(2) A claim by a parent for compensation or dependency and indemnity compensation will also be considered to be a claim for accrued benefits.

(Authority: 38 U.S.C. 5101(b)(2))

(c)(1) Where a child's entitlement to dependency and indemnity compensation arises by reason of termination of a surviving spouse's right to dependency and indemnity compensation or by reason of attaining the age of 18 years, a claim will be required. (38 U.S.C. 5110(e).) (See paragraph (c)(4) of this section.) Where the award to the surviving spouse is terminated by reason of her or his death, a claim for the child will be considered a claim for any accrued benefits which may be payable.

(2) A claim filed by a surviving spouse who does not have entitlement will be accepted as a claim for a child or children in her or his custody named in the claim.

(3) Where a claim of a surviving spouse is disallowed for any reason whatsoever and where evidence requested in order to determine entitlement from a child or children named in the surviving spouse's claim is submitted within 1 year from the date of request, requested either before or after disallowance of the surviving spouse's claim, an award for the child or children will be made as though the disallowed claim had been filed solely on their behalf. Otherwise, payments may not be made for the child or children for any period prior to the date of receipt of a new claim.

(4) Where payments of pension, compensation or dependency and indemnity compensation to a surviving spouse have been discontinued because of remarriage or death, or a child becomes eligible for dependency and indemnity compensation by reason of attaining the age of 18 years, and any necessary evidence is submitted within 1 year from date of request, an award for the child or children named in the surviving spouse's claim will be made on the basis of the surviving spouse's claim having been converted to a claim on behalf of the child. Otherwise, payments may not be made for any period prior to the date of receipt of a new claim.

(Authority: 38 U.S.C 501)

CROSS REFERENCES: State Department as agent of Department of Veterans Affairs. See §3.108. Change in status of dependents. See §3.651.

[50 FR 25981, June 24, 1985, as amended at 71 FR 44918, Aug. 8, 2006]

§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)

[26 FR 1570, Feb. 24, 1961, as amended at 71 FR 44918, Aug. 8, 2006]

§3.154 Injury due to hospital treatment, etc.

Claimants must file a complete claim on the appropriate application form prescribed by the Secretary when applying for benefits under 38 U.S.C. 1151 and 38 CFR 3.361. See §§3.151, 3.160(a), and 3.400(i) concerning effective dates of awards; see §3.155(b) regarding intent to file the appropriate application form.

(Authority: 38 U.S.C. 501 and 1151.)

CROSS REFERENCE: Effective Dates. See §3.400(i). Disability or death due to hospitalization, etc. See §§3.358, 3.361 and 3.800.

[79 FR 57695, Sept. 25, 2014]

§3.155 How to file a claim.

The following paragraphs describe the manner and methods in which a claim can be initiated and filed. The provisions of this section are applicable to all claims governed by part 3, with the exception that paragraph (b) of this section, regarding intent to file a claim, does not apply to supplemental claims.

(a) *Request for an application for benefits.* 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 of full age or capacity, who indicates a desire to file for benefits under the laws administered by VA, by a communication or action, to include an electronic mail that is transmitted through VA's electronic portal or otherwise, that does not meet the standards of a complete claim is considered a request for an application form for benefits under §3.150(a). Upon receipt of such a communication or action, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application form or form prescribed by the Secretary.

(b) *Intent to file a claim.* A claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of claimant who is not of full age or capacity may indicate a claimant's desire to file a claim for benefits by submitting an intent to file a claim to VA. An intent to file a claim must provide sufficient identifiable or biographical information to identify the claimant. Upon receipt of the intent to file a claim, VA will furnish the claimant with the appropriate application form prescribed by the Secretary. If VA receives a complete application form prescribed by the Secretary, as defined in paragraph (a) of §3.160, appropriate to the benefit sought within 1 year of receipt of the intent to file a claim, VA will consider the complete claim filed as of the date the intent to file a claim was received.

(1) An intent to file a claim can be submitted in one of the following three ways:

(i) Saved electronic application. When an application otherwise meeting the requirements of this paragraph (b) is electronically initiated and saved in a claims-submission tool within a VA web-based electronic claims application system prior to filing of a complete claim, VA will consider that application to be an intent to file a claim.

(ii) Written intent on prescribed intent to file a claim form. The submission to an agency of original jurisdiction of a signed and dated intent to file a claim, on the form prescribed by the Secretary for that purpose, will be accepted as an intent to file a claim.

(iii) Oral intent communicated to designated VA personnel and recorded in writing. An oral statement of intent to file a claim will be accepted if it is directed to a VA employee designated to receive such a communication, the VA employee receiving this information follows the provisions set forth in §3.217(b), and the VA employee documents the date VA received the claimant's intent to file a claim in the claimant's records.

(2) An intent to file a claim must identify the general benefit (e.g., compensation, pension), but need not identify the specific benefit claimed or any medical condition(s) on which the claim is based. To the extent a claimant provides this or other extraneous information on the designated form referenced in paragraph (b)(1)(ii) of this section that the form does not solicit, the provision of such information is of no effect other than that it is added to the file for appropriate consideration as evidence in support of a complete claim if filed. In particular, if a claimant identifies specific medical condition(s) on which the claim is based in an intent to file a claim, this extraneous information does not convert the intent to file a claim into a complete claim or a substantially complete application. Extraneous information provided in an oral communication under paragraph (b)(1)(iii) of this section is of no effect and generally will not be recorded in the record of the claimant's intent to file.

(3) Upon receipt of an intent to file a claim, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the appropriate application form prescribed by the Secretary.

(4) If an intent to file a claim is not submitted in the form required by paragraph (b)(1) of this section or a complete claim is not filed within 1 year of the receipt of the intent to file a claim, VA will not take further action unless a new claim or a new intent to file a claim is received.

(5) An intent to file a claim received from a service organization, an attorney, or agent indicating a represented claimant's intent to file a claim may not be accepted if a power of attorney was not executed at the time the communication was written. VA will only accept an oral intent to file from a service organization, an attorney, or agent if a power of attorney is of record at the time the oral communication is received by the designated VA employee.

(6) VA will not recognize more than one intent to file concurrently for the same benefit (e.g., compensation, pension). If an intent to file has not been followed by a complete claim, a subsequent intent to file regarding the same benefit received within 1 year of the prior intent to file will have no effect. If, however, VA receives an intent to file followed by a complete claim and later another intent to file for the same benefit is submitted within 1 year of the previous intent to file, VA will recognize the subsequent intent to file to establish an effective date for any award granted for the next complete claim, provided it is received within 1 year of the subsequent intent to file.

(c) *Incomplete application form.* Upon receipt of a communication indicating a belief in entitlement to benefits that is submitted on a paper application form prescribed by the Secretary that is not complete as defined in §3.160(a) of this section, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application form prescribed by the Secretary. If a complete claim is submitted within 1 year of receipt of such incomplete application form prescribed by the Secretary, VA will consider it as filed as of the date VA received the incomplete application form prescribed by the Secretary that did not meet the standards of a complete claim. See §3.160(a) for Complete Claim.

(d) *Claims.*—(1) *Requirement for complete claim and date of claim.* A complete claim is required for all types of claims, and will generally be considered filed as of the date it was received by VA for an evaluation or award of benefits under the laws administered by the Department of Veterans Affairs.

(i) *Supplemental claims.* Upon receipt of a communication indicating a belief in entitlement to benefits that is submitted in writing or electronically on a supplemental claim form prescribed by the Secretary that is not complete as defined in §3.160(a) of this section, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application form prescribed by the Secretary. If VA receives a complete claim within 60 days of notice by VA that an incomplete claim was filed, it will be considered filed as of the date of receipt of the incomplete claim (see §3.2501).

(ii) *For other types of claims.* If VA receives a complete claim within 1 year of the filing of an intent to file a claim that meets the requirements of paragraph (b) of this section, it will be considered filed as of the date of receipt of the intent to file a claim. Only one complete claim for a benefit (*e.g.,* compensation, pension) may be associated with each intent to file a claim for that benefit, though multiple issues may be contained within a complete claim. In the event multiple complete claims for a benefit are filed within 1 year of an intent to file a claim for that benefit, only the first claim filed will be associated with the intent to file a claim. In the event that VA receives both an intent to file a claim and an incomplete application form before the complete claim as defined in §3.160(a) is filed, the complete claim will be considered filed as of the date of receipt of whichever was filed first provided it is perfected within the necessary timeframe, but in no event, will the complete claim be considered filed more than one year prior to the date of receipt of the complete claim.

(2) *Scope of claim.* Once VA receives a complete claim, VA will adjudicate as part of the claim entitlement to any ancillary benefits that arise as a result of the adjudication decision (e.g., entitlement to 38 U.S.C. Chapter 35 Dependents' Educational Assistance benefits, entitlement to special monthly compensation under 38 CFR 3.350, entitlement to adaptive automobile allowance, etc.). The claimant may, but need not, assert entitlement to ancillary benefits at the time the complete

claim is filed. VA will also consider all lay and medical evidence of record in order to adjudicate entitlement to benefits for the claimed condition as well as entitlement to any additional benefits for complications of the claimed condition, including those identified by the rating criteria for that condition in 38 CFR Part 4, VA Schedule for Rating Disabilities. VA's decision on an issue within a claim implies that VA has determined that evidence of record does not support entitlement for any other issues that are reasonably within the scope of the issues addressed in that decision. VA's decision that addresses all outstanding issues enumerated in the complete claim implies that VA has determined evidence of record does not support entitlement for any other issues that are reasonably within the scope of the issues enumerated in the complete claim.

CROSS REFERENCE: Complete claim. See § 3.160(a). Effective dates. See § 3.400.

[79 FR 57695, Sept. 25, 2014, as amended at 84 FR 168, Jan. 18, 2019]

§ 3.156 New evidence.

New evidence is evidence not previously part of the actual record before agency adjudicators.

(a) *New and material evidence.* For claims to reopen decided prior to the effective date provided in § 19.2(a), the following standards apply. A claimant may reopen a finally adjudicated legacy claim by submitting new and material evidence. New evidence is evidence not previously part of the actual record before agency adjudicators. Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished 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 legacy claims not under the modernized review system.* 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 received prior to an appellate decision and referred to the agency of original jurisdiction by the Board of Veterans Appeals without consideration in that decision in accordance with the provisions of § 20.1304(b)(1) of this chapter), will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period.

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

(c) *Service department records.* (1) Notwithstanding any other section in this part, at any time after VA issues a decision on a claim, if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim, notwithstanding paragraph (a) of this section. Such records include, but are not limited to:

(i) Service records that are related to a claimed in-service event, injury, or disease, regardless of whether such records mention the veteran by name, as long as the other requirements of paragraph (c) of this section are met;

(ii) Additional service records forwarded by the Department of Defense or the service department to VA any time after VA's original request for service records; and

(iii) Declassified records that could not have been obtained because the records were classified when VA decided the claim.

(2) Paragraph (c)(1) of this section does not apply to records that VA could not have obtained when it decided the claim because the records did not exist when VA decided the claim, or because the claimant failed to provide sufficient information for VA to identify and obtain the records from the respective service department or from any other official source.

(3) An award made based all or in part on the records identified by paragraph (c)(1) of this section is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the