

### § 3.153

### 38 CFR Ch. I (7-1-08 Edition)

with the Commissioner of Social Security, as prescribed by § 3.153) must be filed in order for death benefits to be paid to any individual under the laws administered by VA. (See § 3.400(c) concerning effective dates of awards.)

(Authority: 38 U.S.C. 5101(a))

(b)(1) A claim by a surviving spouse or child for compensation or dependency and indemnity compensation will also be considered to be a claim for death pension and accrued benefits, and a claim by a surviving spouse or child for death pension will be considered to be a claim for death compensation or dependency and indemnity compensation and accrued benefits.

(Authority: 38 U.S.C. 5101(b)(1))

(2) A claim by a parent for compensation or dependency and indemnity compensation will also be considered to be a claim for accrued benefits.

(Authority: 38 U.S.C. 5101(b)(2))

(c)(1) Where a child's entitlement to dependency and indemnity compensation arises by reason of termination of a surviving spouse's right to dependency and indemnity compensation or by reason of attaining the age of 18 years, a claim will be required. (38 U.S.C. 5110(e).) (See paragraph (c)(4) of this section.) Where the award to the surviving spouse is terminated by reason of her or his death, a claim for the child will be considered a claim for any accrued benefits which may be payable.

(2) A claim filed by a surviving spouse who does not have entitlement will be accepted as a claim for a child or children in her or his custody named in the claim.

(3) Where a claim of a surviving spouse is disallowed for any reason whatsoever and where evidence requested in order to determine entitlement from a child or children named in the surviving spouse's claim is submitted within 1 year from the date of request, requested either before or after disallowance of the surviving spouse's claim, an award for the child or children will be made as though the disallowed claim had been filed solely on their behalf. Otherwise, payments may not be made for the child or chil-

dren for any period prior to the date of receipt of a new claim.

(4) Where payments of pension, compensation or dependency and indemnity compensation to a surviving spouse have been discontinued because of remarriage or death, or a child becomes eligible for dependency and indemnity compensation by reason of attaining the age of 18 years, and any necessary evidence is submitted within 1 year from date of request, an award for the child or children named in the surviving spouse's claim will be made on the basis of the surviving spouse's claim having been converted to a claim on behalf of the child. Otherwise, payments may not be made for any period prior to the date of receipt of a new claim.

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

CROSS REFERENCES: State Department as agent of Department of Veterans Affairs. See § 3.108. Change in status of dependents. See § 3.651.

[50 FR 25981, June 24, 1985, as amended at 71 FR 44918, Aug. 8, 2006]

### § 3.153 Claims filed with Social Security.

An application on a form jointly prescribed by the Secretary and the Commissioner of Social Security filed with the Social Security Administration on or after January 1, 1957, will be considered a claim for death benefits, and to have been received in the Department of Veterans Affairs as of the date of receipt in Social Security Administration. The receipt of such an application (or copy thereof) by the Department of Veterans Affairs will not preclude a request for any necessary evidence.

(Authority: 38 U.S.C. 5105)

[26 FR 1570, Feb. 24, 1961, as amended at 71 FR 44918, Aug. 8, 2006]

### § 3.154 Injury due to hospital treatment, etc.

VA may accept as a claim for benefits under 38 U.S.C. 1151 and § 3.361 any communication in writing indicating an intent to file a claim for disability compensation or dependency and indemnity compensation under the laws governing entitlement to veterans' benefits for disability or death due to VA hospital care, medical or surgical

treatment, examination, training and rehabilitation services, or compensated work therapy program, whether such communication is contained in a formal claim for pension, compensation, or dependency and indemnity compensation or in any other document.

(Authority: 38 U.S.C. 1151)

CROSS REFERENCES: Effective dates. See § 3.400(i). Disability or death due to hospitalization, etc. See §§ 3.358, 3.361 and 3.800.

[69 FR 46432, Aug. 3, 2004]

### § 3.155 Informal claims.

(a) Any communication or action, indicating an intent to apply for one or more benefits under the laws administered by the Department of Veterans Affairs, from a claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not sui juris may be considered an informal claim. Such informal claim must identify the benefit sought. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the claimant for execution. If received within 1 year from the date it was sent to the claimant, it will be considered filed as of the date of receipt of the informal claim.

(b) A communication received from a service organization, an attorney, or agent may not be accepted as an informal claim if a power of attorney was not executed at the time the communication was written.

(c) When a claim has been filed which meets the requirements of § 3.151 or § 3.152, an informal request for increase or reopening will be accepted as a claim.

CROSS REFERENCES: State Department as agent of VA. See § 3.108. Report of examination or hospitalization—as claim for increase or to reopen. See § 3.157.

[26 FR 1570, Feb. 24, 1961, as amended at 52 FR 27340, July 21, 1987]

### § 3.156 New and material evidence.

(a) *General.* A claimant may reopen a finally adjudicated claim by submitting new and material evidence. New evidence means existing evidence not previously submitted to agency decisionmakers. Material evidence means

existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim.

(Authority: 38 U.S.C. 501, 5103A(f), 5108)

(b) *Pending claim.* New and material evidence received prior to the expiration of the appeal period, or prior to the appellate decision if a timely appeal has been filed (including evidence received prior to an appellate decision and referred to the agency of original jurisdiction by the Board of Veterans Appeals without consideration in that decision in accordance with the provisions of § 20.1304(b)(1) of this chapter), will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period.

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

(c) *Service department records.* (1) Notwithstanding any other section in this part, at any time after VA issues a decision on a claim, if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim, notwithstanding paragraph (a) of this section. Such records include, but are not limited to:

(i) Service records that are related to a claimed in-service event, injury, or disease, regardless of whether such records mention the veteran by name, as long as the other requirements of paragraph (c) of this section are met;

(ii) Additional service records forwarded by the Department of Defense or the service department to VA any time after VA's original request for service records; and

(iii) Declassified records that could not have been obtained because the records were classified when VA decided the claim.

(2) Paragraph (c)(1) of this section does not apply to records that VA