

CONSOLIDATED CLJA CLAIM QUESTIONS AND ANSWERS - APRIL 2024

The question is “what is the government’s position on the legal and practical status of a claim that has been bulk-‘filed’ via the portal but not yet individually substantiated and ‘submitted?’”

Q: Legally, do you view the claim as “presented” such that it will be amenable to a deemed denial under 28 U.S.C. § 2675 if the Navy does not finally dispose of it within 6 months of the bulk filing?

A: A legal determination that a CLJA claim is properly presented is made by the CLCU upon review of the claim, after filing.

Q: Practically, will the Navy take any action on it, including evaluating it under the EO, before it is revisited in the portal and “submitted?”

A: Currently, the CLCU is working to complete presentment review of every CLJA claim filed in advance of the 10 August 2024 statutory deadline. As CLCU determines a claim is properly presented, that claim will advance in the CLJA claims review process.

Q: Is any of the above affected by whether the bulk filing batch includes only the required fields in the bulk filing template vs. more than just the required fields?

A: Bulk-filed CLJA claims containing the minimum data necessary for proper presentment (see below) will be advanced in the CLJA claims review process. Providing additional information beyond the required fields may enable a claim to advance through later stages of the review process more quickly, but that additional information should have no bearing on how quickly a presentment determination is made.

Q: The below questions allow for only one answer when more than one answer might apply to a given claimant: Claimant Type (Civilian, Military, In Utero, etc.) - only one allowed; Residence at CLJ (On base, off base, Tarawa, etc.) - only one allowed; Claimant Work (On base, off base, N/A, etc.) - only one allowed.

A: Individual CLJA claim filers currently have the capability to select multiple fields. After the individual claim is created from the bulk file form, while it is still in “draft” status, the same functionality exists.

Q: Currently, is the government only accepting authority documentation via direct upload to individual claims in the portal? Put differently, is the only way for my team to provide authority documentation for the batch filed last week to visit each individual claim and upload its respective authority pdf?

A: Yes. Claims may be batch/bulk-filed through the Claims Management Portal, but documentation supporting each claim must be uploaded into each claim individually using the Claims Management Portal.

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Q: Is the government's position that a deceased-claimant claim is not "presented" for § 2675 purposes until authority documentation has been provided?

A: No. The Government's position is that a properly presented CLJA claim filed on behalf of another must include a statement of the filer's authority to file a CLJA claim on behalf of the claimant. This element, in addition to the four other elements of presentment detailed below, are required to properly present a CLJA claim to the Department of the Navy.

Q: [A]ll of our Claim Forms that were submitted through batch filings over the last year and a half appear in *draft* in the portal. Initially, the instructions in the past stated to NOT provide substantiating documents with the initial filing. It now appears that the Claim Form remains as a "draft" until supporting documents are provided. Please confirm that Claim Forms "submitted" without supporting documents are sufficient to preserve a claim.

A: Draft versus submitted is a portal distinction that ensures a claimant/authorized representative has validated the ingested claims. Your original filing date is the date of batch form filing. There is a field called "Pre-Portal Filing Date" that displays when viewing the details of a claim on the portal, so when someone is on that page, they will see that original filing date listed there (that's the batch form filing date). If you believe there is a discrepancy between your records and the pre-portal filing date, please reach out and we will work to reconcile.

Q: Are claims that are ineligible for the EO being reviewed for resolution? Or should we only be submitting EO eligible claims for substantiation? Is it appropriate to submit supporting documents for EO eligible claims in batches through DOD Safe? If not, what is the proper procedure for substantiating claims that are not in the portal? We have EO eligible and ineligible claims that are not currently in the portal.

A: All CLJA claims should be entered into the Claims Management Portal. CLCU will review all CLJA claims and work with filers to identify additional documentation necessary to substantiate each filer's claim.

Q: Our firm has been batch filing Claim Forms since the inception of the CLJA, but as of last week, the former process is no longer available. We attempted to batch file through the portal, but the portal now requires answers to questions that are not on the Claim Form (civilian dependent's relationship to sponsor, claimant work location, etc.). Is there a way to batch file without having to include these new data points that have been recently added almost two years into the process?

A: The filing instructions posted on our portal convey filing requirements and highlight that inapplicable fields and fields for which filer has no information should be marked as Not Applicable, Other, or Unknown. The NA value in a field will permit a filer to complete submission.

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Q: Since our data points no longer match the requests on the Claim Form to batch file, last week, we attempted to file each claim individually, which interestingly does not require the data points above. When filing individually, however, the portal appears to require supporting documentation. Is supporting documentation now required for individual claims when the Claim Form is submitted?

A: The individual filing does not contain every conceivable field because certain fields are conditional and therefore are only presented if applicable to the filer. The batch filing process is not conditional and therefore all fields are presented to ensure we capture as much data as possible. See response to immediately preceding question for guidance on responding to inapplicable fields. Supporting documentation will be required during the claims process to validate the attestations given when filing a claim. Supporting documentation is not required for presentment.

Q: What is the proper procedure for amending or withdrawing a claim, or substituting as counsel if the claim does not appear in the claims management portal? Our concern is that to date, no claims filed by our office after 2022 have been entered into the portal, and we have many claims that were filed with living clients that now need to be amended to death claims prior to the August 10, 2024 deadline. We also need to amend to add additional injuries given the updated ATSDR and evolving science.

A: To date, legal counsel have emailed requests to amend, withdraw, or substitute to the Department of the Navy. After all claims are ingested into the Claims Management Portal, the CLCU will work to reconcile the ingested data with those emailed requests. A form is in development for filers to make these requests directly to claims processing personnel.

Q: What is the proper procedure for substituting as counsel since there is no option to do so on the claims management portal. How should our office proceed since the Claim Form will not be in our portal to begin with, as it was previously filed *pro se*?

A: A form is in development for filers to make these requests directly to claims processing personnel. Information will be distributed through the PLG's Government Liaison once this form is available for use.

Q: Do medical records need to be certified and complete? Or just *diagnostic* records for each claimed disease/condition?

A: The evidentiary standard for medical records substantiating a qualifying injury is set forth in Section I, Paragraph C of DOJ's public EO guidance. Generally, medical records must be certified, but do not need to be complete if they show the claimant was diagnosed with or treated for that illness or condition. If claimants are not able to provide certified medical records, then we recommend submitting the records the claimant can provide at this time and a sworn explanation why certified medical records cannot be obtained. We will work with the claimant or their counsel during the claims review process to identify any additional records required to substantiate their claim.

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Q: Can substantiation all be combined into one PDF and uploaded to an individual claim?

A: Yes, for each individual claim. We are not accepting combined batches of substantiation since all claims are now individual claims in the portal (even if previously filed in a batch).

Q: Can substantiation documents be bulk uploaded? For example, could we bulk upload all of our Authority to File authorizations? If so, by Claim ID, CLCU Batch # or Firm File #?

A: Similar to question 2, there is no way to bulk upload files to different claims. The Authority to File will need to be uploaded to each unique claim in the portal so that they are associated with the claim. You can send that information via message if you have already submitted the original claim, otherwise, you can upload that in the claim submission.

Q: Is there a way to download a [csv] or excel file of claims filed in a particular CLCU Batch #?

A: We are working to finalize this functionality for law firms and will provide further information when that function is available.

Q: We received 5 filed claims from a co-counsel and asked DON to substitute us as lead counsel. These claims are not listed in our portal. Will they be added by DON?

A: We are not entirely complete with ingestion of our CLJA claims inventory. For that reason, you may not see all of your filed claims when you access the portal. We will communicate to all firms in our system when our ingestion is complete. At that time, we will work as quickly as possible to resolve discrepancies such as the one you identified here. We are working with our contractors on the functionality pertaining to co-counsel. You indicated you are the lead firm, which is helpful, because the lead firm may be the one with primary access to these files. Can you identify the 5 claims?

Q: Will the claims we have asked to be withdrawn be added to the portal under the “Withdrawn” tab?

A: Yes. All claims in our inventory will be ingested. Immediately following ingestion, we will reconcile claims records with updates provided from filers by email (e.g., withdrawal or change of address).

Q: Is DON taking the position that our claim forms are not “*filed*” unless we meet the requirements in the portal to change the status from “draft” to “submitted”?

A: Draft versus submitted is a portal distinction that ensures a claimant/authorized representative has validated the ingested claims. Your original filing date is the date of batch form filing. There is a field called “Pre-Portal Filing Date” that displays when viewing the details of a claim on the portal. If you believe there is a discrepancy between your records and the pre-portal filing date, please reach out and we will work to reconcile.

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Q: If so, does the date change on when the claim is filed from when the status changes to “submitted” or does the date relate back to the original filing date? Please advise.

A: The date a claim was filed will be the operative date and is not impacted by “submission” of an ingested claim in the portal. Every CLJA claim filed before the portal was launched will be treated as filed on the date the claim was submitted to the Department of the Navy.

Q: We are looking for the bare minimum to change the status of the claim from “Draft” to “Submitted.”

A: Before the Camp Lejeune Claims Unit (CLCU) can adjudicate a claim, the filer must submit sufficient evidence to enable the Department of the Navy to investigate the factual basis for the claim. For any claim submission to be considered properly presented, the file must initially include, at a minimum, the following information **in writing**: (1) **Claimant’s Name**, (2) **Injury**, (3) **Sum Certain**, (4) **Authority**, and (5) **Signature**.

- **NAME**: If the injured party—*on their own behalf*—is filing the claim, the claimant must include their full name, current mailing address, and must sign the claim form. If the claimant files their claim electronically, the claims portal includes an area for an electronic signature.
- **INJURY**: Identify the harm that the injured party allegedly incurred as a result of presence on Camp Lejeune. For presentment, ‘other’ is acceptable, however, identifying injury details is encouraged for more efficient claims processing and substantiation.
- **SUM CERTAIN**: Identify the amount of monetary damages sought in compensation for the alleged harm sustained by the injury party.
- **AUTHORITY**:
 - If the claim will be *submitted by someone other than the injured party*, the claim must identify the:
 - Full name of the injured party; and,
 - Full name of the party filing on the injured party’s behalf.
 - The filer must include a statement *explaining the legal basis* upon which the filer is entitled to make a claim for damages on behalf of the injured party.
 - If the claim will be *submitted by an agent or legal representative*, it must show:
 - The Title; and,
 - Legal capacity of the person signing.
 - Examples of those who may be eligible to file on behalf of an injured party include: those who have been appointed by a competent court to act on the injured party’s behalf; an executor or administrator of an estate; or, any other person legally entitled to assert a claim in accordance with applicable state law (for instance, under a power of attorney).
- **SIGNATURE**: The signature of the claimant—and their agents, if applicable—are required.

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Q: Is there any time limitation on the need to substantiate exposure/injury in the portal, or may we upload those documents at a later date (potentially after a global settlement structure is reached by the parties)?

A: The above presentment items need to be completed before the statute of limitation expires, however, to substantiate the exposure/injury, you can provide those documents through the substantiation process with our claims adjudicators and attorneys.

Q: Is it accurate that a claim cannot/will not be denied unless substantiation materials are submitted (exposure/diagnostic records)?

A: No.

Q: If we choose to substantiate cases, will the DON be making settlement offers to claimants who DO NOT qualify for the EO? If so, what is the timeline for any such offers and is a new, more expansive settlement framework in the works? Have any DON non-EO settlements been made to date?

A: We will review all CLJA claims and extend settlement offers to all claimants that prove eligibility for settlement under the CLJA. As the public guidance details, the EO expedites our review process and therefore, EO settlements will be the bulk of the claims practice initially. DON and DOJ will coordinate on non-EO claims and additional frameworks may be developed to adjudicate these claims.

Q: What is the bare minimum of substantiation materials needed for an offer to be evaluated and made in the administrative setting? (exposure and diagnostic substantiation)?

A: The evidentiary standard for substantiating a qualifying injury and duration of exposure are set forth in Section I, Paragraph C of DOJ's public EO guidance.

Q: If we have a client who wants to opt in to the EO, do you suggest we use the separate EO portal for that rather than upload documents to the new portal?

A: The new portal is the only CLJA claims portal. Please enter claims and upload documentation for all CLJA claims using this portal. Feel free to communicate the fact that you believe a specific claim is eligible for an EO offer using the messaging function in the CLJA Claims Portal.

Q: What information is needed from a claimant to reach the status of **Denied: Claim does not meet the minimum requirements for settlement**?

A: Our current focus is on settling as many claims as fairly and efficiently as possible. As we encounter claimants who are either unable or unwilling to provide the documentation necessary to substantiate their claim or to show that their claim for relief falls within the scope of the CLJA, we will consider whether denial is appropriate for those claims.

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Q: Where is all of the csv claims data that has been previously submitted? Have all CLJA claims previously submitted to the DON been uploaded? If not, what is the timeline?

A: Migration efforts are ongoing for all previously submitted claims. Firms will receive a confirmation message once all claims have been moved over so that they may validate their claims in “draft” status.

Q: What do we do with claim data that is placed in the wrong Portal field, but it was submitted correctly via csv?

A: All migrated claims data was brought into the portal and remains in “draft” status which means those claims are open for editing/validation. For that reason, if data is in the wrong place, it can be adjusted within the portal before completing validation of the claim.

Q: If claims are missing, who do we contact so that we can have the filing date appropriately marked?

A: Migration efforts are ongoing for all previously submitted claims. Firms will receive a confirmation message once all claims have been moved over so that they may validate their claims in “draft” status.

Q: What is the DONs position on the agreements and processes developed by Jennifer Langley?

A: Please provide specific information on “agreements and processes” and we can provide a response to this question.

Q: Exposure Dates: Your template doesn't allow for multiple time periods at CLJ. This is correct, the csv template only captures one period of exposure. Additional periods can be entered in the "Basis of Claim" section when editing the claims form.

A: Individual CLJA claim filers currently have the capability to enter additional periods of exposure. Bulk-filers are able to do so *after* an individual claim is created from the bulk file form while that individual claim remains in “draft” status. For each additional period of exposure, filers can add additional claimant types, residences, employment, etc.

Q: Are you asking for the very first date they stepped foot at CLJ and the last day they were ever on it, no matter what happened in between those dates?

A: The dates entered in the csv should capture the start and end date for one period. Additional periods can be entered as discussed in the response to the immediately preceding question.

Q: Are you allowing for estimated time dates/time periods?

A: Yes. For dates of exposure/presence on Camp Lejeune, estimated (or “alleged”) dates are acceptable.

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Q: If so, how is that designated?

A: There is no separate designation for estimated dates. If the actual dates of exposure are unknown, then filers must enter estimated dates to the best of their knowledge—this is why the form specifically refers to this field as “alleged” dates. Exact dates must be documented during the substantiation process, and a claim may be amended as necessary once exact dates of presence on Camp Lejeune are determined through substantiation.

Q: Employer Name: Your template doesn't allow for multiple employers.

A: For purposes of presentment, a filer need not include the name of an employer. The names of one or more employers can be entered on the individual claim form created in the portal from the batch csv file when that claim is in draft status.

Q: Are you asking for the first employer? Last employer?

A: While the name of an employer is not required to present a claim, the name of every employer supporting an alleged period of exposure must be provided during the substantiation process.

Q: Can one csv submission contain multiple batches?

A: Each bulk filing submission should have one csv file associated with it. Within the csv, up to 1000 rows can be provided meaning 1000 claims can be submitted at a time. All claims must be provided on a single sheet in the csv file.

Q: “Choice Field.” Is this dictating a single or multiple choice field?

A: In the CSV Portal Instructions PDF file, choice field indicates that a single choice can be made. The only multiple choice field in the template is the “Presumptive Conditions” field, and the instructions provide the acceptable values and how the information should be entered into the field.

Q: “Date Claim Received by Firm.” Is this the date the client finished signing all paperwork with firm? The date that they finished submitting all needed data? The date I submitted to the DON?

A: This field is intended to capture the date the filing firm received all necessary information for the firm to file a CLJA claim on behalf of a claimant.

Q: Unclear what date is and what it is being utilized for by the DON

A: This field provides helpful information for the CLCU to address duplicate claims.

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Q: What if the diagnosis date for a specific disease is unknown or is approximate?

A: This field is not required to advance your claim through the CLJA claims review process. Accordingly, the field can be marked unknown if the date is unknown, or estimated dates can be provided if appropriate. Later in the claims review process, medical documentation providing exact date(s) of all alleged diagnosed injuries must be provided to substantiate a CLJA claim.

Q: Can the “Firm File #” be changed by the Firm?

A: This value is set by the firm when completing the bulk filing template. This value cannot be changed once the bulk filing has been submitted.

Q: “Signature of Claimant” Is this for the Attorney's name? Is this for the user who is entering the claim data?

A: The signature of the claimant is for the claimant if filing on their own behalf. If a person is filing on behalf of the claimant, then the person authorized to file on behalf of the claimant must sign.

Q: “Withdraw of Claim” What happens when a Claim is "withdrawn"? Is the attorney removed and the claimant is now pro se? Is the entire claim withdrawn and the claimant has to re-file? Can a substitution of counsel be made?

A: Additional guidance on withdrawal, substitution, and amendment processes is forthcoming.