

§ 3.401

38 CFR Ch. I (7-1-10 Edition)

(v) *Termination of remarriage of surviving spouse* (38 U.S.C. 5110(a), (k); 38 U.S.C. 103(d) and 3010(l) effective January 1, 1971; § 3.55)—(1) *Void*. Date the parties ceased to cohabit or date of receipt of claim, whichever is the later.

(2) *Annulled*. Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.

(3) *Death*. Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of § 3.55(a) of this part are met.

(4) *Divorce*. Date the decree became final if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of § 3.55(a) of this part are met.

(w) *Termination of relationship or conduct resulting in restriction on payment of benefits* (38 U.S.C. 5110(m), effective January 1, 1971; §§ 3.50(b)(2) and 3.55). Date of receipt of application filed after termination of relationship and after December 31, 1970. Benefits are not payable unless the provisions of § 3.55(a), as applicable, are met.

(x) *Effective date of determination of incompetency* (§ 3.353). Date of rating of incompetency. (Not applicable to an incompetency determination made for insurance purposes under 38 U.S.C. 1922).

(y) *Effective date of determination restoring competency* (§ 3.353). Date shown by evidence of record that competency was regained.

(z) *Claims based on service in the Women's Air Forces Service Pilots (WASP), or on service in a similarly situated group* (Pub. L. 95-202). (1) Original claim: Date of receipt of claim or date entitlement arose, whichever is later, or as otherwise provided under this section (e.g., paragraph (b)(1) of this section) except that no benefits shall be awarded for any period prior to November 23, 1977.

(2) Reopened claim: Latest of the following dates:

- (i) November 23, 1977.
- (ii) Date entitlement arose.
- (iii) One year prior to date of receipt of reopened claim.

[26 FR 1593, Feb. 24, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 3.400, see the List of CFR

Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 3.401 Veterans.

Awards of pension or compensation payable to or for a veteran will be effective as follows:

(a) *Aid and attendance and housebound benefits*. (1) Except as provided in § 3.400(o)(2), the date of receipt of claim or date entitlement arose, whichever is later. However, when an award of pension or compensation based on an original or reopened claim is effective for a period prior to the date of receipt of the claim, any additional pension or compensation payable by reason of need for aid and attendance or housebound status shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established.

(Authority: 38 U.S.C. 501; 5110(b)(1), (3))

(2) Date of departure from hospital, institution, or domiciliary.

(Authority: 38 U.S.C. 501)

(3) Spouse, additional compensation for aid and attendance: Date of receipt of claim or date entitlement arose, whichever is later. However, when an award of disability compensation based on an original or reopened claim is effective for a period prior to date of receipt of the claim additional disability compensation payable to a veteran by reason of the veteran's spouse's need for aid and attendance shall also be awarded for any part of the award's retroactive period for which the spouse's entitlement to aid and attendance is established.

(Authority: 38 U.S.C. 501; 5110(b)(1), (2))

(b) *Dependent, additional compensation or pension for*. Latest of the following dates:

(1) Date of claim. This term means the following, listed in their order of applicability:

(i) Date of veteran's marriage, or birth of his or her child, or, adoption of a child, if the evidence of the event is received within 1 year of the event; otherwise.

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(ii) Date notice is received of the dependent's existence, if evidence is received within 1 year of the Department of Veterans Affairs request.

(2) Date dependency arises.

(3) Effective date of the qualifying disability rating provided evidence of dependency is received within 1 year of notification of such rating action.

(Authority: 38 U.S.C. 5110(f))

(4) Date of commencement of veteran's award. (Other increases, see § 3.400(o). For school attendance see § 3.667.)

(Authority: 38 U.S.C. 5110 (f), (n))

(c) *Divorce of veteran and spouse.* See § 3.501(d).

(d) *Institutional awards* (§ 3.852)—(1) *Chief officer of non-Department of Veterans Affairs hospital or institution.* From first day of month in which award is approved or day following date of last payment to veteran, whichever is later.

NOTE: If apportionment under §§ 3.452(c) and 3.454 is in order or payment under § 3.850(a), Personal Funds of Patients account will not be set up but difference withheld for dependents.

(2) *Director of a Department of Veterans Affairs medical center or domiciliary.* From day following date of last payment to veteran where veteran previously received payments. On initial or resumed payments from date of entitlement to benefits subject to any amounts payable to or withheld for apportionments for dependents.

(e) *Retirement pay* (§ 3.750)—(1) *Election.* Date of entitlement if timely filed. Subject to prior payments of retirement pay.

(2) *Waiver.* Day following date of discontinuance or reduction of retirement pay.

(3) *Reelection.* Day the reelection is received by the Department of Veterans Affairs.

(f) *Service pension* (§ 3.3(a)). Date of receipt of claim.

(g) *Tuberculosis, special compensation for arrested.* As of the date the graduated evaluation of the disability or compensation for that degree of disablement combined with other service-connected disabilities would provide

compensation payable at a rate less than \$67. See § 3.350(g).

(h) *Temporary increase "General Policy in Rating," 1945 Schedule for Rating Disabilities*—(1) *Section 4.29 of this chapter.* Date of entrance into hospital, after 21 days of continuous hospitalization for treatment.

(2) *Section 4.30 of this chapter.* Date of entrance into hospital, after discharge from hospitalization (regular or release to non-bed care).

(i) *Increased disability pension based on attainment of age 78.* First day of the month during which veteran attains age 78.

[26 FR 1594, Feb. 24, 1961, as amended at 27 FR 11889, Dec. 1, 1962; 36 FR 4599, Mar. 10, 1971; 39 FR 17222, Mar. 14, 1974; 41 FR 36493, Aug. 30, 1976; 41 FR 55874, Dec. 23, 1976; 41 FR 56804, Dec. 30, 1976; 45 FR 34886, May 23, 1980; 54 FR 34981, Aug. 23, 1989; 62 FR 5529, Feb. 6, 1997]

§ 3.402 Surviving spouse.

Awards of pension, compensation, or dependency and indemnity compensation to or for a surviving spouse will be effective as follows:

(a) *Additional allowance of dependency and indemnity compensation for children* § 3.5(e). Commencing date of surviving spouse's award. See § 3.400(c).

(b) *Legal surviving spouse entitled.* See § 3.657.

(c) *Aid and attendance and housebound benefits.* (1) Date of receipt of claim or date entitlement arose whichever is later. However, when an award of dependency and indemnity compensation (DIC) or pension based on an original or reopened claim is effective for a period prior to date of receipt of the claim, any additional DIC or pension payable to the surviving spouse by reason of need for aid and attendance or housebound status shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established.

(Authority: 38 U.S.C. 501; 5110(d))

(2) Date of departure from hospital, institutional or domiciliary care at Department of Veterans Affairs expense. This is applicable only to aid and attendance benefits. Housebound benefits may be awarded during hospitalization