the War Shipping Administration or the Office of Defense Transportation (or an agent of either);
  - operated in waters other than inland waters, the Great Lakes, and other lakes, bays, and harbors of the United States;
  - under contract or charter to, or property of, the government of the United States; and
  - serving the Armed Forces; and
    - while so serving, was licensed or otherwise documented for service as a crewmember of such a vessel by an officer or employee of the United States authorized to license or document the person for such service.[19]

Current Issues and Legislation

Although some World War II-era merchant mariners were granted eligibility for veterans' benefits in 1985 and 1988, the passage of time between their service and the granting of this eligibility may have made it impossible for them to fully access these benefits. For example, when these former merchant mariners were of typical college age after the war, they were not eligible for benefits under the GI Bill. In addition, those with service-connected disabilities or medical conditions may have lost out on nearly 40 years of VA disability compensation or medical benefits.

H.R. 154, Honoring Our WWII Merchant Mariners Act of 2017

H.R. 154, the Honoring Our WWII Merchant Mariners Act of 2017, would provide compensation to former World War II-era merchant mariners to account for the benefits they were not able to access before being granted veterans' benefit eligibility in the 1980s. Similar legislation has been introduced in each Congress since the 108th Congress.

[17] 38 C.F.R. §3.7(x)(15) and Department of Defense, "Determinations of Active Military Service and Discharge; Civilian or Contractual Personnel," 53 *Federal Register* 2775, February 1, 1988.

[18] This section does not include eligibility for interment or inurnment at Arlington National Cemetery, which is administered by the Department of the Army. Pursuant to P.L. 114-158, effective for inurnments and deaths occurring after May 20, 2016, the cremated remains of any civilians granted active-duty status pursuant to the GI Bill Improvement Act of 1977, including World War II-era merchant mariners, may be inurned in the Columbarium or Niche Wall at Arlington Cemetery. Civilians granted active-duty status are not eligible for ground burial at Arlington National Cemetery.

[19] 46 U.S.C. §11202.

Specifically, this legislation would provide a one-time payment of $25,000 to any merchant mariner who served between December 7, 1941, and December 31, 1946, and who otherwise meets the definition of service provided for burial benefits and interment eligibility in P.L. 105-368. Eligible persons would have one year from the date of enactment of the legislation to apply for benefits. A total of $125 million would be authorized to be appropriated in FY2017 for these benefits, to be available until expended.

Although the benefits created by this legislation would partially compensate former merchant mariners for lost benefits, H.R. 154 would place the former merchant mariners in a unique position compared to other civilians who served in World War II and other veterans.

Active duty status for the purposes of eligibility for veterans' benefits has been extended under the provisions of P.L. 95-202 to 33 groups of civilians who served during World Wars I and II, all of whom can claim to have missed the opportunity to claim certain benefits during the period between their service and the granting of active duty status. However, if H.R. 154 were to be enacted, only the two merchant mariner groups would be eligible for any form of compensation to account for these lost benefits.

In addition, merchant mariners would join Medal of Honor winners as the only groups eligible for cash compensation from the VA without having to demonstrate a financial hardship (for VA pension benefits) or a service-connected disability (for VA disability compensation).[20]

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[20] For additional information on Department of Veterans Affairs pension benefits and disability compensation, see CRS Report RS22804, *Veterans' Benefits: Pension Benefit Programs*, by Scott D. Szymendera and Carol D. Davis and CRS Report RL34626, *Veterans' Benefits: Disabled Veterans*, by Scott D. Szymendera et al.