

Department of Veterans Affairs

§ 3.16

that, for death pension purposes, § 3.3(b)(3) and (4) is controlling as to basic entitlement when the conditions prescribed therein are met.

(c) Despite the fact that no unconditional discharge may have been issued, a person shall be considered to have been unconditionally discharged or released from active military, naval or air service when the following conditions are met:

(1) The person served in the active military, naval or air service for the period of time the person was obligated to serve at the time of entry into service;

(2) The person was not discharged or released from such service at the time of completing that period of obligation due to an intervening enlistment or reenlistment; and

(3) The person would have been eligible for a discharge or release under conditions other than dishonorable at that time except for the intervening enlistment or reenlistment.

[26 FR 1566, Feb. 24, 1961, as amended at 27 FR 4024, Apr. 27, 1962; 32 FR 13224, Sept. 19, 1967; 43 FR 15154, Apr. 11, 1978; 46 FR 23926, Apr. 29, 1981]

§ 3.14 Validity of enlistments.

Service is valid unless the enlistment is voided by the service department.

(a) *Enlistment not prohibited by statute.* Where an enlistment is voided by the service department for reasons other than those stated in paragraph (b) of this section, service is valid from the date of entry upon active duty to the date of voidance by the service department. Benefits may not be paid, however, unless the discharge is held to have been under conditions other than dishonorable. Generally discharge for concealment of a physical or mental defect except incompetency or insanity which would have prevented enlistment will be held to be under dishonorable conditions.

(b) *Statutory prohibition.* Where an enlistment is voided by the service department because the person did not have legal capacity to contract for a reason other than minority (as in the case of an insane person) or because the enlistment was prohibited by statute (a deserter or person convicted of a felony), benefits may not be paid based

on that service even though a disability was incurred during such service. An undesirable discharge by reason of the fraudulent enlistment voids the enlistment from the beginning.

(c) *Misrepresentation of age.* Active service which was terminated because of concealment of minority or misrepresentation of age is honorable if the veteran was released from service under conditions other than dishonorable. Service is valid from the date of entry upon active duty to the date of discharge.

(d) *Honorable discharges.* Determinations as to honorable service will be made by the service departments and the finding shall be binding on the Department of Veterans Affairs, but, in the case of an alien, the effect of the discharge will be governed by § 3.7(b).

[26 FR 1567, Feb. 24, 1961, as amended at 27 FR 4024, Apr. 27, 1962]

§ 3.15 Computation of service.

For nonservice-connected or service-connected benefits, active service is countable exclusive of time spent on an industrial, agricultural, or indefinite furlough, time lost on absence without leave (without pay), under arrest (without acquittal), in desertion, while undergoing sentence of court-martial or a period following release from active duty under the circumstances outlined in § 3.41. In claims based on Spanish-American War service, leave authorized under General Order No. 130, War Department, is included.

CROSS REFERENCE: Duty periods. See § 3.6(b)(6).

[40 FR 16064, Apr. 9, 1975]

§ 3.16 Service pension.

In computing the 70 or 90 days required under § 3.3(a) active service which began before or extended beyond the war period will be included if such service was continuous. Broken periods of service during a war period may be added together to meet the requirement for length of service.

[41 FR 18299, May 3, 1976, as amended at 44 FR 45932, Aug. 6, 1979]