

Veterans with Cancer Inc.

Advocacy and Awareness

Briefing Note

August 07, 2024

For: Colonel (Ret'd) Nishika Jardine, Veterans Ombud

Issue: Systemic Barriers Impacting Veterans with Cancer.

Introduction:

Veterans with Cancer is a registered not-for-profit established with the dual mission of advocating on behalf of veterans with cancer and spreading awareness that many veterans' cancers are the result of exposure to carcinogenic chemicals while in uniform.

Background:

Veterans with Cancer (VwC) has been actively reaching out to veterans through its <u>website</u> and Facebook page to increase awareness and to provide helpful information concerning chemical exposure. To assist in their awareness efforts VwC has distributed the attached posters to Legion Branches to inform their members. As well VwC has recently been the <u>subject of an article</u> in the Esprit de Corps magazine. Future Awareness activities involve a potential speaking tour and veteran's workshops aimed at informing veterans of the service-relationship of many cancers.

In regard to its Advocacy efforts VwC has had discussions with BPA concerning systemic barriers and recently met with the Chair of VRAB in Halifax. As a result of that meeting the VwC directors have been invited to present at a three-day training session for VRAB members in Charlottetown this October. VwC has been in touch with MP Blake Richards, Vice-Chair, Standing Committee on Veterans Affairs who was supportive of our efforts. We have also had discussions with the Chair of the National Council of Veteran Organizations (NCVA). As a result of those discussions the NCVA has added VwC's advocacy for change to their legislative agenda for this year with the objective of encouraging an amendment to the Veterans Well-Being Act to bring it up to the standard set by the American PACT Act. Future advocacy plans involve a possible presentation to the Standing Committee on Veterans Affairs and a series of individual appeals to Members of Parliament this Fall.

Discussion:

The current disability claims process at Veteran's Affairs Canada (VAC) was designed for physical injuries sustained in the field and continues to follow procedures that work very well for these injuries. However, as designed, they present a systemic barrier to our members whose injures were sustained in field but were not manifested until many years later. These types of delayed injuries are not easily forced into the mold established for traditional veteran injuries. For example, if a veteran sustained a wound from enemy fire and in retirement the site of that wound precipitated a new medical problem, a doctor would not have a problem determining that the new issue was the result of the veteran's service.

However, if a veteran, with no family history of prostate cancer, develops prostate cancer and had worked extensively with a known carcinogen, such as Carbon Tetrachloride, while in service, it would be very difficult for most doctors to say with any certainty, that the cancer was related to service. Some of our members have been successful in obtaining a physician's opinion confirming that the cancer was service-related, however, the existing process forces veterans to 'doctor shop' in search of a physician with sufficient knowledge of cancer research to make a similar declaration.

The changes needed to remove the systemic barriers for veterans with cancer are outlined in the attached paper on systemic barriers. These involve; treating veterans with identical cancers from similar exposures as a group, applying regulation 50(g) more liberally to the benefit of veterans with cancer, and recognizing judicial precedent established when awards involving a specific cancer from a specific exposure.

Decision Requested:

That the Veterans Ombud advocate for fairness on behalf of all veterans with cancer and make recommendations to decision-makers to adjust current procedures with a view to removing the current systemic barriers impacting Veterans with Cancer.

Prepared by: Commander (Ret'd) Jim Hutton, Director, Veterans with Cancer

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Advocacy and Awareness

Veterans with Cancer Inc.

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INCORPORATION NUMBER 1619282-

Systemic Barriers

Facing Veterans with Cancer

August 07, 2024

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.





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 <u>absence of evidence to the contrary</u>, 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.

Veterans with Cancer Page | 2 of 4



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 <u>CBC article in 2007</u> 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, 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.

Veterans with Cancer Page | 3 of 4



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 Tetracholoride.

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:

- 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.

Veterans with Cancer Page | 4 of 4

Biography

Warrant Officer (ret'd) Randall Hladun

Warrant Officer Hladun joined the military out of high school in 1972 and after standard aptitude tests, he was assigned to attend Performance Orientated Electronics Training (POET) then on to Terminal Equipment Technician (MOC 222 > 224)

His first posting was to 743 Communication Squadron, which was an underground facility built during the Cold War to house government officials during an indirect nuclear attack. He was tasked to maintain telecommunications equipment in the bunker which included an electro-mechanical telephone exchange.



Randall (Randy) Hladun, CD

After that, WO Hladun's postings and promotions came quick. 1st Canadian Signals Regt - Kingston, CFSCE - Kingston, 1 CMBG HQ & Sigs – Calgary, 747 Communication Squadron - Esquimalt, 731 Communication Squadron – Shilo, 18 Wing – Edmonton. It was while in Edmonton that the Force Reduction Plan (FRP) was offered. After consulting with his family and turning down promotion to MWO, he released from the CF in 1995. At that time, WO Hladun was very involved with the community.

WO Hladun was part of the Victim Services Unit of the Edmonton Police Service (EPS). It was a volunteer position where Victim Advocates would provide referrals, court accompaniment, and moral support. It was during one incident involving a sudden death where WO Hladun received an accommodation from the Chief of Police. WO Hladun was fortunate to attend numerous courses offered by EPS. Additionally, WO Hladun would conduct presentations on Drug/ Alcohol abuse in various prisons including the Canadian Forces Service Detention Barracks (CFSDB).

After release from the CF, WO Hladun was successful in being hired at TELUS Corporate Security as a Technical Security Investigator. His primary job was to install wiretaps after receiving a court order. This would involve covert work along side police officers. Secondary to this, WO Hladun would be contracted by Law Enforcement or major corporations across Canada to perform Technical Security Counter Measure (TSCM) Inspections. This inspection is to detect listening devices used in corporate espionage. And thirdly, during quiet times, WO Hladun would investigate TELUS employees for theft, harassment, assault, release of information and so on.

It was during this time that 9/11 occurred. This meant an exponential increase in completing wiretaps for CSIS, on suspected terrorists. WO Hladun's local fight on terrorism is one of his proudest moments as he watched in sadness the televised ramp ceremonies of fallen brothers in arms. WO Hladun received commendations from CPS, RCMP and CSIS. And all during this time, he attended the U of C and earned a Certificate in Security Management. Also, was volunteering at the Calgary Police Service Victim Assistance Unit. In all over 10 years supporting victims of crime.

Downsizing at TELUS, resulted in the Calgary Corporate Security office closing. WO Hladun was successful in obtaining a job at Shaw Business as the Manager of the Telecommunications Fraud department. There WO Hladun's team would use complex software tools to detect fraud patterns and also investigate public complaints of fraud. During his three years at Shaw, he and his team prevented losses to customers of over three million dollars. Again downsizing made the decision and WO Hladun retired and worked part time at an exclusive Golf and Country Club until terminal cancer and illness forced him to quit.

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Biography

Commander (ret'd) James P. Hutton

Commander Hutton joined the Canadian Navy in 1968 where he initially trained as an electronics technician (moc:071). He served in three (3) HMC Ships as a technician including two deployments with the Standing NATO Force Atlantic. Two ships, HMCS Assiniboine and HMCS Saskatchewan were steam turbine driven ships designed in the early 1950s while HMCS Huron was a gas turbine ship designed in the 1960s.

In 1975 he was selected under the navy's commissioning program to study engineering at Royal Military College where he graduated at the top of his class. Upon graduation in 1979 he was selected for the navy's prestigious Postgraduate Training on Scholarship Program in recognition of his undergraduate academic achievements. He went on to study Applied Physics at the University of Victoria where he earned a master's degree in



James P Hutton CD, BSc, MSc, MBA

applied physics. His graduate project was sponsored by Defence Research Pacific and involved tracking noise sources under the Arctic ice. After completing his graduate work he went on to study systems engineering at the Technical University of Nova Scotia and the Navy's Fleet School in Halifax.

He continued his naval career as a Systems Engineer when assigned to HMCS OTTAWA in 1984. While in this position he was responsible for the ships Electronic Warfare, Communications Systems, Ship's Sensors, and Weapons Control Systems. Upon his promotion to Lieutenant Commander he was posted to National Defence Headquarters where he played an integral role in establishing the navy's software development policy and standards.

In 1990 he was promoted to the rank of Commander and posted to Victoria as the Senior Engineer and Headquarters Commanding Officer for the Second Canadian Destroyer Squadron where he was once again deployed in HMCS Huron which was the command ship for the squadron at that time. While in this position he was spent time in the Persian Gulf assessing repair facility capabilities in preparation for the squadron's deployment during the 1991 Gulf War.

Following this assignment he was personally selected by the project manager of the Navy's \$10 billion ship construction program to manage all west coast operations. In this role he was responsible for completing construction and acceptance of 5 of the Navy's 12 new state of the art ships assigned to the west coast. While in this position he developed an effective collaborative leadership style that enabled him to complete systems installations, trial and deliver all ships on-time and within budget, in a challenging environment that included multiple stakeholders with conflicting interests.

His experience in building a consensus among multiple stakeholders with opposing views spurned his interest in conflict resolution. So, upon his retirement in 1997 he studied conflict resolution and mediation at Justice Institute of British Columbia and obtained a position as the Registrar of a Quasi-Judicial Tribunal. While in this position he introduced an early dispute resolution program to resolve job competition appeals without the need for adjudication.

After realizing success in facilitating union-management agreements to amicably resolve appeals, he went back to school and earned a master's degree in Business Administration at Royal Roads University. He leveraged this new credential to obtain positions involving finance and ancillary business development at three post-secondary institutions in roles of progressively increased responsibility. He obtained his final post-secondary position in 2009 when he was selected by Cambrian College to be their Vice-President Finance and Administration. The college was under enormous financial pressure at the time due to government cutbacks and poor decisions in the past. He championed a number of difficult initiatives aimed at right-sizing the workforce, including contracting out some services, introducing initiatives aimed at increasing ancillary revenues and introducing a number of Public Private Partnerships, including the sale of the Student Residence that provided the college with \$25 million while guaranteeing Residence operations in perpetuity.

In 2014, after a multifaceted career spanning 46 years, he retired and chose to relocate back to his home town of Owen Sound. Since his retirement he has kept busy mentoring two owners of small businesses in the GTA and volunteering his time participating on local municipal committees and community groups.

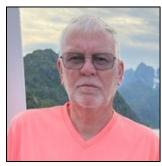
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Biography

Warrant Officer (ret'd) Donald MacPhail

Master Warrant Officer MacPhail joined the Canadian Armed Forces (CAF) in July 1976 and upon graduation from basic training at CFRS Cornwallis he was posted to the Canadian Forces School of Communications & Electronics (CFSCE) in Kingston Ontario. He was assigned to attend Performance Oriented Electronics Training (POET) which was followed by training to become a Terminal Equipment Technician (MOC 222).

MWO MacPhail's first posting was 702 Communications Squadron at CFB Petawawa where he performed preventative and corrective maintenance on the electro-mechanical telephone switching equipment along with installing and maintaining smaller electronic telephone systems in Head Quarters buildings on the base.



Donald (Don) MacPhail, CD

In 1981 Corporal MacPhail was posted to 4 Canadian Mechanized Brigade Group Headquarters & Signals Squadron in Lahr, West Germany where he was responsible for providing maintenance for the tactical telephone switching equipment.

Upon his return to Canada in 1985 Master Corporal MacPhail served with the 720 Communications Squadron at CFS Debert Nova Scotia where he was the Terminal Equipment Shop Supervisor. The telephone switching equipment was located in an underground bunker that was built during the Cold War to house government employees in the event of a nuclear event.

In 1989 Sergeant MacPhail was posted to CFS Carp, Ontario where he was the Terminal Equipment Supervisor. This was another posting to an underground facility that was built during the Cold War to house government officials in the event of a nuclear event.

In 1993 he was promoted to Warrant Officer and posted to NORAD HQ & Air Force Space Command HQ, Colorado Springs, Colorado where he was assigned to the Technical Control Facility in Cheyenne Mountain. After spending 10 months underground in Cheyenne Mountain he was selected to become a project manager/team lead to coordinate the installation of secure telephone systems in Unites States Air Force facilities worldwide.

In 1996 Master Warrant Officer MacPhail was posted to Tactical Command Control & Communications Systems Detachment, Calgary Alberta where he was assigned as a senior member of the project team that was responsible to monitor the contractor's quality control during the manufacture and implementation of the next generation communications equipment for the Canadian Army. He also held the appointment of Detachment Sergeant Major.

MWO MacPhail retired from the CAF in 1997 and embarked on a civilian career that started at the Southern Alberta Institute of Technology (1 year) in Calgary as a Telecommunication Technician; TELUS Communications (2 years) in Calgary as an Implementation Specialist; Saudi Telecom, Kingdom of Saudi Arabia, as an Engineering Technologist (6 months); Bell West (7 years) in Calgary as a Customer Solutions Expert and finally Bell Aliant in Halifax (8 years) as a Customer Solutions Expert.

In November of 2015 MWO MacPhail officially retired from the workforce. From 2009 to 2016 he was a volunteer with the Halifax Chapter of The Motorcycle Ride for Dad (MRFD). The MRFD is a national charity that raises funds for Prostate Cancer awareness and research. He started as the Souvenir Sales Coordinator and after 3 years he was asked to become the Co-Chair of the Halifax Chapter. During his time with the MRFD the Halifax Chapter raised over \$300K that was used to fund prostate cancer research at the Dalhousie Medical Centre in Halifax.

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Veterans with Cancer Inc.

www.Veteranswith Cancer.com

INCORPORATION NUMBER 1619282-3

Who Are We?

We are a small group of veterans with a mission to inform all veterans who have cancer that their cancer may be service-related and, if so, help them submit a disability claim which can be a complex and difficult process.

Systemic Barriers

The current disability claims process at Veteran's Affairs Canada (VAC) was designed for physical injuries sustained in the field and continues to follow procedures that work very well for these injuries. However, as designed, they present a systemic barrier to our members whose injuries were sustained in field, but were not manifested until many years later. We are actively lobbying Veterans Affairs to have these barriers removed.

We're Getting Traction

As a group we are making some in roads in our efforts to persuade VAC to remove the systemic barriers presented by the current process. We have met with the Chair of the Veterans Review and Appeal Board, and have had discussions with Bureau of Pensions Advocates at the Director level.

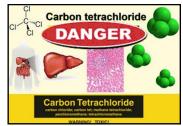
You can help by asking your MP to lobby the VA Minister.

Contact Us

If you have cancer and believe you could have been exposed to chemicals while in service contact us — we can help!

phone: (226) 664-1672 email: Veteran@VeteransWithCancer.com









Numéro d'organisation: 1619282-3

Qui sommes-nous?

Nous sommes un petit groupe d'anciens combattants dont la mission est d'informer tous les anciens combattants atteints de cancer que leur cancer peut être lié au service et, le cas échéant, de les aider à présenter une demande de prestations d'invalidité, ce qui peut être un processus complexe et difficile.

Obstacles Systémiques

Le processus actuel de demande de prestations d'invalidité d'Anciens Combattants Canada (ACC) a été conçu pour les blessures physiques subies sur le terrain et continue de suivre des procédures qui fonctionnent très bien pour ces blessures. Cependant, telles qu'elles ont été conçues, ces procédures constituent un obstacle systémique pour nos membres dont les blessures ont été subies sur le terrain, mais ne se sont manifestées que de nombreuses années plus tard. Nous faisons activement pression sur Anciens Combattants Canada pour que ces obstacles soient éliminés.

Nous avançons

En tant que groupe, nos efforts pour persuader ACC d'éliminer les obstacles systémiques présentés par le processus actuel, commencent a porter fruit. Nous avons rencontré le président du Tribunal des Anciens Combattants (révision et appel) et nous avons eu des discussions avec le Bureau de services juridiques des pensions au niveau de la direction.

Vous pouvez aider en demandant à votre député de faire pression sur le ministre des Anciens Combattants

Contactez nous

Si vous avez un cancer et croyez que vous avez pu être exposé à des produits chimiques pendant votre service, contactez-nous — nous pouvons vous aider!

Téléphone: (226) 664-1672 Courriel: Veteran@VeteransWithCancer.com







