



May 12, 2024

The Honorable Denis R. McDonough
Secretary of Veterans Affairs
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20430

Dear Secretary McDonough,

Thank you for meeting with our Stronghold Freedom Foundation coalition on April 25th and for your willingness to seek solutions for K2 veterans.

The PACT Act provided hope of care and presumptive service connection for hundreds of thousands of veterans, including those who served at K2. As explained in our meeting, with supporting government documents and firsthand accounts from K2 veterans, the unique toxic nature of the base and the multisymptom illnesses that followed, represent a gap in coverage by existing legislation.

Our team appreciates your acknowledgement that the current VA statistic that 96% of K2 veterans have a claim approved is misleading and a gross misrepresentation. The data does not reflect the crippling effects of multisymptom illnesses that are excluded under the PACT Act.

When the VA provides its update on June 24th, our expectation is that there will be a definite path forward to close the gap in coverage for K2 veterans. We are, respectfully, asking to participate in the VA June 24th K2 Community Forum.

In the spirit of providing solutions, our coalition is providing a full legal analysis. Kerry Baker has successfully worked with the VA, through Burn Pits 360, and is a nationally recognized expert on VA benefits.

Mr. Baker's analysis includes all applicable statutory authorities. Mr. Baker is ready to discuss the legal framework with Mr. Steve Miska, Transitional Executive Director of the PACT Act, as well your General Counsel.

In summary, the Secretary of Veterans Affairs already has broad authority to expand health coverage and benefits to K2 veterans. It will immediately help this cohort of sick and suffering veterans as well as surviving family members.

- Under the PACT ACT, the Secretary of Veterans Affairs has the unilateral authority to identify K2 as a geographic area of exposure to yellow cake, enriched uranium, asbestos and various chemical and nerve agents.

Analogous to Agent Orange exposure, this provides presumptive service connection for chronic illnesses that fall outside the existing presumptive disabilities under PACT.

- 38 U.S.C. § 1119(b)(1) ("The Secretary shall . . . presume that any covered veteran was exposed to the substances, chemicals, and airborne hazards identified in the list under paragraph (2), . . .")

Stronghold Freedom Foundation



- 38 U.S.C. § 1119(b)(2) (“The Secretary shall establish . . . a list that contains . . . one or more such substances, chemicals, and airborne hazards as the Secretary . . . may determine . . .”)
- 38 U.S.C. § 1120 (b)(15) provides presumptive rule-making authority for (“Any other disease . . . the Secretary determines . . . that a presumption of service connection is warranted based on a positive association with a substance, chemical, or airborne hazard identified in the list under [section 1119\(b\)\(2\)](#) . . .”).
- The Secretary of Veterans Affairs also has the unilateral authority to recognize non-PACT Act presumptions in all K2 vets, as medically unexplained chronic multisymptom illness under 38 C.F.R. § 3.317.
- The adjudication of multiple symptom illness in K2 veterans is the purview of the Secretary of Veterans Affairs. This does not fall under the OMB. This also does not include regulation changes. The statute referenced below binds the Board to the Secretary's instruction.
 - 38 U.S.C.A. § 7104(c) (“The Board shall be bound in its decisions by . . . instructions of the Secretary . . .”)
- Under the PACT Act, VA can also recognize K2 as a radiation risk activity. Eliminating the dose reconstruction process, given the unique nature of the radiological exposure, including yellow cake and pulverized enriched uranium, would allow specific disabilities that qualify for presumptive service connection.
 - 38 C.F.R. § 3.311 (Authority: 38 U.S.C. § 501 & Pub. L. 98-542)

With less than 6 months until the November elections, the clock has run out on a legislative fix by Congress. The drafters of the PACT Act had the wisdom to build into the law powers that the Secretary of Veterans Affairs can use to expand care and benefits as gaps in coverage arise. The unique needs and illnesses of K2 veterans warrant the exercise of these authorities.

After the April 25 meeting, our coalition connected with the Terri Tanielian, Special Assistant to the President for Veterans Affairs, who told us she fully supports your efforts to address the gap in coverage. We promised to keep Ms. Tanielian updated and will provide her a copy of this letter.

Parallel to our meeting, the Stronghold Freedom Foundation met with key Senate and House staff members. We were reminded that a year ago, in congressional testimony, you made a public commitment to Senator Blumenthal to expand benefits to K2 veterans. Now is the time to make good on your pledge.

Your department’s mission statement is to ensure *care for those “who shall have borne the battle” and for their families, caregivers, and survivors*. This would further support the VA’s commitment to honor *America's debt to the men and women whose patriotic service and sacrifice earned our freedom*.

In this election year, your actions can immediately alleviate the decades long suffering of K2 Veterans and reinforce President Biden’s commitment to veterans, leaving no servicemember or family behind.

Sincerely,

Matthew A. Erpelding
Executive Director
Stronghold Freedom Foundation
Matt@sff-k2.org

Stronghold Freedom Foundation