Developing Claims Based on Exposure to Contaminants in the Water Supply at Camp Lejeune (Challenge)

Trainee Handout

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Objectives

* Identify the date of the change in law, the presumptive period for exposure to contaminants in the water supply at Camp Lejeune, NC and the eligible Veteran’s
* Differentiate between contentions covered by presumption and those covered for health care only
* Select the correct jurisdiction for processing Camp Lejeune claims and the appropriate special issue indicator
* Identify Camp Lejeune service, labeling requirements and where to develop to obtain personnel records
* Demonstrate when to develop to a Veteran with the correct paragraphs and considerations for Fully Developed Claims.

References

* [38 CFR 3.307 (a)(7) Diseases associate with exposure to contaminants in the water supply at Camp Lejeune](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000018832%2F05-3307-Presumptive-service-connection-for-chronic-tropical-or-prisoner-of-war-related-disease-or-disease-associated-with-exposure-to-certain-herbicide-agents-wartime-and-service-on-or-after-January-1-1947)
* [38 CFR 3.309 (f) Diseases associated with exposure to contaminants in the water supply at Camp Lejeune](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000018834%2F07-3309-Disease-subject-to-presumptive-service-connection)
* [38 CFR 17.400 Hospital care and medical services for Camp Lejeune Veterans](https://www.ecfr.gov/cgi-bin/text-idx?SID=b0025f800bd58ef6c7f3fde03d476ff4&mc=true&node=se38.1.17_1400&rgn=div8)
* [M21-1, Part I, Chapter 1, B.1.f, Notification Requirements for Special Issues](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014065%2FM21-1-Part-I-Chapter-1-Section-B-Duty-to-Notify-Under-38-USC-5102-and-5103)
* [M21-1, Part III, Subpart i, 3.B.3.g, Additional Language for FDC Development Letters](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014110%2FM21-1-Part-III-Subpart-i-Chapter-3-Section-B-Processing-Fully-Developed-Claims-FDCs)
* [M21-1, Part IV, Subpart ii.2.C.6, SC for Disabilities Resulting From Exposure to Contaminants in the Water Supply at Camp Lejeune](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014556%2FM21-1-Part-IV-Subpart-ii-Chapter-2-Section-C-Service-Connection-SC-for-Disabilities-Resulting-From-Exposure-to-Environmental-Hazards-or-Service-in-the-Republic-of-Vietnam-RVN)
* [M21-1, Part IV, Subpart ii. 1.I,7 Developing Claims Based on Exposure to Contaminants in the Water Supply at Camp Lejeune](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014938%2FM21-1-Part-IV-Subpart-ii-Chapter-1-Section-E-Developing-Claims-Based-on-Service-in-Southwest-Asia-Under-38-CFR-3317)

Topic 1: Exposure to Contaminants at Camp Lejeune and Presumptive Conditions

Exposure to Contaminated Drinking Water at Camp Lejeune – In the early 1980s contaminants were found in two wells that provided water at Camp Lejeune, N.C. The contaminants included the volatile organic compounds trichloroethylene (TCE), a metal degreaser, and perchloroethylene (PCE), a dry cleaning agent, and vinyl chloride, as well as benzene, and other compounds. It is estimated that the contaminants were in the water supply from the mid-1950s until February 1985 when the wells were shut down.

There is evidence of an association between certain diseases and the contaminants found in the water supply at Camp Lejeune during the period of contamination

On March 14, 2017, 38 CFR 3.307(a)(7) effectuated a presumption of service connection for specific disabilities for Veterans who served no less than 30 days (consecutive or nonconsecutive) at the U.S. Marine Corps Base Camp Lejeune, North Carolina between August 1, 1953 and December 31, 1987 based on exposure to contaminants present in the base’s water supply.

*Important:* This presumption also applies to former reservists and National Guard members if their military record includes orders or other records of no less than 30 days service (consecutive or nonconsecutive) at Camp Lejeune during the contamination period.

**Camp Lejeune Issue**

The following are considered a Camp Lejeune issue(s)

* Any disability specifically claimed as due to exposure to contaminants at Camp Lejeune or
* One of the conditions listed at either 38 CFR 3.309(f) or at 38 CFR 17.400, regardless of whether service at Camp Lejeune during the contamination period is
  + Expressly claimed by the claimant, or
  + Is otherwise established by the evidence of records

**Service at Camp Lejeune**

Under 38 CFR 3.307(a)(7)(iii), service at Camp Lejeune is service of no less than 30 days (consecutive or nonconsecutive) within the borders of the entirety of the United States Marine Corps Base Camp Lejeune and Marine Corps Air Station (MCAS) New River, North Carolina, during the period beginning on August 1, 1953, and ending on December 31, 1987.

***Important:*** Qualifying service must be established by military orders or other official service department records.

The borders of Camp Lejeune base include, but are not limited to, all the following areas which may be claimed or reflected in military records:

* MCAS New River
* Camp Geiger
* Camp Johnson
* Naval Hospital Camp Lejeune
* Tarawa Terrace
* Camp Knox
* Montford Point
* Sonte Bay/Rifle Range
* Holcomb Boulevard, and
* Hadnot Point

**Exception:** Camp Lejeune service does not include service at MCAS Cherry Point.

**Presumptive Conditions Covered by 38 CFR 3.309(f)**

Under 38 CFR 3.309(f), VA acknowledges the following disabilities to have a relationship with exposure to contaminants in the Camp Lejeune water supply during the period beginning on August 1, 1953 and ending on December 31, 1987:

* Kidney Cancer
* Liver Cancer
* Non-Hodgkin’s lymphoma
* Adult leukemia
* Multiple myeloma
* Parkinson’s disease
* Aplastic anemia and other myelodysplastic syndromes
* Bladder cancer

NOTE: a presumption of SC based on exposure to contaminants in the water supply at Camp Lejeune is not warranted for any other condition, but may be established on a direct basis, if warranted by the facts of the case.

**Conditions Under 37 CFR 17.400 Health Care Only**

Under 38 CFR 17.400 Hospital care and medical service for Camp Lejeune Veterans, the additional illnesses or conditions listed below are covered by VA Health Care:

* Esophageal Cancer
* Lung Cancer
* Breast Cancer
* Bladder Cancer
* Kidney Cancer
* Leukemia
* Multiple myeloma
* Myelodysplastic syndromes
* Renal toxicity
* Hepatic steatosis
* Female infertility
* Miscarriage
* Scleroderma
* Neurobehavioral effects
* Non-Hodgkin’s lymphoma

Topic 2: Processing Camp Lejeune Claims

The following is how VSRs will process Camp Lejeune Claims. All substantially complete claims for compensation containing at least one Camp Lejeune will be routed based on the items below.

NOTE: For the purposes of routing the claims, the regional office of jurisdiction (ROJ) is the next available RO in the National Work Queue (NWQ) environment.

**When the VA receives a claim that references Camp Lejeune and the ROJ retains Jurisdiction**

* Establish appropriate claim EP, and assign the *Environmental Hazard – Camp Lejeune* special issue indicator to the relevant contention(s).
* Verify the Veteran had at least one day of service at Camp Lejeune between August 1, 1953 and December 31, 1987
* Verify and document service at Camp Lejeune and review all available service records to determine the number of days a veteran served at Camp Lejeune during the contamination period
* If the claim **is** for a condition recognized under 38 CFR 3.309(f) **and** the evidence **shows** a diagnosis; and the military records document during the contamination period **is** 30 days **or more** of service at Camp Lejeune – then the claim is decided by the ROJ
* If the claim **is** for a condition recognized under 38 CFR 3.309(f) **and** the evidence shows a diagnosis; **and** the military records document during the contamination period shows **NO** Camp Lejeune service – then the claim is decided by the ROJ
* If the claim **is** for a condition recognized under 38 CFR 3.309(f) and the evidence shows **NO** diagnosis; and the military records document during the contamination period shows **NO** Camp Lejeune service – then the claim is decided by the ROJ
* If the claim is for a condition **NOT** recognized under 38 CFR 3.309(f) **but** recognized for healthcare purposes under 38 CFR 17.400 **and** there is **NO** Camp Lejeune service – then the claim is decided by the ROJ
* If the claim is for any **other** disability claimed specifically as due to exposure at Camp Lejeune **and** the military records document during the contamination period shows **NO** Camp Lejeune service - then the claim is decided by the ROJ

**When the VA receives a claim that references Camp Lejeune and the claim is sent to Centralized Processing**

* Establish appropriate claim EP, and assign the *Environmental Hazard – Camp Lejeune – Louisville*  special issue indicator to the relevant contention(s).
* Verify the Veteran had at least one day of service at Camp Lejeune between August 1, 1953 and December 31, 1987
* Verify and document service at Camp Lejeune and review all available service records to determine the number of days a veteran served at Camp Lejeune during the contamination period
* If the claim **is** for a condition recognized under 38 CFR 3.309(f) **and** the evidence **shows** a diagnosis; and the military records document during the contamination period **is at least one, but less than 30 days service –** then the claim is decided by Louisville RO
* If the claim is for a condition **NOT** recognized under 38 CFR 3.309(f) **but** recognized for healthcare purposes under 38 CFR 17.400 **and** there is **at least one day** of Camp Lejeune Service – then the claim is decided by the Louisville RO
* If the claim is for any **other** disability claimed specifically as due to exposure at Camp Lejeune and the military records document during the contamination period shows **at least one day** of Camp Lejeune service - then the claim is decided by the Louisville RO

Exception: the following types of claims qualify for other centralized processing and will not be processed by the ROJ or Louisville RO.

* Veterans residing in foreign territories
* Original pre-discharge claims
* Restricted access claims, and
* Other specific special mission claims, as needed

**Verifying Camp Lejeune Service**

Before referring the claim for centralized processing the ROJ **MUST:**

* Verify the veteran had at least one day of service at Camp Lejeune between August 1, 1953 and December 31, 1987 and
* Review all available service records to determine the number of days a veteran served at Camp Lejeune during the contamination period

*IMPORTANT*

* When calculating the 30 day service requirement, consider the number of cumulative days the Veteran served at Camp Lejeune. The 30 days of Camp Lejeune service **do not have** to be consecutive
* Regardless of the disability claimed, ROJs must retain jurisdiction of all claims where there is no qualifying service at Camp Lejeune during the contamination period.

In the Veteran’s VBMS eFolder, update the subject line (or annotate) the relevant document to read: ***“CLNC pg XX; mm/dd/yyyy-mm/dd/yyyy”***

**Obtaining Records of Camp Lejeune Service**

It is vital we have all the military records. Ensure that all records are obtained as these records may verify Camp Lejeune service through temporary duty (TDY) order, performance evaluations, or in the case of National Guard or reserves, orders for active duty for training or inactive duty for training.

Request service records that are not already in VA’s possession through normal channels

***Note***:  When *initially* requesting service personnel records through

* PIES, use request code
  + O50 (if the corresponding claim is being processed in VBMS), or
  + O18 (if the corresponding claim is ***not*** being processed in VBMS), or
* Defense Personnel Records Information Retrieval System (DPRIS), select the records identified on the OMPF REQUEST FORM as
  + SC1 – DD-214/215
  + SC6 – Disch/Sep/Ret
  + SC8 – Orders/Endorsements
  + PG2 – Commendatory Items, and
  + PH5 – Chron Assignment History.

**HOWEVER -** If a review of the above documents does not provide proof of 30 days service at Camp Lejeune. Then we are required to develop for the rest of the personnel record from DPRIS. **Best practice is to order the entire personnel record from DPRIS the first time.**

**Developing to the Claimant in regards to a Camp Lejeune Claim**

The standard Section 5103 notice contained on [*VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits*](http://www.vba.va.gov/pubs/forms/VBA-21-526EZ-ARE.pdf), is sufficient for most claims; however, in certain situations, a subsequent development letter must be sent requesting specific information not included in the standard notice.

***Exception***:  Do not send the development letter if the evidence of record

* provides the information the subsequent development letter solicits, or
* is otherwise sufficient to decide the claim.

Develop to the Veteran if

* Initial review of the claim does not establish any service at Camp Lejeune between August 1, 1953 and December 31, 1987
* The disability claimed as due to exposure to contaminants in the Camp Lejeune water supply is not recognized as a presumptive condition under 38 CFR 3.309(f)

NOTE: Refer to M21-1 IV.ii.1.I.7.j for the terminology to use in the subsequent development letter.

**Action to Take when the Veteran Claims Exposure to Contaminants but Does Not Claim a Disability**

A claim is not substantially complete if a Veteran alleges exposure to contaminants in the Camp Lejeune water supply, but does not claim service connection for a specific disability. In cases such as these, the receiving RO must following the procedures for handling an incomplete application at M21-1, Part I, 1.B.1.h

However, the VSR, whenever possible should contact the claimant first by telephone to obtain the information needed to complete the application.

Attachment A: Camp Lejeune Presumptive and Health Care Conditions

Presumptive Conditions under 38 CFR 3.309(f):

* Kidney cancer
* Liver cancer
* Non-Hodgkin’s lymphoma
* Adult leukemia
* Multiple myeloma
* Parkinson’s Disease
* Aplastic Anemia and other Myelodysplastic Syndromes
* Bladder Cancer

**Conditions covered by VHA for healthcare under 38 CFR 17.400**

* Esophageal Cancer
* Lung Cancer
* Breast Cancer
* Bladder Cancer
* Kidney Cancer
* Leukemia
* Multiple myeloma
* Myelodysplastic syndromes
* Renal toxicity
* Hepatic steatosis
* Female infertility
* Miscarriage
* Scleroderma
* Neurobehavioral effects
* Non-Hodgkin’s lymphoma

Attachment B: Camp Lejeune Development Paragraphs

Initial review of the claim does not establish any service at Camp Lejeune between August 1, 1953 and December 31, 1987:

*Note: Enter the paragraphs as free text into your VBMS Supplemental Development letter under the What We Need From You section of the letter.*

We need additional evidence from you to verify Camp Lejeune service.

[optional] We are requesting your service records from the service department. You do not need to contact the service department yourself. If you have your service records already in your possession, please submit a copy of them to us.

The service information VA requires to decide a claim for service connection for diseases resulting from exposure to contaminated water at Camp Lejeune includes (1) proof of service at Camp Lejeune, and (2) details about your service at the Marine Corps base. The details about your service at the Marine Corps base must include the length of time you worked at the base, your duties and the locations where you worked on base, and whether you resided on base or off base.

Important:

* This notice is required when any disability is claimed as due to Camp Lejeune service, even if the claimed disability is not one of the presumptive conditions listed at 38 CFR 3.309(f).
* Create a custom tracked item with 30 day suspense titled ***CL requesting service***.

The disability claimed as due to exposure to contaminants in the Camp Lejeune water supply is not recognized as a presumptive condition under 38 CFR 3.309(f)

*Note: Enter the paragraph as free text into your VBMS Supplemental Development letter under the What We Need From You section of the letter.*

We may consider that your *[Contention]* is associated with contaminants in the water supply at Camp Lejeune if you send us scientific or medical evidence showing that your claimed condition is medically associated with exposure to the contaminants. If your doctor has expressed an opinion regarding the relationship of your claimed condition to exposure to contaminants in the water supply at Camp Lejeune, send us that opinion, the reasons and bases for that opinion, and the clinical treatment records. In addition, the doctor should provide literature that supports the opinion. Literature may consist of scientific or medical journal articles, etc., that support the doctor's opinion that your exposure is related to the currently diagnosed condition.

**Important**:

* This notice is required for any claim where the Veteran served at Camp Lejeune between August 1, 1953, and December 31, 1987, even if the service at Camp Lejeune was for less than 30 days.
* Create a custom tracked item with 30 day suspense titled *CL proof of non-presumptive disability*.

Practical Exercise

**Direction: Review each of the scenarios provided below and answer the questions.**

Scenario 1: A Veteran has submitted a VA Form 21-526EZ that is date stamped April 24, 2017. The Veteran is claiming service connection for bladder cancer and submitted private medical records confirming the diagnosis of active bladder cancer on April 23, 2017. VA has established an EP 020 as the Veteran is currently service connected at a 60% disability rating. Service is verified on the DD214 of record that shows honorable service in the USMC from June 5, 1985 through June 30, 2015. On the DD-214 there is no information that indicates he was stationed at Camp Lejeune, NC. The Veterans personnel records and STR’s are of record. While reviewing his DPRIS records you find evidence on page 19 of the DPRIS document bundle that the Veteran was stationed at Camp Johnson, NC from November 2, 1985 through November 15, 1988. Answer the following questions:

1. Are you required to initiate any development action on this claim? If yes, what development actions will you take?
2. Does the contention of bladder cancer require special issue(s)? If yes, which one(s)?
3. Are you required to make note of the information found in the DPRIS record?
4. What is the next step that should be taken with this claim? (tracked item, claim status etc.)

Scenario 2: A Veteran has submitted a VA Form 21-526 that is date stamped April 25, 2017. The Veteran is claiming service connection for breast cancer due to exposure to contaminated water at Camp Lejeune, NC and has submitted private medical records confirming the diagnosis. VA has established an EP 110 as this is the Veteran’s original claim. The Veteran submitted a certified copy of her DD214 that shows honorable service in the USN as a nurse from May 16, 1964 through November, 1, 1970. The DD-214 shows that she was detached from Naval Hospital Camp Lejeune, NC. A review of the Veteran’s eFolder shows that the IPC sent her a Standard 5103 letter on April 28, 2017. There are no other documents in the eFolder. Answer the following questions:

1. Are you required to initiate any development action on this claim? If yes, what development actions will you take?
2. Does the contention of breast cancer require special issue(s)? If yes, which one(s)?
3. Are you required to make note of the information found on the DD214?
4. What is the next step that should be taken with this claim? (tracked item, claim status etc.)

Scenario 3: A Veteran submits a VA Form 21-526EZ on April 28, 2017 claiming liver cancer due to exposure to contaminated water at Camp Lejeune. The Veteran currently has a disability rating of 70%. The Veteran stated that the diagnosis was made by VAMC Fort Harrison, MT. A review of the CAPRI record confirms the diagnosis and has been uploaded to the eFolder. The DD214 of records show honorable service in the USMC from October 20, 1987 through October 19, 1991. The Veteran’s record contains the complete personnel record. The record shows he attended boot camp at Marine Corps Recruit Depot, Paris Island, SC and was transferred to Camp Lejeune, NC on January 22, 1988 where he spent his entire active duty time. The Veteran’s STR’s are silent for any treatment or complaints of treatment for a liver condition. Answer the following questions:

1. Are you required to initiate any development action on this claim? If yes, what development actions will you take?
2. Does the contention of liver cancer require special issue(s)? If yes, which one(s)?
3. What is the next step that should be taken with this claim? (tracked item, claim status etc.)