to any individual under the laws administered by VA. (38 U.S.C. 5101(a)). A claim by a veteran for compensation may be considered to be a claim for pension; and a claim by a veteran for pension may be considered to be a claim for compensation. The greater benefit will be awarded, unless the claimant specifically elects the lesser benefit.

(b) Retroactive disability pension claims. Where disability pension entitlement is established based on a claim received by VA on or after October 1, 1984, the pension award may not be effective prior to the date of receipt of the pension claim unless the veteran specifically claims entitlement to retroactive benefits. The claim for retroactivity may be filed separately or included in the claim for disability pension, but it must be received by VA within one year from the date on which the veteran became permanently and totally disabled. Additional requirements for entitlement to a retroactive pension award are contained in §3.400(b) of this part.

(Authority: 38 U.S.C 5110(b)(3))

CROSS REFERENCE: Informal claims. See §3.155(b).

[50 FR 25981, June 24, 1985]

§ 3.152 Claims for death benefits.

(a) A specific claim in the form prescribed by the Secretary (or jointly with the Commissioner of Social Security, as prescribed by §3.153) must be filed in order for death benefits to be paid to any individual under the laws administered by VA. (See §3.400(c) concerning effective dates of awards.)

(Authority: 38 U.S.C. 5101(a))

(b)(1) A claim by a surviving spouse or child for compensation or dependency and indemnity compensation will also be considered to be a claim for death pension and accrued benefits, and a claim by a surviving spouse or child for death pension will be considered to be a claim for death compensation or dependency and indemnity compensation and accrued benefits.

(Authority: 38 U.S.C. 5101(b)(1))
§ 3.153 Claims filed with Social Security.

An application on a form jointly prescribed by the Secretary and the Commissioner of Social Security filed with the Social Security Administration on or after January 1, 1957, will be considered a claim for death benefits, and to have been received in the Department of Veterans Affairs as of the date of receipt in Social Security Administration. The receipt of such an application (or copy thereof) by the Department of Veterans Affairs will not preclude a request for any necessary evidence.

(Authority: 38 U.S.C. 5105)


§ 3.154 Injury due to hospital treatment, etc.

VA may accept as a claim for benefits under 38 U.S.C. 1151 and § 3.361 any communication in writing indicating an intent to file a claim for disability compensation or dependency and indemnity compensation under the laws governing entitlement to veterans’ benefits for disability or death due to VA hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program, whether such communication is contained in a formal claim for pension, compensation, or dependency and indemnity compensation or in any other document.

(Authority: 38 U.S.C. 1151)

Cross References: Effective dates. See §3.400(i). Disability or death due to hospitalization, etc. See §§3.358, 3.361 and 3.800.

[69 FR 46432, Aug. 3, 2004]

§ 3.155 Informal claims.

(a) Any communication or action, indicating an intent to apply for one or more benefits under the laws admin-istered by the Department of Veterans Affairs, from a claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not sui juris may be considered an informal claim. Such informal claim must identify the benefit sought. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the claimant for execution. If received within 1 year from the date it was sent to the claimant, it will be considered filed as of the date of receipt of the informal claim.

(b) A communication received from a service organization, an attorney, or agent may not be accepted as an informal claim if a power of attorney was not executed at the time the communication was written.

(c) When a claim has been filed which meets the requirements of §§3.151 or §3.152, an informal request for increase or reopening will be accepted as a claim.

Cross References: State Department as agent of VA. See §3.108. Report of examination or hospitalization—as claim for increase or to reopen. See §3.157.


§ 3.156 New and material evidence.

(a) General. A claimant may reopen a finally adjudicated claim by submitting new and material evidence. New evidence means existing evidence not previously submitted to agency decisionmakers. Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an established fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim.

(Authority: 38 U.S.C. 501, 5103A(f), 5108)

(b) Pending claim. New and material evidence received prior to the expiration of the appeal period, or prior to the appellate decision if a timely appeal has been filed (including evidence