

How does the Elective Option (EO) Work?

Camp Lejeune Off Ramp Settlement Analysis



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As of September 1, 2023,

- Approx. 93,000 claims have been filed under the Camp Lejeune Justice Act
- 0 properly filed claims have been resolved
- 0 Marines/family received a settlement offer
- Federal judges wondering why
- USDOJ releases Elective Option for Camp Lejeune Justice Act claims

Introduction



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- Provides framework to resolve claims quickly
- Allows Dept. of the Navy (DON) to focus on key aspects
- DON can be more efficient to validate claims and extend settlement offers more quickly
- Marines not eligible for EO still have remedies available

Overview of the Elective Option (EO)



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Settlement matrix taking into account:

- Illnesses/conditions that Agency of Toxic Substance and Disease Registry (ATSDR) identified as having evidence at “equipoise and above” level
- Tier 1 Qualifying Injury
- Tier 2 Qualifying Injury
- Duration of Exposure



The Elective Option Grid

The Elective Option Grid



	30 to 364 Days	1 Year to 5 Years	More Than 5 Years
Tier 1 Qualifying Injury	\$150,000	\$300,000	\$450,000
Tier 2 Qualifying Injury	\$100,000	\$250,000	\$400,000

*Plus additional \$100,000 when Qualifying Injury resulted in death

- Kidney Cancer
- Liver Cancer
- Non-Hodgkin Lymphoma
- Leukemias
- Bladder Cancer

Tier 1 Qualifying Injuries



- Multiple Myeloma
- Parkinson's Disease
- Kidney Disease / End Stage Renal Disease
- Systemic Sclerosis / Systemic Scleroderma



Tier 2 Qualifying Injuries

- Presentment -
 - Claim must be properly presented to DON
- Onset -
 - First diagnosed on or before 8/10/2022
- Latency -
 - 2 year minimum and 35 year maximum

Additional Requirements



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To show Qualifying Injury:

- must present medical documentation showing diagnosis/treatment before 8/10/22
- signed/certified by a medical doctor
- documents must be original or certified copy of original

Evidentiary Standards



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To show Duration of Exposure:

- must present housing or employment documentation showing claimant was on base for at least 30 days between 8/1/53 and 12/31/87
- Claimants exposed while living on base with service member may rely on service member's documentation if claimant shows relationship to member

Evidentiary Standards



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Those who have previously received healthcare or disability benefits related to Camp Lejeune from the VA may rely on those benefits to establish a:


- Qualifying Injury;
- Duration of Exposure of between 30 and 364 days; or
- Both.

Evidentiary Standards



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- 1) Determine “Perfection”
 - 2) Screen Perfected Claims for a Qualifying Injury
 - 3) DON-Initiated Investigation
 - 4) Claimant Substantiation
 - 5) DON Finalization and Request for Payment from Judgment Fund
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Process for Reviewing Administrative Claims for the EO



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- Claim must be properly presented to DON
- Use form from CLJA website
- DON will reach out if additional information is needed to perfect claim
- No need to refile claims already submitted and currently pending with DON

Process for Reviewing Administrative Claims for the EO – Determine Perfection



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- DON shall screen perfected claims to ensure they allege a Qualifying Injury
- Claims alleging multiple injuries may proceed so long as 1 of those injuries is a Qualifying Injury

Process for Reviewing Administrative Claims for the EO – Screen for Qualifying Injury



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DON will look for the following:

- Was person diagnosed with / treated for a Qualifying Injury?
- What is Date of Diagnosis?
- What is Date of First Exposure?
- What is Date of Last Exposure?
- Were there any days absent?
- Did Qualifying Injury result in death?

Process for Reviewing Administrative Claims for the EO – DON-Initiated Investigation



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If DON needs additional documentation, it may request from the claimant.

- Examples – birth certificate; medical records.

DON may deny a claim if Marine fails to provide sufficient supporting documentation.

DON may repeat steps as deemed appropriate.

Process for Reviewing Administrative Claims for the EO – Claimant Substantiation



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- DON will propose eligible EO offers to USDOJ
- If USDOJ approves, then DON will notify Marines (via attorneys when represented) of the EO offer
- **Victims shall have 60 days to accept/decline EO offer**
- If no action taken within 60 days, DON may choose to deny claim
- If claimant declines EO offer and files lawsuit, they cannot request a subsequent EO offer (cont.)

Process for Reviewing Administrative Claims for the EO – DON Finalization & Request for Payment



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- After accepting EO offer, Marine shall sign all releases within 14 days
- Marine shall sign affirmation, under penalty of perjury, of information supporting the EO determination
- Release does not affect rights to award / payment / benefit under the VA
- DON will process documents for payment with USDOT for payment of settlement within 60 days

Process for Reviewing Administrative Claims for the EO – DON Finalization & Request for Payment



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According to the federal government...

- Guaranteed payment
- Expedited payment
- Reduced evidentiary standards
- Waiver of VA & Medicare A/B offset provisions under the CLJA

Common Concerns & Questions – What are the Benefits of Accepting EO Offer vs. Filing Lawsuit?



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According to the federal government...

- You may keep your claim with DON
- Additional settlement frameworks may be created
- You may file lawsuit (once claim formally denied by DON or 6 months period passes)

Common Concerns & Questions – **What if I Decline an EO Settlement?**



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According to the federal government...

- No, BUT USDOJ will review / extend offers consistent with EO
- Once lawsuit filed, DON lacks authority
- Marine may not dismiss claim to return to DON admin process

Common Concerns & Questions – Does the EO Apply to Claims Already in Litigation?



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According to the federal government...

- Compensating specific qualifying diseases is consistent with other gov't programs
- ATSDR Assessment of the Evidence provides a principled basis for settling cases in the administrative phase

Common Concerns & Questions – Why do only These Nine Diseases Qualify?



According to the federal government...

1. Assessing the illness severity is too fact & time intensive for a program like this
2. Assigning different values may be inappropriate due to the inherent complexity
3. The Qualifying Illnesses are nearly all cancers or other terminal or chronic illnesses



Common Concerns & Questions – Why are Qualifying Injuries

Treated Similarly if Some are More Severe?



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According to the federal government...

- If a claimant has more than one Qualifying Injury, they will be compensated under the EO for only one injury, at the level that provides the greatest amount of compensation.



Common Concerns & Questions – What if I Have More Than One Qualifying Injury?



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According to the federal government...

- No, it will not affect VA benefits
- VA will not assert a lien on the EO payments
- Awards / settlements made outside of the EO may be offset by the value of VA benefits



Common Concerns & Questions - Will

Accepting an EO Offer
Affect my VA Benefits?



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According to the federal government...

- Max 20% of award for admin claim
- Max 25% of award for cases in litigation

Common Concerns & Questions – What % of my EO Payment May be Collected as Attorney Fees?



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According to the federal government...

- File with DON, not USDOJ, Veterans Affairs, or the United States Marine Corps
- See www.navy.mil/clja
- The US cannot advise claimants on whether they should retain an attorney to assist with filing a claim

Common Concerns & Questions – How do I File my Administrative Claim with the Navy?



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According to the federal government...

- DON and USDOJ are unable to provide updates on the status of individual claims
- Claimants represented by attorneys may discuss claims status with their attorney



Common Concerns & Questions – How Can I Check the Status of my Administrative Claim?



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The EO presents some upside ...

- Expedited Process
- Certainty
- Lower Evidentiary Bar
- VA & Medicare A/B Offset Concession

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Analysis– What's
Positive About the
EO?



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The EO presents substantial downside...

- Offset Remains for Medicare Advantage/Medicare Drug/Medicaid
- No Protection for Future Medicaid Benefits
- Fails to Account for Other Liens
- Limited Entry Based on Disease
- Undervalues Claims

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Analysis– What's
Negative About the
EO?



- Talk to your attorney!
- If you don't have an attorney and want one, ask us to refer you.
- If you choose to remain unrepresented, think long and hard about the ramifications of accepting the EO.
- Your final net proceeds will be less than the EO offer itself.



Conclusions for Marines

- Share this info with your clients.
- If client receives EO offer, will you be ready to advise whether they should accept it within 60 days?
- What work must you do now to advise them properly?
- How do offsets/liens affect net proceeds?
- Will clients' future access to preferred health insurance be protected?



Conclusions for Attorneys

- Share this info with your clients (attorneys and Marines/families)!
- Does EO accomplish client goals?
- Does EO protect future access to preferred health insurance?
- Does EO fairly compensate victims?

Conclusions for Settlement Planners



Cattie & Gonzalez Can Help!



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