



## **BOARD OF VETERANS' APPEALS**

**FOR THE SECRETARY OF VETERANS AFFAIRS**

IN THE APPEAL OF

**JEANNIE** [REDACTED]

IN THE CASE OF

[REDACTED]  
Appellant Represented by  
Gordon A. Graham, Agent

XSS [REDACTED]

Docket No. 200507-87264

DATE: February 18, 2026

### **ORDER**

New and relevant evidence has been received with respect to the claim for service connection for the cause of the Veteran's death, and the claim will be readjudicated.

Service connection for the cause of the Veteran's death is granted.

### **FINDINGS OF FACT**

1. An October 2017 rating decision denied service connection for cause of death.
2. Evidence received since the October 2017 rating decision is new and tends to prove or disprove a matter at issue with respect to the claim of entitlement to service connection for cause of death.
3. The evidence weighs in favor of finding that the lung cancer that resulted in the Veteran's death was related to his military service, to include exposure to contaminated water at Camp Lejeune.

## **CONCLUSIONS OF LAW**

1. The criteria for readjudicating the claim for service connection for cause of death has been met. 38 U.S.C. §§ 1131, 5103A(h), 5108; 38 C.F.R. §§ 3.303, 3.2501.
2. The criteria for service connection for the cause of death have been met. 38 U.S.C. §§ 5107, 5110; 38 C.F.R. §§ 3.102, 3.159, 3.400.

## **REASONS AND BASES FOR FINDINGS AND CONCLUSIONS**

The Veteran served on active duty from July 1953 to July 1956. The Veteran died in November 2015; the Appellant is his surviving spouse.

By way of history, a May 2018 Department of Veterans Affairs (VA) Regional Office rating decision, issued under the Legacy review system, confirmed and continued the previous denial of service connection for cause of death, finding the evidence received was not new and material. The Appellant's Notice of Disagreement (NOD) was received in January 2019. A Statement of the Case (SOC) was issued in April 2020.

Within 60 days of the April 2020 SOC, the Appellant opted the appeal into the Appeals Modernization Act (AMA) system by submitting a timely May 2020 VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement or NOD), and elected the Hearing docket. A Board hearing was held on April 26, 2024.

Therefore, the Board may only consider the evidence of record at the time of the April 2020 SOC, as well as any evidence submitted by the Appellant or her representative at the hearing or within 90 days following the hearing. 38 C.F.R. § 20.302(a). If evidence was submitted either (1) during the period after the AOJ issued the April 2020 SOC and prior to the Board hearing, or (2) more than 90 days

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following the hearing, the Board did not consider it in its decision. 38 C.F.R. §§ 20.300, 20.302(a), 20.801.

**Whether new and relevant evidence has been received with respect to the claim for service connection for cause of death.**

The Appellant's November 2015 claim for service connection for cause of the Veteran's death was denied in an October 2017 rating decision. The Appellant requested reconsideration of the claim in May 2018, and the AOJ issued the May 2018 decision denying the claim. The basis for the denials was that the evidence did not show that the disability that resulted in the Veteran's death, lung cancer, was related to service.

As noted above, the Appellant opted the claims into the Appeals Modernization Act (AMA) system of appeals by filing a timely VA Form 10182 to the April 2020 SOC. Pursuant to the AMA, the criteria for readjudicating a previously denied claim changed from a new and material standard to a new and relevant standard, and this appeal is considered under the AMA, as the Veteran opted the claims into the AMA from the April 2020 SOC.

VA will readjudicate a claim if new and relevant evidence is presented or secured. 38 C.F.R. § 3.156 (d). "New evidence" is defined as evidence not previously part of the actual record before agency adjudicators. "Relevant evidence" is evidence that tends to prove or disprove a matter at issue in a claim. 38 C.F.R. § 3.2501 (a)(1). The standard shall not be construed to impose a higher evidentiary threshold than the standard that was in effect prior to the date of the enactment of the AMA. *See* 38 U.S.C. § 5108.

For supplemental claims under the AMA, new and relevant evidence must be presented or secured to warrant readjudication of the claim. *See* 38 C.F.R. § 3.2501. This holds true regardless of whether the most recent prior decision on the issue is final or whether the supplemental claim is received within one year of the most recent prior decision. *See* 38 C.F.R. § 3.2501(a)(1). Thus, despite the fact that the May 2018 rating decision was issued less than one year prior to the receipt of the supplemental claim, the question before the Board is whether the evidence

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received after the October 2017 rating decision, but prior to the issuance of the May 2018 decision on appeal, is both new and relevant.

Since the October 2017 rating decision, the Appellant submitted the document titled Camp Lejeune: Past Water Contamination Update December 16, 2014, which identifies lung cancer as a condition for which the Veteran may have been entitled to receive VA health benefits due to working at U.S. Marine Corp Base Camp Lejeune, North Carolina. The Board finds that this new document meets the low threshold of new and relevant evidence. Accordingly, the claim will be readjudicated.

**Service connection for the cause of death.**

Pursuant to 38 U.S.C. § 1310, dependency and indemnity compensation (DIC) is paid to a surviving spouse of a qualifying Veteran who died from a service-connected disability. *See Darby v. Brown*, 10 Vet. App. 243, 245 (1997); 38 U.S.C. § 1310 (a); 38 C.F.R. § 3.5 (a)(1).

The death of a veteran will be considered as having been due to a service-connected disability when the evidence establishes that such disability was either the principal or a contributory cause of death. 38 C.F.R. § 3.312 (a). In order to constitute the contributory cause of death, it must be shown that the service-connected disability contributed substantially or materially; that it combined to cause death; that it aided or lent assistance to the production of death. 38 C.F.R. § 3.312 (c)(1).

The Veteran died in November 2015. The death certificate lists the immediate cause of death as lung cancer. *See* November 2015 Death Certificate. The Appellant maintains that the Veteran's death was the result of lung cancer that resulted from exposure to contaminated water at Camp Lejeune.

In September 2017, a VA physician opined that it was less likely than not that the Veteran's lung cancer was due to his exposure to contaminated water while in service at Camp Lejeune. The examiner referenced that the Veteran "smoked heavily in the 1970s per report 3 ppd" and that current medical evidence would not

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strongly implicate his water exposure as a significant risk factor. The examiner explained that the majority of data examining the epidemiology of lung cancer comes from the developed world, where cigarette smoking is the predominant risk factor, and that in the developing world additional risk factors, such as smoke and air pollution, may be particularly important. The examiner also stated that the risk of lung cancer increases with both the number of cigarettes smoked per day as well as the lifetime duration of smoking, and that factors that may influence the likelihood of developing lung cancer in smokers include the age at onset of smoking, the degree of inhalation, the tar and nicotine content of the cigarettes, and the use of unfiltered cigarettes. The examiner did not apply the risk factors such as number of cigarettes smoked per day or age at onset of smoking to the Veteran specifically.

An April 2020 private medical opinion by the Veteran's provider of 20 years opined that the Veteran's condition was caused by contamination of chemicals while serving on active duty in the Marine Corps. The clinician explained that the Veteran had been a nonsmoker for over 50 years before his diagnosis. *See* April 2020 Opinion from Dr. R.C.

Another April 2020 opinion from a private pulmonologist opined that the Veteran's lung cancer diagnosis was not likely secondary to smoking, as he smoked only eight years and was smoke free for over fifty years. The examiner opined that the Veteran's lung cancer was more likely due to contamination of chemicals in the water while serving active duty in the Marine Corp at Camp Lejeune.

A subsequent December 2023 opinion from a private clinician opined that to a reasonable degree of medical certainty, the Veteran's lung cancer was related to service. The examiner explained that his expertise included physiology, pharmacology, and experimental therapeutics. The examiner stated that service members and their families living at the base bathed in and ingested tap water that was contaminated with harmful chemicals at concentrations from 240 to 3400 times levels permitted by safety standards. The examiner referenced the presence of trichloroethylene (TCE) and tetrachloroethylene (PCE) as well as 70 other contaminants including benzene that have been identified as contaminating the water supply. Unfortunately, to this date all components of the contaminant water

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have yet to be identified, according to the examiner. The examiner also explained that benzene and dioxins are known carcinogens that persist in body tissues for decades, causing DNA damage, oxidative stress, and epigenetic changes. The examiner stated that diseases may not appear until decades after exposure. The examiner also stated that lung cancer is strongly linked to organic solvents and benzene. He acknowledged the correlation between lung cancer and smoking, but explained that the risk drops significantly after quitting, and returns close to nonsmoker levels after five to 15 years. The examiner also explained that the cancer metastasized showing aggressive disease consistent with toxic exposure.

The Board finds that the evidence is at least evenly balanced as to whether the Veteran's lung cancer was due to service. As any reasonable doubt must be resolved in favor of the Appellant, the Board finds that entitlement to service connection for the cause of the Veteran's death is warranted. 38 U.S.C. § 5107 (b); 38 C.F.R. § 3.102. The appeal is granted.



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J. Kirby  
Veterans Law Judge  
Board of Veterans' Appeals

Attorney for the Board

T.B.

*The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.*