

Discussion Paper

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... on behalf of all Veterans with Cancer.

Chemical Exposure Resulting in Cancer

Disclaimer:

We are here in support of all veterans with cancer resulting from exposure to chemicals while serving. Our objective is to help our fellow veterans with cancer to successfully navigate, what many find to be a cumbersome, painfully slow process. We recognize that Veterans Review and Appeal Board is a quasi-judicial body and that it is possible that one of us may appear before the Board at some time in the future. For this reason we will not be discussing any aspects of our personal issues during our discussions. We also recognize that some of the issues in this discussion paper involve the mandate of VAC as opposed to VRAB.

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 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 you 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

Our 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. If accepted, we believe that our suggestions will significantly improve the process for these types of claimants.

1. US Legislation

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. The Act also improves staff education regarding toxic environments and delayed impact on veterans.

a. Canadian Application

Canada does have somewhat similar legislation. Para 50 of the Veterans Well-being Regulations: states:

50. ...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.

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 could 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 doesn’t seem to be the case. For example, decision 100002226018, appears to place more weight on the fact that a Pension Medical Advisor (April 03, 2013), consulted multiple research articles and 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. On the contrary, 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.

2. Case law

I think we can safely say, that when it comes to injuries sustained in the field, that no two injuries are the same. Generally, the same can’t be said about a particular cancer that resulted from exposure to specific carcinogen. In this case veterans’ delayed injuries are, for all intents and purposes, identical. 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?

Some VRAB decisions contain statements such as: “*The Panel in rendering its decision, is not bound by previous decisions given with respect to other clients*”. The question when it comes to

delayed injuries due to chemical exposure is; why is the Panel not bound by previous decisions? We suggest that for these cases, it would be appropriate for VRAB to apply the legal doctrine of stare decisis, i.e. follow precedent in making their decisions.

a. Application

For example, there was a recent award 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.

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. 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, than 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 some chemicals, like Carbon Tetrachloride, are carcinogens according to the American

National Library of Medicine's, 15th Report on Carcinogens. It's also known that during the 60s and 70s that many veterans were exposed to Carbon Tetrachloride. *In this situation, 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 possible 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?*

Similarly, if there are 10 veterans with prostate cancer, who were all in the same trade and had extensive exposure to Carbon Tetrachloride, *they should be given the benefit of the doubt when it comes to service-relation 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 that groups of veterans with the same cancer and with exposure to the same carcinogen, be considered as a group with a presumptive service-related cancer as per para 50 of the Veterans Well-being Regulations.

Furthermore, we are suggesting that if one veteran's doctor states that their patient's particular cancer was the result of their exposure to a specific chemical during service, then that doctor's statement should apply to all veterans who had similar exposure to the same chemical during service and developed the same cancer.

Most importantly, we are suggesting that VAC and VRAB apply the legal doctrine of stare decisis and follow precedent in making their decisions. Therefore when there is an award for particular cancer resulting from exposure to a specific chemical while in service, then that decision should establish precedent for similar cases that follow.

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.