

United States Senate

WASHINGTON, DC 20510-4904

The Honorable Eric Shinseki
Secretary
Department of Veterans Affairs
810 Vermont Ave., NW
Washington, DC 20220

July 6, 2009

Dear Mr. Secretary,

I write to express my concern about the potential failure of the VA to provide care and benefits to veterans with service-connected disabilities related to their exposure to contaminated drinking water at Camp Lejeune. I would appreciate it if you could provide me with information on the Department's policy with regard to caring for these veterans.

One of my constituents, Allen Menard, was stationed at Camp Lejeune during the period when the drinking water was contaminated. In the National Defense Authorization Act of 2008, H.R. 1585, Congress directed the Department of Health and Human Services to conduct additional studies of residents exposed to contaminated drinking water at Camp Lejeune "due to the potential negative health impacts of these contaminants." Section 315(d)(1)(A). It further directed the Secretary of the Navy to notify all individuals potentially exposed to these contaminants. Mr. Menard was notified by the Navy pursuant to this provision.

Two epidemiologists who have advised the Agency for Toxic Substances and Disease Registry on the Camp Lejeune studies submitted statements in support of his claim that he was exposed to probable carcinogens that increased the risk of his subsequent diagnosis of non-Hodgkin's lymphoma. One of the epidemiologists concluded that Mr. Menard was exposed to both benzene, a known carcinogen, and "aromated and/or halogenated hydrocarbons." He cited numerous studies linking these chemicals with cancer, including one study finding a six-fold increase of non-Hodgkin's lymphoma in those exposed to aromated and/or halogenated hydrocarbons.

The VA denied Mr. Menard's claim for service-connection on the basis of his VA examination. His VA examiner determined that "there is no direct evidence that the veteran had cutaneous exposure to one of these chemicals and the amount he was exposed to is not clear." On the basis of this finding, she concluded that "[i]t is

therefore, difficult for me to make any conclusion about this veteran's exposure to hazardous chemicals and its possible culmination in cutaneous T-cell lymphoma." The VA's denial provided no analysis of the studies cited in the epidemiologists' statements.

Section 5107 of Title 83 of the United States Code provides that "[t]he Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant." (emphasis added).

I am concerned that the VA may have erred in denying Mr. Menard compensation for his condition because it failed to give him the benefit of the doubt as required by federal law. The evidence indicates that the drinking water at Camp Lejeune was contaminated with probable carcinogens and that Mr. Menard was likely exposed to these carcinogens. Mr. Menard submitted evidence from two experts on this matter who are familiar with the particulars of the Camp Lejeune contamination. The VA rebutted this evidence only with a statement from the examiner that she could not "make any conclusion" one way or the other about Mr. Menard's exposure to contaminants or the causation of his cancer. In the face of such doubt, federal law would appear to require the awarding of benefits to the veteran.

I am troubled by the VA's treatment of this case and the possibility that a significant number of veterans with disabilities that are more likely than not service-connected have been similarly denied benefits. In light of the fact that there is sufficient evidence of potential negative health consequences to justify major scientific studies into this matter and the fact that such studies have not been completed, it would appear that the VA should be compensating, as a matter of policy, this entire class of claimants until such time as negative health effects can be ruled out. That is what it means to provide veterans the benefit of the doubt.

I would appreciate it if you would both give Mr. Menard's appeal prompt consideration and provide me with information regarding the VA's policy regarding the adjudication of similar claims. I appreciate your prompt response to this letter.

Sincerely,



Senator Russell D. Feingold
United States Senator