

### §3.16

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

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]

#### §3.17 Disability and death pension; Mexican border period and later war periods.

In computing the 90 days' service required for pension entitlement (see §3.3), there will be included active service which began before and extended into the Mexican border period or ended during World War I, or began or ended during World War II, the Korean conflict, the Vietnam era or the Persian Gulf War, if such service was continuous. Service during different war periods may be combined with service during any other war period to meet the 90 days' service requirement.

(Authority: 38 U.S.C. 1521)

[37 FR 6676, Apr. 1, 1972, as amended at 44 FR 45932, Aug. 6, 1979; 56 FR 57986, Nov. 15, 1991]

#### §§ 3.18-3.19 [Reserved]

#### §3.20 Surviving spouse's benefit for month of veteran's death.

(a) Where the veteran died on or after December 1, 1962, and before October 1, 1982, the rate of death pension or dependency and indemnity compensation otherwise payable for the surviving spouse for the month in which the death occurred shall be not less than the amount of pension or compensation which would have been payable to or for the veteran for that month but for his or her death.

(Authority: 38 U.S.C. 5310)

(b) Where the veteran dies on or after October 1, 1982, the surviving spouse may be paid death pension or dependency and indemnity compensation for the month in which the veteran died at a rate equal to the amount of compensation or pension which would have been payable to the veteran for that month had death not occurred, but only if such rate is equal to or greater than the monthly rate of death pension or dependency and indemnity compensation to which the surviving spouse is entitled. Otherwise, no payment of death pension or dependency and indemnity compensation may be made for the month in which the veteran died.

(Authority: 38 U.S.C. 5111(c))

(c)(1) Where a veteran receiving compensation or pension dies after December 31, 1996, the surviving spouse, if not entitled to death compensation, dependency and indemnity compensation, or death pension for the month of death, shall be entitled to a benefit for that month in an amount equal to the amount of compensation or pension the veteran would have received for that month but for his or her death.

(2) A payment issued to a deceased veteran as compensation or pension for the month in which death occurred shall be treated as payable to that veteran's surviving spouse, if the surviving spouse is not entitled to death compensation, dependency and indemnity compensation or death pension for that month and, if negotiated or deposited, shall be considered to be the benefit to which the surviving spouse is entitled under paragraph (c)(1) of this section. However, if such payment is in an amount less than the amount of the benefit under paragraph (c)(1) of this section, the unpaid difference shall be treated in the same manner as an accrued benefit under §3.1000 of this part.

(Authority: 38 U.S.C. 5310(b))

[48 FR 34471, July 29, 1983, as amended at 62 FR 35422, July 1, 1997; 64 FR 30392, June 8, 1999]

#### §3.21 Monetary rates.

The rates of compensation, dependency and indemnity compensation for surviving spouses and children, and