

### § 3.41

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

dollar authorized basis, and the disabilities are combined under the authority contained in 38 U.S.C. 1157, the evaluation for which dollars are payable will be first considered and the difference between this evaluation and the combined evaluation will be the basis for computing the amount payable at the rate of \$0.50 for each dollar authorized.

CROSS REFERENCE: Computation of service. See § 3.15.

[26 FR 1565, Feb. 24, 1961, as amended at 31 FR 14454, Nov. 10, 1966; 60 FR 18355, Apr. 11, 1995. Redesignated and amended at 66 FR 66767, Dec. 27, 2001; 71 FR 8220, Feb. 16, 2006]

#### § 3.41 Philippine service.

(a) For a Regular Philippine Scout or a member of one of the regular components of the Philippine Commonwealth Army while serving with Armed Forces of United States, the period of active service will be from the date certified by the Armed Forces as the date of enlistment or date of report for active duty whichever is later to date of release from active duty, discharge, death, or in the case of a member of the Philippine Commonwealth Army June 30, 1946, whichever was earlier. Release from active duty includes:

(1) Leaving one's organization in anticipation of or due to the capitulation.

(2) Escape from prisoner-of-war status.

(3) Parole by the Japanese.

(4) Beginning of missing-in-action status, except where factually shown at that time he was with his or her unit or death is presumed to have occurred while carried in such status: *Provided, however,* That where there is credible evidence that he was alive after commencement of his or her missing-in-action status, the presumption of death will not apply for Department of Veterans Affairs purposes.

(5) Capitulation on May 6, 1942, except that periods of recognized guerrilla service or unrecognized guerrilla service under a recognized commissioned officer or periods of service in units which continued organized resistance against Japanese prior to formal capitulation will be considered return to active duty for period of such service.

(b) Active service of a Regular Philippine Scout or a member of the Phil-

ippine Commonwealth Army serving with the Armed Forces of the United States will include a *prisoner-of-war* status immediately following a period of active duty, or a period of recognized guerrilla service or unrecognized guerrilla service under a recognized commissioned officer. In those cases where following release from active duty as set forth in paragraph (a) of this section, the veteran is factually found by the Department of Veterans Affairs to have been injured or killed by the Japanese because of anti-Japanese activities or his or her former service in the Armed Forces of the United States, such injury or death may be held to have been incurred in active service for Department of Veterans Affairs purposes. Determination shall be based on all available evidence, including service department reports, and consideration shall be given to the character and length of the veteran's former active service in the Armed Forces of the United States.

(c) A prisoner-of-war status based upon arrest during general zonification will not be sufficient of itself to bring a case within the definition of return to military control.

(d) The active service of members of the irregular forces *guerrilla* will be the period certified by the service department.

[26 FR 1566, Feb. 24, 1961, as amended at 26 FR 4612, May 26, 1961. Redesignated at 66 FR 66767, Dec. 27, 2001]

#### § 3.42 Compensation at the full-dollar rate for certain Filipino veterans residing in the United States.

(a) *Definitions.* For purposes of this section:

(1) *United States* (U.S.) means the states, territories and possessions of the United States; the District of Columbia, and the Commonwealth of Puerto Rico.

(2) *Residing in the U.S.* means that an individual's principal, actual dwelling place is in the U.S. and that the individual meets the residency requirements of paragraph (c)(4) of this section.

(3) *Citizen of the U.S.* means any individual who acquires U.S. citizenship through birth in the territorial U.S., birth abroad as provided under title 8,