§ 3.800 Disability or death due to hospitalization, etc.

This section applies to claims received by VA before October 1, 1997. For claims received by VA on or after October 1, 1997, see §§ 3.362 and 3.363.

(a) Where disease, injury, death or the aggravation of an existing disease or injury occurs as a result of having submitted to an examination, medical or surgical treatment, hospitalization or the pursuit of a course of vocational rehabilitation under any law administered by the Department of Veterans Affairs and not the result of his (or her) own willful misconduct, disability or death compensation, or dependency and indemnity compensation will be awarded for such disease, injury, aggravation, or death as if such condition were service connected. The commencing date of benefits is subject to the provisions of § 3.400(i).

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

(1) Benefits under paragraph (a) of this section will be in lieu of any benefits the veteran may be entitled to receive under the Federal Employees’ Compensation Act inasmuch as concurrent payments are prohibited. (See § 3.708.)

(2) Where any person is awarded a judgment on or after December 1, 1962, against the United States in a civil action brought pursuant to 28 U.S.C. 1346(b), or enters into a settlement or compromise on or after December 1, 1962, under 28 U.S.C. 2672 or 2677, by reason of a disability, aggravation or death within the purview of this section, no compensation or dependency and indemnity compensation shall be paid to such person for any month beginning after the date such judgment, settlement, or compromise on account of such disability, aggravation, or death becomes final until the total amount of benefits which would be paid except for this provision equals the total amount included in such judgment, settlement, or compromise. The provisions of this paragraph do not apply, however, to any portion of such compensation or dependency and indemnity compensation payable for any period preceding the end of the month in which such judgment, settlement or compromise becomes final.

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

(3) If an administrative award was made or a settlement or compromise became final before December 1, 1962, compensation or dependency and indemnity compensation may not be authorized for any period after such award settlement, or compromise whether before or after December 1, 1962. There is no bar to payment of compensation or dependency and indemnity compensation and no set-off because of a judgment which became final before December 1, 1962, unless specified in the terms of the judgment.


(i) If a judgment, settlement, or compromise covered by paragraph (a)(2) of this section becomes final on or after December 10, 2004, and includes an amount that is specifically designated for a purpose for which benefits are provided under 38 U.S.C. chapter 21 (38 CFR 3.809 and 3.809a) or 38 U.S.C. chapter 39 (38 CFR 3.808), and if VA awards 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39 benefits after the date on which the judgment, settlement, or compromise becomes final, the amount of the award will be reduced by the amount received under the judgment, settlement, or compromise for the same purpose.

(ii) If the amount described in paragraph (a)(4)(i) of this section is greater than the amount of an award under 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39, the excess amount received under
§ 3.802 Medal of Honor.

(a) The Secretary of the Department of the Army, the Department of the Navy, the Department of the Air Force, or the Department of Transportation will determine the eligibility of applicants to be entered on the Medal of Honor Roll and will deliver to the Secretary of the Department of Veterans Affairs a certified copy of each certificate issued in which the right of the person named in the certificate to the special pension is set forth. The special pension will be authorized on the basis of such certification.

(b) An award of special pension at the monthly rate specified in 38 U.S.C. 1562 will be made as of the date of filing of the application with the Secretary concerned. The special pension will be paid in addition to all other payments under laws of the United States. However, a person awarded more than one Medal of Honor may not receive more than one special pension.

(c) VA will pay to each person who is receiving or who in the future receives Medal of Honor pension a retroactive lump sum payment equal to the total amount of Medal of Honor pension that person would have received during the period beginning the first day of the