

children will be effective the day following the date of last payment to the veteran if a claim is received within 1 year after that date; otherwise from date of receipt of a claim. The total amount payable will be the lesser of these amounts:

(1) The service death pension rate if the veteran was receiving service pension or the improved death pension rate if the veteran was receiving section 306 or improved pension.

(2) The amount of pension payable to the veteran at the time of disappearance.

(Authority: 38 U.S.C. 1507)

[26 FR 1599, Feb. 24, 1961, as amended at 27 FR 11891, Dec. 1, 1962; 30 FR 6649, May 14, 1965; 40 FR 14313, Mar. 31, 1975; 44 FR 45942, Aug. 6, 1979]

§ 3.657 Surviving spouse becomes entitled, or entitlement terminates.

Where a surviving spouse establishes entitlement to pension, compensation, or dependency and indemnity compensation, an award to another person as surviving spouse, or for a child or children as if there were no surviving spouse will be discontinued or adjusted as provided in this section.

(a) *Surviving spouse's awards.* For periods on or after December 1, 1962, where a legal surviving spouse establishes entitlement after payments have been made to another person as surviving spouse, the full rate payable to the legal surviving spouse will be authorized effective the date of entitlement. Payments to the former payee will be discontinued as follows:

(1) Where benefits are payable to the legal surviving spouse from a date prior to the date of filing claim, the award to the former payee will be terminated the day preceding the effective date of the award to the legal surviving spouse.

(2) Where benefits are payable to the legal surviving spouse from the date of filing claim, the award to the former payee will be terminated effective the date of receipt of the claim or date of last payment, whichever is later.

(b) *Children's awards.* (1) Where a surviving spouse establishes entitlement and:

(i) Payments were being made for a child or children at a lower monthly

rate than that provided where there is a surviving spouse, the award to the surviving spouse will be effective the date provided by the applicable law, and will be the difference between the rate paid for the children and the rate payable for the surviving spouse and children. The full rate will be payable for the surviving spouse effective the day following the date of last payment for the children;

(ii) Payments were being made for a child or children at the same or higher monthly rate than that provided where there is a surviving spouse, the award to the surviving spouse will be effective the day following the date of last payment on the awards on behalf of the children.

(2) Where a surviving spouse has received benefits after entitlement was terminated and,

(i) The child or children were entitled to a lower monthly rate, the award to the surviving spouse will be amended to authorize payment at the rate provided for the children as if there were no surviving spouse, covering the period from the date the surviving spouse's entitlement terminated to the date of last payment. The award for the child or children will be made effective the following day.

(ii) The child or children were entitled to a higher monthly rate, the award to the surviving spouse will be discontinued effective date of last payment. The award to the children will be effective the day following the date the surviving spouse's entitlement terminated and will be the difference between the rate payable for the children and the rate paid on the surviving spouse's award. The full rate will be payable for the children effective the day following the date of last payment to the surviving spouse.

[39 FR 20204, June 7, 1974, as amended at 44 FR 45942, Aug. 6, 1979]

§ 3.658 Offsets; dependency and indemnity compensation.

(a) When an award of dependency and indemnity compensation is made covering a period for which death compensation or benefits under the Federal Employee's Compensation Act, based on military service, have been paid to the same payee based on the same