made by the service departments and the finding shall be binding on the Department of Veterans Affairs, but, in the case of an alien, the effect of the discharge will be governed by §3.7(b).


§ 3.15 Computation of service.

For nonservice-connected or service-connected benefits, active service is countable exclusive of time spent on an industrial, agricultural, or indefinite furlough, time lost on absence without leave (without pay), under arrest (without acquittal), in desertion, while undergoing sentence of court-martial or a period following release from active duty under the circumstances outlined in §3.41. In claims based on Spanish-American War service, leave authorized under General Order No. 130, War Department, is included.

CROSS REFERENCE: Duty periods. See §3.6(b)(6).

[40 FR 16064, Apr. 9, 1975]

§ 3.16 Service pension.

In computing the 70 or 90 days required under §3.3(a) active service which began before or extended beyond the war period will be included if such service was continuous. Broken periods of service during a war period may be added together to meet the requirement for length of service.

[41 FR 18299, May 3, 1976, as amended at 44 FR 45832, Aug. 6, 1979]

§ 3.17 Disability and death pension; Mexican border period and later war periods.

In computing the 90 days’ service required for pension entitlement (see §3.3), there will be included active service which began before and extended into the Mexican border period or ended during World War I, or began or ended during World War II, the Korean conflict, the Vietnam era or the Persian Gulf War, if such service was continuous. Service during different war periods may be combined with service during any other war period to meet the 90 days’ service requirement.

(Authority: 38 U.S.C. 1521)

[37 FR 6676, Apr. 1, 1972, as amended at 44 FR 45832, Aug. 6, 1979; 56 FR 57986, Nov. 15, 1991]

§§ 3.18–3.19 [Reserved]

§ 3.20 Surviving spouse’s benefit for month of veteran’s death.

(a) Where the veteran died on or after December 1, 1962, and before October 1, 1982, the rate of death pension or dependency and indemnity compensation otherwise payable for the surviving spouse for the month in which the death occurred shall be not less than the amount of pension or compensation which would have been payable to or for the veteran for that month but for his or her death.

(Authority: 38 U.S.C. 5310)

(b) Where the veteran dies on or after October 1, 1982, the surviving spouse may be paid death pension or dependency and indemnity compensation for the month in which the veteran died at a rate equal to the amount of compensation or pension which would have been payable to the veteran for that month had death not occurred, but only if such rate is equal to or greater than the monthly rate of death pension or dependency and indemnity compensation to which the surviving spouse is entitled. Otherwise, no payment of death pension or dependency and indemnity compensation may be made for the month in which the veteran died.

(Authority: 38 U.S.C. 5111(c))

(c)(1) Where a veteran receiving compensation or pension dies after December 31, 1996, the surviving spouse, if not entitled to death compensation, dependency and indemnity compensation, or death pension for the month of death, shall be entitled to a benefit for that month in an amount equal to the amount of compensation or pension the veteran would have received for that month but for his or her death.

(2) A payment issued to a deceased veteran as compensation or pension for the month in which death occurred
shall be treated as payable to that veteran’s surviving spouse, if the surviving spouse is not entitled to death compensation, dependency and indemnity compensation or death pension for that month and, if negotiated or deposited, shall be considered to be the benefit to which the surviving spouse is entitled under paragraph (c)(1) of this section. However, if such payment is in an amount less than the amount of the benefit under paragraph (c)(1) of this section, the unpaid difference shall be treated in the same manner as an accrued benefit under §3.1000 of this part.

(Authority: 38 U.S.C. 5318(b))

§ 3.22 DIC benefits for survivors of certain veterans rated totally disabled at time of death.

(a) Even though a veteran died of non-service-connected causes, VA will pay death benefits to the surviving spouse or children in the same manner as if the veteran’s death were service-connected, if:

(1) The veteran’s death was not the result of his or her own willful misconduct, and

(2) At the time of death, the veteran was receiving, or was entitled to receive, compensation for service-connected disability that was:

(i) Rated by VA as totally disabling for a continuous period of at least 10 years immediately preceding death;

(ii) Rated by VA as totally disabling continuously since the veteran’s release from active duty and for at least 5 years immediately preceding death; or

(iii) Rated by VA as totally disabling for a continuous period of not less than one year immediately preceding death, if the veteran was a former prisoner of war who died after September 30, 1999.

(b) For purposes of this section, “entitled to receive” means that the veteran filed a claim for disability compensation during his or her lifetime and one of the following circumstances is satisfied:

(1) The veteran would have received total disability compensation at the time of death for a service-connected disability rated totally disabling for the period specified in paragraph (a)(2) of this section but for clear and uncontradictable error committed by VA in a decision on a claim filed during the veteran’s lifetime; or

(2) Additional evidence submitted to VA before or after the veteran’s death, consisting solely of service department records that existed at the time of a prior VA decision but were not previously considered by VA, provides a basis for reopening a claim finally decided during the veteran’s lifetime and for awarding a total service-connected disability rating retroactively in accordance with §§ 3.156(c) and 3.400(q)(2) of this part for the relevant period specified in paragraph (a)(2) of this section; or

(3) At the time of death, the veteran had a service-connected disability that was continuously rated totally disabling by VA for the period specified in paragraph (a)(2), but was not receiving compensation because:

(i) VA was paying the compensation to the veteran’s dependents;

(ii) VA was withholding the compensation under authority of 38 U.S.C. 5314 to offset an indebtedness of the veteran;