Presumptions – Veterans with Cancer

Recommendation

NCVA proposes that the presumptive provisions of Section 50, sub (g) of the Regulations to the Veterans Well-being Act (VWA) be expanded to create a form of automatic entitlement for veterans with cancer (and other enumerated conditions) who have served in conflict zones or operational duty areas where environmental hazards are known to exist, including toxic elements, aircraft exhaust fumes, burn pits and other noxious agents.

Recommendation

The Canadian government, through VAC, should enact legislation to parallel the American Promise to Address Comprehensive Toxics (PACT) Act, which provides dual presumptions as to medical conditions covered and defined geographical areas of toxic exposures that will automatically qualify veterans for pension and health-care entitlement.

Recommendation

VAC should adopt the interim proposals of the Veterans with Cancer organization to remedy this long-standing grievance of cancer victims who have served Canada in areas containing environmental toxins, burn pits, carbon tetrachloride, et al.

Recommendation

NCVA continues to advocate the utilization of these forms of presumption in general to obviate the current backlog and wait-time crises experienced by veterans and their families in making claims for disability and health-care benefits.

For many years, Canadian veterans with cancer conditions have faced significant challenges when applying for VAC disability and health-care benefits with regard to demonstrating that their cancer is related to their military service, which involved exposure

to toxic chemicals, burn pits, aircraft exhaust fumes, carbon tetrachloride (CTCs) and similar noxious agents.

Unfortunately, it has been NCVA's experience going back decades that the greater majority of veterans with cancer have been unsuccessful with their disability or health-care claims or, alternatively, the cases have taken months, if not years, to obtain proper entitlement due to the stringent evidentiary requirements imposed by VAC.

NCVA takes the position that these readily apparent obstacles and delays need to be addressed by VAC to ensure that the claims of these veterans with cancer who have been exposed to toxic environments while serving Canada are recognized as service-related.

As a positive development in this context, it is noteworthy that, of late, a number of individual claims have been granted on appeal to the Veterans Review and Appeal Board (VRAB) or VAC through the application of the presumptive provisions of Section 50 of the Regulations to the VWA (parallel provisions exist under the Pension Act):

> "**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."

It remains our contention that a significant expansion and application of the presumptive provisions found in the Veterans Well-being Regulations, Section 50 sub (g), would augment and expedite the adjudicative process in regard to these deserving claims.

Indeed, in our judgment, it is time that the federal government through VAC adopt the approach followed in the U.S. when addressing these types of cancer claims in circumstances where a toxic environment has existed in the geographical areas of their military service.

In the U.S., landmark legislation has recently been passed to remedy this long-standing grievance among American veterans with cancer and their families. The PACT Act is a newly enacted American law that expands Veterans Affairs (VA) health care and benefits for veterans exposed to burn pits, Agent Orange and other toxic substances.

For example, under the PACT Act, if a veteran has contracted cancer (or other enumerated lists of medical conditions) and has served in a conflict zone or military posting wherein toxic chemicals, burn pits, CTCs, etc. are known to have existed, it is presumed under the PACT Act that the veteran's cancer et al is related to military service for pension or health-care purposes.

This entitlement is granted automatically in recognition of the fact that the veteran applicant confronts an evidentiary obstacle course to prove the interrelationship and, in many cases, the cancer condition may have had its onset a number of years after the veteran's military service has been completed.

The American legislation has remedied this concern by adopting a dual presumption as to the cause of the cancer and those service-related geographical areas where such toxic agents, burn pits et al are known to have been found. This interrelationship automatically triggers a disability or health-care benefit for the American veteran applicant with cancer.

The new legislation actually **designates 33 specific locations** (countries, territories or operational areas) where **burn pit exposure is presumed** to have occurred.

In raw numbers, more than 1.6 million claims have been granted since the PACT Act was enacted in August 2022 to veterans and survivors in all 50 states who have been able to receive disability benefits under the law, totaling about $5.7 billion in benefits according to the VA administration:

> "For too long, too many veterans who got sick serving and fighting for our country had to fight the VA for their care. This will no longer be necessary."

NCVA has been working in concert with the Veterans with Cancer organization in Canada that has been established to draw attention to this long-standing grievance.

Veterans with Cancer has formulated the following recommendations to address the troubling adjudicative issues in regard to this entitlement problem:

(i) Remove systemic barriers for veterans with cancer. Treat veterans with the same cancer as a group and, of those, treat veterans with the same exposure as a sub-group by recognizing that these claims are identical. The processing times will be shortened for all veterans.

(ii) Apply the presumptive provisions of Section 50, sub (g), more liberally to the benefit of veterans with cancer. In doing so, reduce the emphasis on medical evidence. However, where medical evidence exists, tying a specific cancer to a specific exposure, that evidence should be applied to all veterans with the same cancer and exposure.

(iii) 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 legal precedent. Don't make all veterans with identical cancers/exposures individually jump through the same hoops.

These recommendations reflect immediate steps that VAC can undertake to expedite current claims presently in the VAC adjudicative system.

NCVA remains convinced that VAC should:

(i) Immediately expand the presumptive provisions of Section 50, sub (g) of the Regulations to the VWA to create a form of automatic entitlement for veterans with cancer (and other enumerated conditions) who have served in conflict zones or operational duty areas where environmental hazards are known to exist, including toxic elements, burn pits and other noxious agents, and;

(ii) Ultimately enact legislation to parallel the American PACT Act, which provides dual presumptions as to medical conditions covered and defined geographical areas of toxic exposures that will automatically qualify veterans for pension and health-care entitlement.

2025 Progress

It is imperative to note that members of the NCVA spoke with Trudie MacKinnon, director general, centralized operations division, service delivery of VAC, who stated that disability applications submitted on behalf of veterans for cancer claims do not require the burden of proof to demonstrate that their cancer was service-related. On March 7, 2025, this statement was confirmed by former minister of veterans affairs Darren Fisher, stating ***"where links have been established through evidence between a military occupation or location, an environmental exposure and a medical diagnosis, it is only necessary for a member or veteran to demonstrate that they served in a given occupation or location for a sufficient period of time and that they have a related diagnosis in order to be eligible for disability benefits."*** **Therefore, under the new agreement from the director general, case adjudicators are instructed to assess cancer types based on chemical exposure.**

Similar to the recent legislative change of the PACT Act for American veterans, the Bureau of Pension Advocates has been notified across Canada that it is sufficient for veterans submitting cancer claims to demonstrate their exposure to an environmental hazard such as lead, burn pits, Agent Orange and other toxic substances for any duration.

This interrelationship automatically triggers a disability or health-care benefit for the American veteran applicant with cancer. Given the recent confirmation from Director General Trudie MacKinnon, Canadian veterans with cancer claims share the same entitlement for their service-related disease. Additionally, the statement made by Fisher on March 7, 2025, confirms that veterans with established links between military exposure and their medical diagnosis must only demonstrate they served in the known area for a sufficient period of time to be eligible for their disability benefit.