

§ 3.53

born to them before such marriage (see § 3.54(d)), and

(b) The claimant entered into the marriage without knowledge of the impediment, and

(c) The claimant cohabited with the veteran continuously from the date of marriage to the date of his or her death as outlined in § 3.53, and

(d) No claim has been filed by a legal surviving spouse who has been found entitled to gratuitous death benefits other than accrued monthly benefits covering a period prior to the veteran's death.

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

CROSS REFERENCE: Definition, marriage. See § 3.205(c).

[26 FR 1567, Feb. 24, 1961, as amended at 27 FR 1215, Feb. 9, 1962; 32 FR 13224, Sept. 19, 1967; 41 FR 18299, May 3, 1976]

§ 3.53 Continuous cohabitation.

(a) *General.* The requirement that there must be continuous cohabitation from the date of marriage to the date of death of the veteran will be considered as having been met when the evidence shows that any separation was due to the misconduct of, or procured by, the veteran without the fault of the surviving spouse. Temporary separations which ordinarily occur, including those caused for the time being through fault of either party, will not break the continuity of the cohabitation.

(b) *Findings of fact.* The statement of the surviving spouse as to the reason for the separation will be accepted in the absence of contradictory information. If the evidence establishes that the separation was by mutual consent and that the parties lived apart for purposes of convenience, health, business, or any other reason which did not show an intent on the part of the surviving spouse to desert the veteran, the continuity of the cohabitation will not be considered as having been broken. State laws will not control in determining questions of desertion; however, due weight will be given to findings of fact in court decisions made during the life of the veteran on issues

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subsequently involved in the application of this section.

[41 FR 18300, May 3, 1976, as amended at 59 FR 32659, June 24, 1994]

§ 3.54 Marriage dates.

A surviving spouse may qualify for pension, compensation, or dependency and indemnity compensation if the marriage to the veteran occurred before or during his or her service or, if married to him or her after his or her separation from service, before the applicable date stated in his section.

(a) *Pension.* Death pension may be paid to a surviving spouse who was married to the veteran:

(1) One year or more prior to the veteran's death, or

(2) For any period of time if a child was born of the marriage, or was born to them before the marriage, or

(3) Prior to the applicable delimiting dates, as follows:

(i) Civil War—June 27, 1905.

(ii) Indian wars—March 4, 1917.

(iii) Spanish-American War—January 1, 1938.

(iv) Mexican border period and World War I—December 14, 1944.

(v) World War II—January 1, 1957.

(vi) Korean conflict—February 1, 1965.

(vii) Vietnam era—May 8, 1985.

(viii) Persian Gulf War—January 1, 2001.

(Authority: 38 U.S.C. 532(d), 534(c), 536(c), 541(e), 541(f))

(b) *Compensation.* Death compensation may be paid to a surviving spouse who, with respect to date of marriage, could have qualified as a surviving spouse for death compensation under any law administered by the Department of Veterans Affairs in effect on December 31, 1957, or who was married to the veteran:

(1) Before the expiration of 15 years after termination of the period of service in which the injury or disease which caused the veteran's death was incurred or aggravated, or

(2) One year or more, or

(3) For any period of time if a child was born of the marriage, or was born to them before the marriage.

(Authority: 38 U.S.C. 1102)