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**Updated:** January 16, 2024<sup>1</sup>

## **Frequently Asked Questions on Elective Option for Camp Lejeune Justice Act Claims**

### *FAQs Included in the January 16, 2024 Update*

This update to the FAQ answers additional common concerns and questions, including the meaning of “certified copies of originals,” the availability of “reconsideration,” and the relationship between TRICARE benefits and an EO offer (*see* Questions 12 through 14). This version also provides an update on CMS’s communications with Medicare Advantage Organizations and State Medicaid Agencies (*see* Question 8) and clarifies date calculations for claims reviewed by DOJ (*see* Question 3).

#### *1. What Are the Benefits of Accepting an EO Settlement Over Filing a Lawsuit?*

Claimants who accept an EO settlement offer are guaranteed payment. Recovery outside the EO—whether through an administrative claim that is not eligible for the EO, or through filing a lawsuit in Federal court—is not guaranteed because such recovery requires proof that the contaminated water was at least as likely as not the cause of the plaintiff’s illness. This process must account for the level of exposure and all potential alternative risk factors for the illness. In addition, recovery obtained through other administrative processes, trial, or settlement are subject to offsets to reflect any disability award, payment or benefit related to water exposure at Camp Lejeune.<sup>2</sup>

Claimants who accept an EO settlement can expect to receive payment within 60 days or less, provided they accurately complete all necessary payment documentation in a timely manner. In court, litigation may require multiple months of discovery, motions practice, and potentially trial.

The EO also reduces the number of factual issues a claimant must establish. For example, the EO utilizes a base-wide approach to exposures. So long as the claimant resided or worked at Camp Lejeune during the statutory time period (even if the claimant did not reside or work at areas served by the contaminated water systems—Tawara Terrace, Hadnot Point, or Holcomb Boulevard), the claimant will receive payment, provided the claimant meets the other EO requirements. In court, plaintiffs may need to provide evidence of exposure to contaminated water from one of the contaminated systems to recover. Finally, as mentioned in the Public Guidance and in contrast to CLJA damages awards obtained through litigation, EO offers will

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<sup>1</sup> On January 16, 2024, Part II of the Public Guidance (Frequently Asked Questions) was amended to address additional questions. Part II is now included in a separate document to address new questions on a periodic basis.

<sup>2</sup> CLJA, § 804(e)(2).

not be offset by disability awards, payments, or benefits received through the Department of Veterans Affairs.

## *2. What If I Decline an EO Settlement?*

Claimants who decline an EO settlement offer may keep their administrative claim with the Department of the Navy. The Department of the Navy and the Department of Justice are continuing to develop additional frameworks for resolving CLJA matters. These additional frameworks may require greater time and resources than the EO, after which recovery is not guaranteed and offsets may be applied. Alternatively, a claimant may file a lawsuit in federal court, provided that the claim has either been formally denied by the Department of the Navy or six months have passed since the claim was initially filed.

## *3. Does the EO Apply to Claims Already in Litigation?*

No, but the Department of Justice will investigate and offer to resolve claims in litigation as of October 6, 2023 consistent with the EO (referred to here as the “DOJ-EO” settlement process). If a claimant filed a civil litigation complaint in the United States District Court for the Eastern District of North Carolina, then the Department of the Navy lacks authority to investigate and potentially resolve that claim under the EO. A claimant may not dismiss his or her lawsuit in order to return to the administrative claim process.

To avoid prejudicing claims already in litigation, the Department of Justice will screen and investigate already-filed lawsuits using a similar process as the Department of the Navy. Claims for which a district court complaint was initially filed on or before October 6, 2023, 30 days after the September 6, 2023 announcement of the EO, are referred to as “Group A” claims. As with the EO, DOJ-EO settlement offers extended to Group A claims shall expire after 60 days. Upon acceptance of a DOJ-EO settlement offer, a Group A claimant shall fully complete DOJ’s “Stipulation for Compromise and Settlement Release of Claims Pursuant to 28 U.S.C. § 2677” and related documentation, U.S. Treasury Judgment Fund forms necessary for payment, and a certification stating that the district court complaint will be dismissed with prejudice within 14 days of receipt of the DOJ-EO settlement payment. As with the EO, Group A claimants who timely accept a DOJ-EO settlement offer shall not have their VA benefits offset because of their settlement.

Any other claimant (“Group B”) who files an initial complaint and initiates litigation after October 6, 2023, more than 30 days after the announcement of the EO on September 6, 2023, will be considered to have “opted-out” of the EO and DOJ-EO.

## *4. Why Do Only These Nine Diseases Qualify under the EO?*

Compensating specific qualifying diseases is consistent with other government programs. The EO relieves the claimants of the burden of submitting expert testimony regarding causation and relieves the United States of the cost of evaluating that expert testimony.

Some claimants with Qualifying Injuries may be unable to prove causation in tort litigation. On the other hand, some claimants with injuries that are not Qualifying Injuries may be able to prove causation in tort litigation. In both instances, however, claimants would bear the burden of

proving general and specific causation through expert testimony. On balance, the ATSDR *Assessment of the Evidence* provides a principled basis for settling cases in the administrative claim phase.

As noted in the Public Guidance, “Cardiac Birth Defects” are not included in the EO, even though the ATSDR determined there was sufficient evidence of causation for this category of illnesses. Cardiac birth defects include a wide range of illnesses that are difficult to evaluate similarly without fact-intensive investigation.

The VA treats certain additional illnesses as “presumptively service-connected” to service at Camp Lejeune. These additional diseases are not included in the EO because, according to ATSDR, there is less scientific evidence of causation and because additional, fact-intensive investigation would likely be required in litigation.

*5. Why Are Qualifying Injuries All Treated Similarly If Some Injuries Are More Severe than Others?*

The EO does not attempt to compare the severities of different illnesses. This is the case for at least three reasons. First, assessing the severity of an illness is a fact-intensive and time-intensive inquiry that might require examining a claimant’s medical records, deposing the claimant or the claimant’s family-members, and eliciting expert opinion testimony regarding the effects of an illness. Second, assigning different values to different types of illnesses based on their severity may be inappropriate at the administrative claim phase because of the inherent complexity of such an assessment and the equities it would implicate. Third, the Qualifying Injuries are nearly all cancers or other terminal or chronic illnesses.

*6. What If I Have More than One Qualifying Injury?*

A claimant may recover under the EO for only a single Qualifying Injury. The EO considers settlement on a “per-claimant” basis rather than a “per-injury” basis. If a claimant has more than one Qualifying Injury, the claimant will be compensated for one such injury, at the level that will provide the greatest compensation for the claimant. Thus, if a claimant has both a Tier 1 and Tier 2 Qualifying Injury, the claimant will receive compensation for the Tier 1 Qualifying Injury.

*7. Will Accepting an EO Offer Affect My VA Benefits?*

No, accepting an EO offer for a CLJA claim will not affect the claimant’s VA benefits. VA will not assert a lien or offset over EO payments. Awards or settlements made outside of the EO may be offset by the value of VA benefits.

*8. Will Accepting an EO Offer Affect My Medicare or Medicaid Benefits?*

Accepting an EO offer for a CLJA claim will not affect the claimant’s benefits under the Medicare fee-for-service program. The Centers for Medicare & Medicaid Services (CMS) will not assert an offset over EO payments under the Medicare fee-for-service program. However, Medicare Advantage Organizations and state Medicaid agencies may also have paid benefits to a claimant and will independently determine whether to seek recovery of payments they have

made associated with CLJA claims. Awards or settlements made outside of the EO may be offset by the value of Medicare fee-for-service benefits.

CMS has notified Medicare Advantage Organizations and State Medicaid Agencies that CMS will not assert an offset over EO payments under the Medicare fee-for-service program. CMS views the CLJA as establishing an exclusive remedy for injuries resulting from Camp Lejeune contaminated water exposures, and therefore has determined that the Medicare fee-for-service program serves as the primary payer of health expenses related to CLJA injuries of Medicare fee-for-service beneficiaries.<sup>3</sup>

#### *9. What Percentage of My EO Payment May Be Collected As Attorneys' Fees?*

Because settlements under the EO are made pursuant to 28 U.S.C. §§ 2672 & 2677, attorneys' fees for administrative settlements cannot exceed 20% of the award and attorneys' fees for settlements of cases in litigation cannot exceed 25% of the award.<sup>4</sup>

#### *10. How Do I File My Administrative Claim with the Navy?*

An administrative claim should be filed with the Department of the Navy. The administrative claim should not be filed with the Department of Justice, the Department of Veterans Affairs, or the United States Marine Corps.

Further information on how to file an administrative claim with the Department of the Navy can be found at: [www.navy.mil/clja](http://www.navy.mil/clja). Claimants who have already filed a claim with Navy do not need to refile their claim in order to take advantage of the EO.

The United States cannot advise claimants on whether they should retain an attorney to assist in filing a claim.

#### *11. How Can I Check the Status of My Administrative Claim?*

At this time, the Department of the Navy and the Department of Justice are unable to provide updates on the status of individual claims. Claimants who are represented by an attorney may discuss the status of their claims with their attorney.

#### *12. When Are "Certified Copies of Originals" Required, and Is a Letter from a Records Custodian an Appropriate Certification?*

Certified copies of originals (or originals) are required to authenticate *privately held* documents, such as medical records from a private provider. A cover letter from a records custodian (someone who is responsible for maintaining the records) satisfies this certification

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<sup>3</sup> See CMS, Claims Under the Camp Lejeune Justice Act, <https://www.medicaid.gov/claims-under-camp-lejeune-justice-act-clja/index.html> (last visited Jan. 4, 2024); HPMS, Memo re: Camp Lejeune Justice Act (Oct. 30, 2023), available at <https://www.cms.gov/about-cms/information-systems/hpms/hpms-memos-archive-weekly>.

<sup>4</sup> 28 U.S.C. § 2678

requirement. Government records, including those provided by the Department of Veterans Affairs, do not require additional certification.

*13. What If I Am Interested in an EO Offer, but Believe I Qualify for a Different Offer than the One Provided?*

A claimant who believes his or her EO offer is based on incorrect information, such as an incorrect length of residence or employment at Camp Lejeune, may request reconsideration. Consistent with Navy regulations, a request for reconsideration must (1) be made, in writing, within 60 days of the original EO offer; and (2) include any supplemental substantiating evidence or information. A proper reconsideration request withdraws the previous EO offer until the Department of the Navy extends a new offer in light of the supplemental information. Information provided with a request for reconsideration will be treated similarly to information provided in response to a substantiation request (see Step 3b in the Public Guidance). A claimant shall have 60 days to accept or decline the new offer, which may be the same, more, or less than the original offer (see Step 4 in the Public Guidance).

Consistent with Navy regulations, a request that reasonably appears to have been presented solely for the purpose of extending the time to accept an EO offer shall not be treated as a request for reconsideration and shall not extend the 60 days to accept or decline the original offer. The claimant or the claimant's authorized representative will be notified promptly if the request is not considered a proper request for reconsideration and does not extend the 60 days.<sup>5</sup>

*14. If I Accept an EO Offer, Will the Department of the Navy Assert a Claim for Reimbursement to Recover Any Costs for Medical Treatment Related to Camp Lejeune Injuries and Paid for by TRICARE?*

No, the Department of the Navy will not assert a claim for reimbursement of related costs for medical treatment paid for by TRICARE. If a claimant is eligible for TRICARE benefits, accepting an EO settlement will not impact that eligibility. This answer does not address cases that are litigated or settled outside of the EO framework.

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<sup>5</sup> See 32 C.F.R. § 750.31(b).