

## § 2.8

Appeals, the views of the head of the administration having responsibility for the benefit will be obtained and transmitted with the recommendation of the initiating office.

(Authority: 38 U.S.C. 503, 512)

[37 FR 22864, Oct. 26, 1972, as amended at 49 FR 30693, Aug. 1, 1984; 54 FR 34981, Aug. 23, 1989; 68 FR 25504, May 13, 2002]

### § 2.8 Delegation of authority to authorize allowances for Department of Veterans Affairs employees who are notaries public.

(a) Employees occupying or acting in the positions designated in paragraph (b) of this section are authorized to designate those employees who are required to serve as notaries public in connection with the performance of official business and to pay an allowance for the costs therefor not to exceed the expense required to be incurred by them in order to obtain their commission.

(Authority: 5 U.S.C. 5945)

(b) Designated positions: Deputy Secretary, Under Secretary for Benefits, Director, Office of Data Management and Telecommunications, Chief Medical Director, General Counsel, Directors of regional offices, hospitals, domiciliaries, and centers.

[35 FR 13771, Aug. 29, 1970, as amended at 49 FR 30693, Aug. 1, 1984]

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EDITORIAL NOTE: Nomenclature changes to part 3 appear at 61 FR 7216, Feb. 27, 1996; 62 FR 35970, July 3, 1997; 62 FR 47532, Sept. 9, 1997; and 67 FR 46868, July 17, 2002.

#### Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

AUTHORITY: 38 U.S.C. 501(a), unless otherwise noted.

##### GENERAL

#### § 3.1 Definitions.

(a) *Armed Forces* means the United States Army, Navy, Marine Corps, Air

Force, and Coast Guard, including their Reserve components.

(b) *Reserve component* means the Army, Naval, Marine Corps, Air Force, and Coast Guard Reserves and the National and Air National Guard of the United States.

(c) *Reserves* means members of a Reserve component of one of the Armed Forces.

(d) *Veteran* means a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

(1) For compensation and dependency and indemnity compensation the term *veteran* includes a person who died in active service and whose death was not due to willful misconduct.

(2) For death pension the term *veteran* includes a person who died in active service under conditions which preclude payment of service-connected death benefits, provided such person had completed at least 2 years honorable military, naval or air service, as certified by the Secretary concerned. (See §§ 3.3(b)(3)(i) and 3.3(b)(4)(i))

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

(e) *Veteran of any war* means any veteran who served in the active military, naval or air service during a period of war as set forth in § 3.2.

(f) *Period of war* means the periods described in § 3.2.

(g) *Secretary concerned* means:

(1) The Secretary of the Army, with respect to matters concerning the Army;

(2) The Secretary of the Navy, with respect to matters concerning the Navy or the Marine Corps;

(3) The Secretary of the Air Force, with respect to matters concerning the Air Force;

(4) The Secretary of Transportation, with respect to matters concerning the Coast Guard;

(5) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(6) The Secretary of Commerce, with respect to matters concerning the

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Coast and Geodetic Survey, the Environmental Science Services Administration, and the National Oceanic and Atmospheric Administration.

(h) *Discharge or release* includes retirement from the active military, naval, or air service.

(i) *State* means each of the several States, Territories and possessions of the United States, the District of Columbia, and Commonwealth of Puerto Rico.

(j) *Marriage* means a marriage valid under the law of the place where the parties resided at the time of marriage, or the law of the place where the parties resided when the right to benefits accrued.

(Authority: 38 U.S.C. 103(c))

(k) *Service-connected* means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(l) *Non-service-connected* means, with respect to disability or death, that such disability was not incurred or aggravated, or that the death did not result from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(m) *In line of duty* means an injury or disease incurred or aggravated during a period of active military, naval, or air service unless such injury or disease was the result of the veteran's own willful misconduct or, for claims filed after October 31, 1990, was a result of his or her abuse of alcohol or drugs. A service department finding that injury, disease or death occurred in line of duty will be binding on the Department of Veterans Affairs unless it is patently inconsistent with the requirements of laws administered by the Department of Veterans Affairs. Requirements as to line of duty are not met if at the time the injury was suffered or disease contracted the veteran was:

(1) Avoiding duty by desertion, or was absent without leave which materially interfered with the performance of military duty.

(2) Confined under a sentence of court-martial involving an unremitted dishonorable discharge.

(3) Confined under sentence of a civil court for a felony as determined under the laws of the jurisdiction where the person was convicted by such court.

(Authority: 38 U.S.C. 105)

NOTE: See § 3.1(y)(2)(iii) for applicability of *in line of duty* in determining former prisoner of war status.

(n) *Willful misconduct* means an act involving conscious wrongdoing or known prohibited action. A service department finding that injury, disease or death was not due to misconduct will be binding on the Department of Veterans Affairs unless it is patently inconsistent with the facts and the requirements of laws administered by the Department of Veterans Affairs.

(1) It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences.

(2) Mere technical violation of police regulations or ordinances will not per se constitute willful misconduct.

(3) Willful misconduct will not be determinative unless it is the proximate cause of injury, disease or death. (See §§ 3.301, 3.302.)

(o) *Political subdivision of the United States* includes the jurisdiction defined as a State in paragraph (i) of this section, and the counties, cities or municipalities of each.

(p) *Claim—Application* means a formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement, to a benefit.

(q) *Notice* means written notice sent to a claimant or payee at his or her latest address of record.

(r) *Date of receipt* means the date on which a claim, information or evidence was received in the Department of Veterans Affairs, except as to specific provisions for claims or evidence received in the State Department (§ 3.108), or in the Social Security Administration (§§ 3.153, 3.201), or Department of Defense as to initial claims filed at or prior to separation.

(s) *On the borders thereof* means, with regard to service during the Mexican border period, the States of Arizona, California, New Mexico, and Texas, and

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the nations of Guatemala and British Honduras.

(Authority: 38 U.S.C. 101(30))

(t) *In the waters adjacent thereto* means, with regard to service during the Mexican border period, the waters (including the islands therein) which are within 750 nautical miles (863 statute miles) of the coast of the mainland of Mexico.

(Authority: 38 U.S.C. 101(30))

(u) *Section 306 pension* means those disability and death pension programs in effect on December 31, 1978, which arose out of Pub. L. 86-211; 73 Stat. 432.

(v) *Old-Law pension* means the disability and death pension programs that were in effect on June 30, 1960. Also known as protected pension, i.e. protected under section 9(b) of the Veteran's Pension Act of 1959 (Pub. L. 86-211; 73 Stat. 432).

(w) *Improved pension* means the disability and death pension programs becoming effective January 1, 1979, under authority of Pub. L. 95-588; 92 Stat. 2497.

(x) *Service pension* is the name given to Spanish-American War pension. It is referred to as a service pension because entitlement is based solely on service without regard to nonservice-connected disability, income and net worth.

(Authority: 38 U.S.C. 1512, 1536)

(y) *Former prisoner of war*. The term *former prisoner of war* means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in the line of duty by an enemy or foreign government, the agents of either, or a hostile force.

(1) *Decisions based on service department findings*. The Department of Veterans Affairs shall accept the findings of the appropriate service department that a person was a prisoner of war during a period of war unless a reasonable basis exists for questioning it. Such findings shall be accepted only when detention or internment is by an enemy government or its agents.

(2) *Other decisions*. In all other situations, including those in which the Department of Veterans Affairs cannot

accept the service department findings, the following factors shall be used to determine prisoner of war status:

(i) *Circumstances of detention or internment*. To be considered a former prisoner of war, a serviceperson must have been forcibly detained or interned under circumstances comparable to those under which persons generally have been forcibly detained or interned by enemy governments during periods of war. Such circumstances include, but are not limited to, physical hardships or abuse, psychological hardships or abuse, malnutrition, and unsanitary conditions. Each individual member of a particular group of detainees or internees shall, in the absence of evidence to the contrary, be considered to have experienced the same circumstances as those experienced by the group.

(ii) *Reason for detainment or internment*. The reason for which a serviceperson was detained or interned is immaterial in determining POW status, except that a serviceperson who is detained or interned by a foreign government for an alleged violation of its laws is not entitled to be considered a former POW on the basis of that period of detention or internment, unless the charges are a sham intended to legitimize the period of detention or internment.

(3) *Central Office approval*. The Director of the Compensation and Pension Service, VA Central Office, shall approve all VA regional office determinations establishing or denying POW status, with the exception of those service department determinations accepted under paragraph (y)(1) of this section.

(4) *In line of duty*. The Department of Veterans Affairs shall consider that a serviceperson was forcibly detained or interned in line of duty unless the evidence of record discloses that forcible detainment or internment was the proximate result of the serviceperson's own willful misconduct.

(5) *Hostile force*. The term *hostile force* means any entity other than an enemy or foreign government or the agents of either whose actions are taken to further or enhance anti-American military, political or economic objectives

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or views, or to attempt to embarrass the United States.

(Authority: 38 U.S.C. 101(32))

(z) *Nursing home* means

(1) Any extended care facility which is licensed by a State to provide skilled or intermediate-level nursing care,

(2) A nursing home care unit in a State veterans' home which is approved for payment under 38 U.S.C. 1742, or

(3) A Department of Veterans Affairs Nursing Home Care Unit.

(aa) *Fraud*:

(1) As used in 38 U.S.C. 103 and implementing regulations, fraud means an intentional misrepresentation of fact, or the intentional failure to disclose pertinent facts, for the purpose of obtaining, or assisting an individual to obtain an annulment or divorce, with knowledge that the misrepresentation or failure to disclose may result in the erroneous granting of an annulment or divorce; and

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

(2) As used in 38 U.S.C. 110 and 1159 and implementing regulations, fraud means an intentional misrepresentation of fact, or the intentional failure to disclose pertinent facts, for the purpose of obtaining or retaining, or assisting an individual to obtain or retain, eligibility for Department of Veterans Affairs benefits, with knowledge that the misrepresentation or failure to disclose may result in the erroneous award or retention of such benefits.

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

CROSS-REFERENCES: Pension. See § 3.3. Compensation. See § 3.4. Dependency and indemnity compensation. See § 3.5. Preservation of disability ratings. See § 3.951. Service-connection. See § 3.957.

[26 FR 1563, Feb. 24, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 3.1, see the List of Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 3.2 Periods of war.

This section sets forth the beginning and ending dates of each war period beginning with the Indian wars. Note that the term *period of war* in reference

to pension entitlement under 38 U.S.C. 1521, 1541 and 1542 means all of the war periods listed in this section except the Indian wars and the Spanish-American War. See § 3.3(a)(3) and (b)(4)(i).

(a) *Indian wars*. January 1, 1817, through December 31, 1898, inclusive. Service must have been rendered with the United States military forces against Indian tribes or nations.

(b) *Spanish-American War*. April 21, 1898, through July 4, 1902, inclusive. If the veteran served with the United States military forces engaged in hostilities in the Moro Province, the ending date is July 15, 1903. The Philippine Insurrection and the Boxer Rebellion are included.

(c) *World War I*. April 6, 1917, through November 11, 1918, inclusive. If the veteran served with the United States military forces in Russia, the ending date is April 1, 1920. Service after November 11, 1918 and before July 2, 1921 is considered World War I service if the veteran served in the active military, naval, or air service after April 5, 1917 and before November 12, 1918.

(d) *World War II*. December 7, 1941, through December 31, 1946, inclusive. If the veteran was in service on December 31, 1946, continuous service before July 26, 1947, is considered World War II service.

(e) *Korean conflict*. June 27, 1950, through January 31, 1955, inclusive.

(f) *Vietnam era*. The period beginning on February 28, 1961, and ending on May 7, 1975, inclusive, in the case of a veteran who served in the Republic of Vietnam during that period. The period beginning on August 5, 1964, and ending on May 7, 1975, inclusive, in all other cases.

(Authority: 38 U.S.C. 101(29))

(g) *Future dates*. The period beginning on the date of any future declaration of war by the Congress and ending on a date prescribed by Presidential proclamation or concurrent resolution of the Congress.

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

(h) *Mexican border period*. May 9, 1916, through April 5, 1917, in the case of a veteran who during such period served