§ 3.10 Dependency and indemnity compensation rate for a surviving spouse.

(a) General determination of rate. When VA grants a surviving spouse entitlement to DIC, VA will determine the rate of the benefit it will award. The rate of the benefit will be the total of the basic monthly rate specified in paragraph (b) or (d) of this section and any applicable increases specified in paragraph (c) or (e) of this section.

(b) Basic monthly rate. Except as provided in paragraph (d) of this section, the basic monthly rate of DIC for a surviving spouse will be the amount set forth in 38 U.S.C. 1311(a)(1).

(c) Section 1311(a)(2) increase. The basic monthly rate under paragraph (b) of this section shall be increased by the amount specified in 38 U.S.C. 1311(a)(2) if the veteran, at the time of death, was receiving, or was entitled to receive, compensation for service-connected disability that was rated by VA as totally disabling for a continuous period of at least eight years immediately preceding death. Determinations of entitlement to this increase shall be made in accordance with paragraph (f) of this section.

(d) Alternative basic monthly rate for death occurring prior to January 1, 1993. The basic monthly rate of DIC for a surviving spouse when the death of the veteran occurred prior to January 1, 1993, will be the amount specified in 38 U.S.C. 1311(a)(3) corresponding to the veteran’s pay grade in service, but only if such rate is greater than the total of the basic monthly rate and the section 1311(a)(2) increase (if applicable) the surviving spouse is entitled to receive under paragraphs (b) and (c) of this section. The Secretary of the concerned service department will certify the veteran’s pay grade and the certification will be binding on VA. DIC paid pursuant to this paragraph may not be increased by the section 1311(a)(2) increase under paragraph (c) of this section.

(e) Additional increases. One or more of the following increases may be paid in addition to the basic monthly rate and the section 1311(a)(2) increase.

(1) Increase for children. If the surviving spouse has one or more children under the age of 18 of the deceased veteran (including a child not in the surviving spouse’s actual or constructive custody, or a child who is in active military service), the monthly DIC rate will be increased by the amount set forth in 38 U.S.C. 1311(b) for each child.

(2) Increase for regular aid and attendance. If the surviving spouse is determined to be in need of regular aid and attendance under the criteria in §3.352 or is a patient in a nursing home, the monthly DIC rate will be increased by the amount set forth in 38 U.S.C. 1311(c).

(3) Increase for housebound status. If the surviving spouse does not qualify for the regular aid and attendance allowance but is housebound under the criteria in §3.351(f), the monthly DIC rate will be increased by the amount set forth in 38 U.S.C. 1311(d).

(4) For a two-year period beginning on the date entitlement to dependency and indemnity compensation commenced, the dependency and indemnity compensation paid monthly to a surviving spouse with one or more children below the age of 18 shall be increased by the amount set forth in 38 U.S.C. 1311(e), regardless of the number of such children. The dependency and indemnity compensation payable under this paragraph is in addition to any other dependency and indemnity compensation payable. The increase in dependency and indemnity compensation of a surviving spouse under this paragraph shall cease beginning with the first month commencing after the month in which all children of the surviving spouse have attained the age of 18.

(Authority: 38 U.S.C. 1311(e))

(f) Criteria governing section 1311(a)(2) increase. In determining whether a surviving spouse qualifies for the section 1311(a)(2) increase under paragraph (c) of this section, the following standards shall apply.

(1) Marriage requirement. The surviving spouse must have been married to the veteran for the entire eight-year period referenced in paragraph (c) of this section in order to qualify for the section 1311(a)(2) increase.

(2) Determination of total disability. As used in paragraph (c) of this section,
§ 3.11 Homicide.

Any person who has intentionally and wrongfully caused the death of another person is not entitled to pension, compensation, or dependency and indemnity compensation or increased pension, compensation, or dependency and indemnity compensation by reason of such death. For the purpose of this section the term dependency and indemnity compensation includes benefits at dependency and indemnity compensation rates paid under 38 U.S.C. 1318.

§ 3.12 Character of discharge.

(a) If the former service member did not die in service, pension, compensation, or dependency and indemnity compensation is not payable unless the period of service on which the claim is based was terminated by discharge or release under conditions other than dishonorable. (38 U.S.C. 101(2). A discharge under honorable conditions is binding on the Department of Veterans Affairs as to character of discharge.

(b) A discharge or release from service under one of the conditions specified in this section is a bar to the payment of benefits unless it is found that the person was insane at the time of committing the offense causing such discharge or release or unless otherwise specifically provided (38 U.S.C. 5303(b)).

(c) Benefits are not payable where the former service member was discharged or released under one of the following conditions:

(1) As a conscientious objector who refused to perform military duty, wear the uniform, or comply with lawful order of competent military authorities.

(2) By reason of the sentence of a general court-martial.

(3) Resignation by an officer for the good of the service.

(4) As a deserter.