

§ 3.107

38 CFR Ch. I (7-1-07 Edition)

§ 3.107 Awards where not all dependents apply.

Except as provided in § 3.251(a)(4), in any case where claim has not been filed by or on behalf of all dependents who may be entitled, the awards (original or amended) for those dependents who have filed claim will be made for all periods at the rates and in the same manner as though there were no other dependents. However, if the file reflects the existence of other dependents who have not filed claim and there is potential entitlement to benefits for a period prior to the date of filing claim, the award to a person who has filed claim will be made at the rate which would be payable if all dependents were receiving benefits. If at the expiration of the period allowed, claims have not been filed for such dependents, the full rate will be authorized for the first payee.

[29 FR 9564, July 15, 1964]

§ 3.108 State Department as agent of Department of Veterans Affairs.

Diplomatic and consular officers of the Department of State are authorized to act as agents of the Department of Veterans Affairs and therefore a formal or informal claim or evidence submitted in support of a claim filed in a foreign country will be considered as filed in the Department of Veterans Affairs as of the date of receipt by the State Department representative.

CROSS REFERENCE: Evidence from foreign countries. See § 3.202.

[26 FR 1569, Feb. 24, 1961]

§ 3.109 Time limit.

(a) *Notice of time limit for filing evidence.* (1) If a claimant's application is incomplete, the claimant will be notified of the evidence necessary to complete the application. If the evidence is not received within 1 year from the date of such notification, pension, compensation, or dependency and indemnity compensation may not be paid by reason of that application (38 U.S.C. 5103(a)). Information concerning the whereabouts of a person who has filed claim is not considered evidence.

(2) The provisions of this paragraph are applicable to original applications, formal or informal, and to applications

for increased benefits by reason of increased disability, age, or the existence of a dependent and to applications for reopening or resumption of payments. If substantiating evidence is required with respect to the veracity of a witness or the authenticity of documentary evidence timely filed, there will be allowed for the submission of such evidence 1 year from the date of the request therefor. However, any evidence to enlarge the proofs and evidence originally submitted is not so included.

(b) *Extension of time limit.* Time limits within which claimants or beneficiaries are required to act to perfect a claim or challenge an adverse VA decision may be extended for good cause shown. Where an extension is requested after expiration of a time limit, the action required of the claimant or beneficiary must be taken concurrent with or prior to the filing of a request for extension of the time limit, and good cause must be shown as to why the required action could not have been taken during the original time period and could not have been taken sooner than it was. Denials of time limit extensions are separately appealable issues.

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

[26 FR 1569, Feb. 24, 1961, as amended at 26 FR 2231, Mar. 16, 1961; 29 FR 1462, Jan. 29, 1964; 30 FR 133, Jan. 7, 1965; 55 FR 13529, Apr. 11, 1990]

§ 3.110 Computation of time limit.

(a) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.

(b) *The first day of the specified period* referred to in paragraph (a) of this section shall be the date of mailing of notification to the claimant or beneficiary of the action required and the time limit therefor. The date of the letter of notification shall be considered the date of mailing for purposes of

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computing time limits. As to appeals, see §§ 20.302 and 20.305 of this chapter.

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

[55 FR 13529, Apr. 11, 1990, as amended at 58 FR 32443, June 10, 1993]

§3.111 [Reserved]

§3.112 Fractions of one cent.

In all cases where the amount to be paid under any award involves a fraction of a cent, the fractional part will be excluded.

[26 FR 1570, Feb. 24, 1961]

§3.114 Change of law or Department of Veterans Affairs issue.

(a) *Effective date of award.* Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a child of a Vietnam veteran is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a child of a Vietnam veteran is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The provisions of this paragraph are applicable to original and reopened claims as well as claims for increase.

(1) If a claim is reviewed on the initiative of VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits

may be authorized from the effective date of the law or VA issue.

(2) If a claim is reviewed on the initiative of VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request.

(Authority: 38 U.S.C. 1822, 5110(g))

(b) *Discontinuance of benefits.* Where the reduction or discontinuance of an award is in order because of a change in law or a Department of Veterans Affairs issue, or because of a change in interpretation of a law or Department of Veterans Affairs issue, the payee will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. If additional evidence is not received within that period, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired.

(Authority: 38 U.S.C. 5112(b)(6))

[27 FR 11886, Dec. 1, 1962, as amended at 55 FR 13529, Apr. 11, 1990; 62 FR 17706, Apr. 11, 1997; 65 FR 35282, June 2, 2000; 67 FR 49586, July 31, 2002]

§3.115 Access to financial records.

(a) The Secretary of Veterans Affairs may request from a financial institution the names and addresses of its customers. Each such request, however, shall include a certification that the information is necessary for the proper administration of benefits programs under the laws administered by the Secretary, and cannot be obtained by a reasonable search of records and information of the Department of Veterans Affairs.

(b) Information received pursuant to a request referred to in paragraph (a) of this section shall not be used for any purpose other than the administration