

REPORT TO THE MINISTER OF NATIONAL DEFENCE

DETERMINING SERVICE ATTRIBUTION

FOR MEDICALLY RELEASING MEMBERS

MAY 2016



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Each year, approximately 5500 members release from the Canadian Armed Forces (CAF). Of that number, over 1500 are released for medical reasons. Generally, the process of release from the CAF is lengthy. For CAF members who are medically releasing and/or are ill or injured, the process is further fraught with the challenges of their individual struggles. Once released, members sometimes have to wait for months for their benefits application to be processed. Clearly, any delay in receiving benefits or services has an enormous impact on the lives of medically releasing members and most certainly does not make for a seamless transition from military to civilian life.

By looking at the service delivery model from a new perspective, we have an opportunity to reduce bureaucratic delays and frustrations for medically releasing members who should not have to wait to receive the benefits and services to which they are entitled.

NEW VETERANS CHARTER (NVC) BENEFITS AND ELIGIBILITY

The primary source of benefits for currently releasing members is the *Canadian Forces Members and Veterans Re-Establishment and Rehabilitation Act* (New Veterans' Charter or NVC). There are various services and benefits available under the NVC, each having distinct eligibility criteria. Some of these benefits and services are available to any medically releasing member or to members who have not been released for medical reasons provided they can demonstrate that they have a disability resulting from an illness or injury that is attributable to service. Most of the remaining benefits require applicants, regardless of release category, to demonstrate three things: (1) that they have an illness or injury; (2) that the illness or injury was attributable to service; and (3) that they have a certain degree of disability resulting from the illness or injury.

The term 'attributable to service' is used to indicate that an injury or illness is directly caused or aggravated by military service.

RECOMMENDATION

The purpose of this paper is to demonstrate that it is possible to adjust the current cumbersome bureaucratic process to assist medically releasing members and drastically shorten the wait times for receiving benefits. **We recommend that the CAF determine whether an illness or injury is caused or aggravated by that member's military service and that the CAF's determination be presumed by VAC to be sufficient evidence to support an application for benefits.**

This recommendation fits within the existing legislative framework but requires a willingness to rethink the *status quo*.

NVC AND THE CURRENT SERVICE DELIVERY MODEL

The NVC stipulates that the Minister of Veterans Affairs, may, on application, pay an award or benefit if the applicant establishes an injury or illness that is attributable to military service.¹ More specifically, the onus is on the applicant to provide evidence of (1) a diagnosed condition, (2) that it is attributable to service, and that (3) there is a resulting disability. In determining whether the evidence provided by the applicant meets the eligibility criteria, Veterans Affairs Canada (VAC), as the administrator, considers mostly documentary evidence generated by the CAF.² The evidence consists largely of the applicant's medical records and possibly other career related records.

This begs the question of why a protracted bureaucratic process is required for VAC to review records prepared by the CAF when it is possible for the CAF to determine whether a medically releasing member's condition is related to or aggravated by military service. Given that the CAF has control of the member's career and has responsibility for the member's medical health throughout that career, such a determination would be presumed to be evidence in support of a member's application for VAC benefits.

Yet the CAF has been reluctant to make such a determination despite the significance it would have for the medically releasing member who is applying for benefits.

THE CAF KNOWS WHETHER A RELATIONSHIP TO SERVICE EXISTS

Common sense suggests that CAF is best placed to know whether a member's physical or mental health condition is caused or aggravated by their military service.

¹ NVC at section 45.

² VAC, *Service Health Records for Disability Benefit Application - Fact Sheet* available online at <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/service-health>.

The Surgeon General oversees the provision of clinical health and medical policy for the Canadian Armed Forces. The CAF medical system has two goals: to provide medical care to members as well as to monitor their general suitability for military service and their ability to perform their specific military occupation. The Canadian Forces Health Services Group (CFHS) is responsible for providing clinical health care to all regular force members and some reserve force members.³

The CAF creates and controls the member's complete medical record including health status at recruitment. The assessment of medical fitness begins at a pre-enrolment physical examination, continues throughout the member's military career, and ends with a release medical. Further, medical policies regarding the maintenance of military health records recognize that one of the purposes of a health record is to assist in the processing of insurance and pension claims.⁴

In addition to the comprehensive health records, the CAF also prepares and controls career files which may contain important non-medical information that could be critical to understanding whether a condition is related to service.

In some cases there may be specific (non-medical) records that are relevant to determining whether an injury or illness is related to military service. There may be a Report of Injury, Disease or Illness (CF-98) that describes an incident resulting in an injury. The CF-98 also reports exposure to a toxic substance whether or not there are immediate effects.

In other words, the CAF has the relevant information as well as the expertise and systems in place to determine whether one of its members has sustained an injury or illness that was caused or aggravated by the member's military service.

A SHIFT IN THE MINDSET IS NEEDED

There is nothing in the laws, regulations, and policies governing the CAF that either requires or prevents the Surgeon General from determining whether a releasing CAF member's illness, injury, or aggravation thereof is related to service.

VAC's responsibility to determine whether the legislative criteria are met in no way precludes the CAF from drawing a factual and/or medical conclusion that is often within the ability of the

³ Chapter 34 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O).

⁴ Canadian Forces Health Services Group Instruction 5020-25, *Personal Health Information – Use* available online on the Defence Intranet at <http://cmp-cpm.mil.ca/en/health/policies-direction/policies/5020-25.page>

CAF to make. In fact, the CAF is determining causality in a number of other contexts, so there is no reason why it cannot be done to support a medically releasing member's application for benefits.⁵

The Surgeon General is hesitant to have its medical officers conclude whether an injury or illness is related to or aggravated by military service for still serving members who apply for VAC benefits. The Director Medical Policy (D Med Pol) has recently released a communiqué confirming this position.⁶ The rationale underlying the position is that drawing conclusions about causality go beyond clinical care, potentially creating ethical issues and undermining the doctor-patient relationship. The concern expressed is that a serving member may benefit from minimizing an injury/illness because of possible career implications yet would be advantaged by maximizing that same injury/illness for the purpose of a VAC application. Arguably, asking the treating physician of a still serving member to draw a conclusion whether that member's injury or illness was caused or aggravated by service places the physician in a conflict position.

We make no comment regarding the Surgeon General's position and rationale as it relates to still serving members.

However, the rationale would not apply in the case of members being medically released because, after release, their continued health care would not be provided by the CAF medical system. In other words, because they are releasing there is no competing interest between career implications and application for benefits. Consequently, there would be no issue regarding the professional ethics of treating physicians.

START WITH THE OBVIOUS

It is acknowledged that for the CAF to assess whether an illness or injury is service related for all of its releasing members would require a wholesale re-think of the current processes.

Nevertheless, it is feasible to move immediately with this recommendation for those members who are being medically released. The process of a medical release involves the review of the member's medical file and career file by numerous levels of medical officers and administrators who would review mostly the same documents that VAC eventually uses to make its determination. Not all of these medical officers would have provided clinical care to the member and none will provide clinical care to that member going forward.

⁵ Some benefits administered by the Canadian Armed Forces require medical conditions attributable to service. For example, under QUEENS REGULATIONS AND ORDERS 34.07, reservists requiring medical care for conditions attributable to military service are entitled to care provided by the Canadian Armed Forces.

⁶ The communiqué is available on the Defence Intranet at <http://cmp-cpm.mil.ca/en/health/policies-direction/communiques/dmedpol-2015-004>

D Med Pol, which reviews medical files of all CAF members being considered for medical release, has the medical expertise, has access to file information, and is empowered to advise release authorities.⁷ It therefore makes sense to have D Med Pol determine, where possible, whether any of the medical conditions on a member file are attributable to military service.

CONCLUSION

Any recommendation that challenges the status quo will likely find some resistance by those who are entrenched in the existing administrative processes or service delivery model. However, the model is broken as is evident from the plentiful media reports and the embarrassing statistics on service delivery. It is also very unfair to the medically releasing CAF member.

Members and veterans are frustrated by the heavy administration, the duplication of effort, the lack of clarity, the onus placed on them to gather the proof from CAF for VAC to determine their entitlements, and the resulting delays in receiving their benefits. From a practical perspective, this has very real consequences on the lives of our medically releasing members.

We urge the CAF to begin systematically pronouncing on whether the health conditions (illness or injury) of every releasing member are related to or aggravated by the military service of that member.

This would go a long way to assist medically releasing CAF members meet the burden required of them to access VAC-administered benefits.

⁷ DAOD 5019-2.