



Systemic Barriers

Facing Veterans with Cancer

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Chemical Exposure Resulting in Cancer

An injury due to Chemical Exposure is very different from a physical injury sustained on deployment. If a veteran lost an arm while deployed the cause and effect is clear and the relationship to service is obvious. However, if a veteran is exposed to a chemical while in service, that we now know is carcinogenic and as a result develops cancer 20 years later, the connection to service is obscured by a variety of factors contributing to any cancer. Unlike injuries occurring on the battlefield, which are each unique and have few civilian equivalents, delayed chemical injuries have a multitude of equivalents in the general population. It is our hope that our suggestions will assist Veterans Affairs Canada (VAC) by providing some context when assessing the service-relationship to veteran's cancers.

Currently veterans have excessive wait times to have their claims resolved. The impact of delayed claims on veterans with cancer can be significantly greater than others in the case of a terminal illness. One example is a member of our group waited 25 months just to get a decision denying a claim related to exposure to Carbon Tetrachloride (CTC). Given that the use of this chemical ended in the early eighties, the youngest potential claimant is over 65 and the oldest, if he's still with us, would be in his late eighties. Many in our group know of fellow veterans who have already passed away from cancer that was in all likelihood service related. Therefore it is important for the system to speed up the evaluation process of claims involving delayed injury due to chemical exposure.

Suggestions

Veterans with Cancer (VwC) suggestions are aimed at encouraging a shift from treating all veteran's claims as unique and individual, to recognizing the similarities of delayed injuries from chemical exposure and where appropriate, treating them as groups of veterans due to their similarity and applying judicial precedent to fast track claims when appropriate. If accepted, we believe that our suggestions will significantly improve the process for veterans with cancer while speeding up the process for all veterans.



Veterans with Cancer



1. Veteran Focused Legislation

a. American PACT Act

The PACT Act is a law that expands VA health care and benefits for Veterans exposed to burn pits, Agent Orange, and other toxic substances such as Carbon Tetrachloride. The Act recognizes “**Presumptive Exposure**” such as serving in a particulate area and “**Presumptive Conditions**” such as brain cancer, kidney cancer etc. Essentially if an American veteran can show that they served in a particular area or were exposed to a particular chemical and later developed a cancer, their disability pension is automatic.

b. Canadian Veterans Well-Being Act

Canada does have somewhat similar legislation in the Veterans Well-Being Act. However this legislation does not go as far as the American PACT Act when it comes to giving veterans the benefit of the doubt or providing automatic pensions in certain circumstances. The Canadian Veterans Well-Being Act needs to be updated to bring it in line with the American PACT Act.

In addition some VAC decisions do not appear to apply this legislation as frequently as possible to give veterans the full benefit of the doubt as intended: Para 50 of the Veterans Well-being Regulations states:

50. ... a veteran is presumed, in the absence of evidence to the contrary, to have established that an injury or disease is a service-related injury or disease, ... if it is demonstrated that the injury or disease or its aggravation was incurred in the course of:

(g) the performance by the member or veteran of any duties that exposed the member or veteran to an environmental hazard that might reasonably have caused the injury or disease or its aggravation.

This places the onus on VAC to show “**evidence to the contrary**”, as opposed to veterans proving that their cancer is service-related. For example, The American National Library of Medicine’s 15th Report on Carcinogens states that: “*Carbon tetrachloride is, reasonably anticipated to be a human carcinogen.*” Therefore, in its simplest form, para 50 should be interpreted as veterans who were exposed to Carbon Tetrachloride and developed prostate cancer, are presumed to have established a service-related injury. However this has not always been the case in the past. – *why not?*

A specific example of this is decision 100002226018, which places more weight on the fact that a Pension Medical Advisor could not find research connecting prostate cancer to Carbon Tetrachloride. Clearly the fact that they didn’t find research connecting the two doesn’t mean that Carbon Tetrachloride does not cause prostate cancer. From the average veteran’s perspective this does not appear to be “**evidence to the contrary**” as required by para 50. Quite the opposite, this suggests that the onus remains on the veteran to prove that their cancer was service-related without the service-related presumption granted by para 50. – *why is this?*

2. Case law – Judicial Precedent

I think we can safely say, that when it comes to injuries sustained in the field, that no two injuries are the same. Hence applying the legal doctrine of stare decisis or judicial precedent is not possible given that each case is very different. Generally, the same can’t be said when it comes to veterans with cancer.



Cases, involving veterans with cancer, are identical; when the veterans develop the same cancer from exposure to the same chemicals. So, why treat them as if they were uniquely different? Why force every veteran to present the same research papers showing that Carbon Tetrachloride, for example, causes cancer? Similarly, when the VRAB accepts that a veteran's particular cancer was caused by their exposure to a specific chemical, why force all veterans in the same situation to present the same arguments to other VRAB members? VRAB is a Quasi-Judicial Tribunal. As such VRAB should be applying judicial precedent where appropriate. If they did it would dramatically speed up the process and reduce the current backlog.

a. Application

For example, there were recent awards for prostate cancer resulting from exposure to Carbon Tetrachloride while in service. This precedent should be applied to all veterans coming forward with prostate cancer who can show that they were exposed to Carbon Tetrachloride during their service.

b. Database Search

Once a claim is approved, either directly or on appeal, then we suggest that VAC pull all similar claims with the same cancer and exposure for advance documentation review. This should greatly speed up the process.

c. Duty to Inform

A [CBC article in 2007](#) highlighted a veteran's request that all those serving in navy ships built in the 50's be informed that they were at risk for cancer due to the extensive use of asbestos in these ships. In response, Veterans Affairs Canada media relations advisor, Janice Summerby stated: *"We don't know in the case of a particular ship who served on it or where they might be living today ... Generally we rely on veterans organizations to spread the word."* We suggest that VAC has a duty to inform veterans when the existence of a service-related carcinogen becomes known. At a minimum we believe that a national advertisement is warranted and postings on veteran's related social media. Delegating this responsibility to non-funded veterans organizations is just not appropriate for a public funded agency.

3. Doctor's Statements

As stated above, a delayed injury, as a result of chemical exposure during service, is very different from a physical injury sustained in the field. In the case of the later it is relatively easy to make the connection between the injury and service. However, when it comes to a delayed injury, such as cancer, the connection with service can never be known with any degree of certainty. In most cases, oncologists and urologists are not research scientists and do not likely have firsthand knowledge of the connection between prostate cancer to exposure to Carbon Tetrachloride. As such, most doctors are very reluctant to make any comment on the cause of the cancer. For this reason, in cases involving veterans with cancer, VAC and BPA should cease holding up the process waiting for doctor's letters which will not materialize in 98% of these cases.

However, if a veteran does find a doctor who states that the veteran's prostate cancer, for example, was caused by exposure to Carbon Tetrachloride, then that doctor's statement should apply equally to all veterans coming forward with similar claims. In this case, why make veterans 'Doctor Shop' when it has already been established that, on a balance of probabilities, exposure to Carbon Tetrachloride causes prostate cancer.



4. Wrapping Up the Benefit of the Doubt

Currently cancer research is not advanced enough to be able to say with certainty that a particular cancer was caused by exposure to a specific chemical. However, it is known that many chemicals that veterans were exposed to during the 60s and 70s are carcinogens. Therefore these veterans cancers should be presumed to be service-related **as per para 50** of the Veterans Well-being Regulations.

As well, we know that some families have a history of prostate cancer going back generations. In this case their predisposition to prostate cancer is likely the primary factor. So, if a veteran, with no family history was exposed to Carbon Tetrachloride while in service and develops prostate cancer, it is highly likely, that if it were not for their service, this veteran likely would not have cancer. In this case, this veteran should be given the benefit of the doubt, **as per para 50** of the Veterans Well-being Regulations.

Of note is that 42% of those veterans with cancer registering on the VwC website stated that they had Prostate Cancer and were exposed to Carbon Tetrachloride.

Similarly, if there are 10 veterans with prostate cancer, who were all in the same trade and had extensive exposure to Carbon Tetrachloride. These are, for all intents and purposes, identical. Each of these veterans should not be individually required to prove that Carbon Tetrachloride caused their cancer. They should be given the benefit of the doubt when it comes to 'service-related' **as per para 50** of the Veterans Well-being Regulations.

Summary

It is important to differentiate between veterans with injuries that occurred in the field, from veterans delayed injuries resulting from exposure to chemicals 20 to 30 years prior to their diagnosis. This type of injury is very different and as such requires a different assessment process. We are therefore suggesting that the existing process be modified to accommodate veterans with delayed injury caused by exposure to chemicals during service. Specifically we are suggesting:

1. Treat veterans with the same cancers as a group and of those, treat veterans with the same exposure as a subgroup. By recognizing that these claims are identical, the process time will be shorten for all veterans.
2. Apply Regulation 50(g) more liberally to the benefit of veterans with cancer. In doing so, reduce the emphasis on Doctors Letters. However when a Doctors Letter exists tying a specific cancer to a specific exposure that letter should be applied to all veterans with the same cancer and exposure.
3. VAC should refer to VRAB and VAC past decisions involving delayed injuries like cancer and when presented with the same cancer resulting from the same exposure as in a past VRAB or VAC decision, recognize and apply Judicial Precedent. Don't make all veterans with identical cancers/exposures individually jump through the same hoops.

In summary, we believe that if adopted our suggestions will significantly speed up the evaluation process for all veterans and greatly assist those veterans with delayed injury to obtain fair consideration.