

Department of Veterans Affairs

§ 3.6

Veterans Affairs to a surviving spouse, child, or parent:

(1) Because of a service-connected death occurring after December 31, 1956, or

(2) Pursuant to the election of a surviving spouse, child, or parent, in the case of such a death occurring before January 1, 1957.

(Authority: 38 U.S.C. 101 (14))

(b) *Entitlement.* Basic entitlement for a surviving spouse, child or children, and parent or parents of a veteran exists, if:

(1) Death occurred on or after January 1, 1957, except in the situation specified in § 3.4(c)(2); or

(2) Death occurred prior to January 1, 1957, and the claimant was receiving or eligible to receive death compensation on December 31, 1956 (or, as to a parent, would have been eligible except for income), under laws in effect on that date or who subsequently becomes eligible by reason of a death which occurred prior to January 1, 1957; or

(3) Death occurred on or after May 1, 1957, and before January 1, 1972, and the claimant had been ineligible to receive dependency and indemnity compensation because of the exception in subparagraph (1) of this paragraph. In such case dependency and indemnity compensation is payable upon election.

(38 U.S.C. 1310, 1316, 1317, Public Law 92-197, 85 Stat. 660)

(c) *Exclusiveness of remedy.* No person eligible for dependency and indemnity compensation by reason of a death occurring on or after January 1, 1957, shall be eligible by reason of such death for death pension or compensation under any other law administered by the Department of Veterans Affairs, except that, effective November 2, 1994, a surviving spouse who is receiving dependency and indemnity compensation may elect to receive death pension instead of such compensation.

(Authority: 38 U.S.C. 1317)

(d) *Group life insurance.* No dependency and indemnity compensation or death compensation shall be paid to any surviving spouse, child or parent based on the death of a commissioned

officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration occurring on or after May 1, 1957, if any amounts are payable under the Federal Employees' Group Life Insurance Act of 1954 (Pub. L. 598, 83d Cong., as amended) based on the same death.

(Authority: Sec. 501(c)(2), Pub. L. 881, 84th Cong. (70 Stat. 857), as amended by Sec. 13(u), Pub. L. 85-857; (72 Stat. 1266); Sec. 5, Pub. L. 91-621 (84 Stat. 1863))

[29 FR 10396, July 25, 1964, as amended at 35 FR 18661, Dec. 9, 1970; 37 FR 6676, Apr. 1, 1972; 39 FR 34529, Sept. 26, 1974; 44 FR 22717, Apr. 17, 1979; 58 FR 25561, Apr. 27, 1993; 58 FR 27622, May 10, 1993; 60 FR 18355, Apr. 11, 1995; 70 FR 72220, Dec. 2, 2005; 73 FR 23356, Apr. 30, 2008]

§ 3.6 Duty periods.

(a) *Active military, naval, and air service.* This includes active duty, any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty, and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty or from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during such training.

(Authority: 38 U.S.C. 101(24))

(b) *Active duty.* This means:

(1) Full-time duty in the Armed Forces, other than active duty for training;

(2) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service:

(i) On or after July 29, 1945, or

(ii) Before that date under circumstances affording entitlement to *full military benefits*, or

(iii) At any time, for the purposes of dependency and indemnity compensation.

(3) Full-time duty as a commissioned officer of the Coast and Geodetic Survey or of its successor agencies, the

§ 3.6

38 CFR Ch. I (7-1-12 Edition)

Environmental Science Services Administration and the National Oceanic and Atmospheric Administration:

- (i) On or after July 29, 1945, or
- (ii) Before that date:
 - (a) While on transfer to one of the Armed Forces, or
 - (b) While, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or
 - (c) In the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or
 - (iii) At any time, for the purposes of dependency and indemnity compensation.
- (4) Service at any time as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy;
- (5) Attendance at the preparatory schools of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy for enlisted active-duty members who are reassigned to a preparatory school without a release from active duty, and for other individuals who have a commitment to active duty in the Armed Forces that would be binding upon disenrollment from the preparatory school;
- (6) Authorized travel to or from such duty or service; and
- (7) A person discharged or released from a period of active duty, shall be deemed to have continued on active duty during the period of time immediately following the date of such discharge or release from such duty determined by the Secretary concerned to have been required for him or her to proceed to his or her home by the most direct route, and, in all instances, until midnight of the date of such discharge or release.

(Authority: 38 U.S.C. 106(c))

(c) *Active duty for training.* (1) Full-time duty in the Armed Forces performed by Reserves for training purposes;

(2) Full-time duty for training purposes performed as a commissioned of-

ficer of the Reserve Corps of the Public Health Service:

- (i) On or after July 29, 1945, or
- (ii) Before that date under circumstances affording entitlement to *full military benefits*, or
- (iii) At any time, for the purposes of dependency and indemnity compensation:
- (3) Full-time duty performed by members of the National Guard of any State, under 32 U.S.C. 316, 502, 503, 504, or 505, or the prior corresponding provisions of law or full-time duty by such members while participating in the reenactment of the Battle of First Manassas in July 1961;
- (4) Duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10 U.S.C.
 - (i) The requirements of this paragraph are effective—
 - (A) On or after October 1, 1982, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated after September 30, 1982, and
 - (B) October 1, 1983, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated before October 1, 1982.
 - (ii) Effective on or after October 1, 1988, such duty must be prerequisite to the member being commissioned and must be for a period of at least four continuous weeks.

(Authority: 38 U.S.C. 101(22)(D) as amended by Pub. L. 100-456)

(5) Attendance at the preparatory schools of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy by an individual who enters the preparatory school directly from the Reserves, National Guard or civilian life, unless the individual has a commitment to service on active duty which would be binding upon disenrollment from the preparatory school.

(6) Authorized travel to or from such duty.

(Authority: 38 U.S.C. 101(22))

Department of Veterans Affairs

§3.7

The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(d) *Inactive duty training*. This means: (1) Duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under 37 U.S.C. 206 or any other provision of law;

(2) Special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and

(3) Training (other than active duty for training) by a member of, or applicant for membership (as defined in 5 U.S.C. 8140(g)) in, the Senior Reserve Officers' Training Corps prescribed under chapter 103 of title 10 U.S.C.

(4) Duty (other than full-time duty) performed by a member of the National Guard of any State, under 32 U.S.C. 316, 502, 503, 504, or 505, or the prior corresponding provisions of law. The term *inactive duty training* does not include:

- (i) Work or study performed in connection with correspondence courses,
- (ii) Attendance at an educational institution in an inactive status, or
- (iii) Duty performed as a temporary member of the Coast Guard Reserve.

(Authority: 38 U.S.C. 101(23))

(e) *Travel status—training duty (disability or death from injury or covered disease)*. Any individual:

(1) Who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive duty training; and

(2) Who is disabled or dies from an injury or covered disease incurred while proceeding directly to or returning directly from such active duty for training or inactive duty training shall be deemed to have been on active duty for training or inactive duty training, as the case may be. The Department of Veterans Affairs will determine whether such individual was so authorized or required to perform such duty, and whether the individual was disabled or

died from an injury or covered disease so incurred. In making such determinations, there shall be taken into consideration the hour on which the individual began to proceed or return; the hour on which the individual was scheduled to arrive for, or on which the individual ceased to perform, such duty; the method of travel performed; the itinerary; the manner in which the travel was performed; and the immediate cause of disability or death. Whenever any claim is filed alleging that the claimant is entitled to benefits by reason of this paragraph, the burden of proof shall be on the claimant.

(3) For purposes of this section, the term *covered disease* means any of the following:

- (i) An acute myocardial infarction.
- (ii) A cardiac arrest.
- (iii) A cerebrovascular accident.

(Authority: 38 U.S.C. 106(d))

[26 FR 1564, Feb. 24, 1961, as amended at 26 FR 6767, July 28, 1961; 27 FR 4023, Apr. 27, 1962; 29 FR 14171, Oct. 15, 1964; 36 FR 5341, Mar. 20, 1971; 41 FR 26881, June 29, 1976; 49 FR 47003, Nov. 30, 1984; 54 FR 51200, Dec. 13, 1989; 55 FR 23931, June 13, 1990; 60 FR 57179, Nov. 14, 1995; 61 FR 11731, Mar. 22, 1996; 66 FR 48560, Sept. 21, 2001; 67 FR 49585, July 31, 2002]

§3.7 Individuals and groups considered to have performed active military, naval, or air service.

The following individuals and groups are considered to have performed active military, naval, or air service:

(a) *Aerial transportation of mail (Pub. L. 140, 73d Congress)*. Persons who were injured or died while serving under conditions set forth in Pub. L. 140, 73d Congress.

(b) *Aliens*. Effective July 28, 1959, a veteran discharged for alienage during a period of hostilities unless evidence affirmatively shows he or she was discharged at his or her own request. A veteran who was discharged for alienage after a period of hostilities and whose service was honest and faithful is not barred from benefits if he or she is otherwise entitled. A discharge changed prior to January 7, 1957, to honorable by a board established under authority of section 301, Pub. L. 346, 78th Congress, as amended,