

§§ 3.705–3.706 [Reserved]

§ 3.707 Dependents' educational assistance.

(a) *Child.* The conditions applicable to the bar to payment of pension, compensation or dependency and indemnity compensation for a child concurrently with educational assistance allowance under 38 U.S.C. chapter 35 are set forth in § 21.3023 of this chapter.

(b) *Spouse or surviving spouse.* There is no bar to the payment of pension, compensation or dependency and indemnity compensation to a spouse concurrently with educational assistance allowance under 38 U.S.C. ch. 35.

CROSS REFERENCES: Discontinuance. See § 3.503(a)(8). Certification. See § 3.807.

[34 FR 840, Jan. 18, 1969, as amended at 41 FR 29120, July 15, 1976]

§ 3.708 Federal Employees' Compensation.

(a) *Military service*—(1) *Initial election.* Where a person is entitled to compensation from the Office of Workers' Compensation Programs, under the Federal Employees' Compensation Act (FECA) based upon disability or death due to service in the Armed Forces and is also entitled based upon service in the Armed Forces to pension, compensation or dependency and indemnity compensation under the laws administered by the Department of Veterans Affairs, the claimant will elect which benefit he or she will receive. Pension compensation, or dependency and indemnity compensation may not be paid in such instances by the Department of Veterans Affairs concurrently with compensation from the Office of Workers' Compensation Programs. Benefits are not payable by the Office of Workers' Compensation Programs for disability or death incurred on or after January 1, 1957, based on military service.

(2) *Right of reelection.* Persons receiving compensation from the Office of Workers' Compensation Programs based on death due to military service may elect to receive dependency and indemnity compensation at any time. Once payment of dependency and indemnity compensation has been granted, all further right to FECA benefits is extinguished and only dependency

and indemnity compensation is payable thereafter.

(3) *Rights of children.* Where primary title is vested in the surviving spouse, the claimant's election controls the rights of any of the veteran's children, regardless of whether they are in the claimant's custody and regardless of the fact that such children may not be eligible to receive benefits under laws administered by the Office of Workers' Compensation Programs. A child who is eligible for dependency and indemnity compensation or other benefits independent of the surviving spouse's entitlement may receive such benefits concurrently with payment of FECA benefits to the surviving spouse.

(4) *Entitlement based on 38 U.S.C. 1151.* The provisions of this paragraph are applicable also in those cases in which disability or death occurs as a result of having submitted to an examination, medical or surgical treatment, hospitalization or hospital care, training, or compensated work therapy program. See §§ 3.358 and 3.361.

(b) *Civilian employment*—(1) *Same disability or death.* Where a person is entitled to compensation from the Office of Workers' Compensation Programs based upon civilian employment and is also entitled to compensation or dependency and indemnity compensation under laws administered by the Department of Veterans Affairs for the same disability or death, the claimant will elect which benefit he or she will receive. On or after September 13, 1960, an award cannot be approved for payment of compensation or dependency and indemnity compensation concurrently with compensation from the Office of Workers' Compensation Programs in such instances and an election to receive benefits from either agency is final. See § 3.958. There is no right of reelection. (5 U.S.C. 8116(b)) A child who is eligible for dependency and indemnity compensation or other benefits independent of the surviving spouse's entitlement may receive such benefits concurrently with payment of FECA benefits to the surviving spouse.

(2) *Not the same disability or death.* There is no prohibition against payment of benefits under the Federal Employees' Compensation Act concurrently with other benefits administered

§ 3.710

by the Department of Veterans Affairs when such benefits are not based on the same disability or death.

[39 FR 18099, May 23, 1974, as amended at 41 FR 29120, July 15, 1976; 44 FR 45943, Aug. 6, 1979; 69 FR 46435, Aug. 3, 2004]

§ 3.710 Civil service annuitants.

Department of Veterans Affairs benefits may be paid concurrently with civil service retirement benefits. However, payments will be considered income as provided in § 3.262 (e) and (h).

[29 FR 15208, Nov. 11, 1964]

§ 3.711 Improved pension elections.

Except as otherwise provided by this section and § 3.712, a person entitled to receive section 306 or old-law pension on December 31, 1978, may elect to receive improved pension under the provisions of 38 U.S.C. 1521, 1541, or 1542 as in effect on January 1, 1979. Except as provided by § 3.714, an election of improved pension is final when the payee (or the payee's fiduciary) negotiates one check for this benefit and there is no right to reelection. Any veteran eligible to make an election under this section who is married to a veteran who is also eligible to make such an election may not receive improved pension unless the veteran's spouse also elects to receive improved pension.

(Authority: Sec. 306(a)(1) of Pub. L. 95-588, 92 Stat. 2497)

[46 FR 11661, Feb. 10, 1981]

§ 3.712 Improved pension elections; surviving spouses of Spanish-American War veterans.

(a) *General.* A surviving spouse of a Spanish-American War veteran eligible for pension under 38 U.S.C. 1536 may elect to receive improved pension under 38 U.S.C. 1541. Except as provided by § 3.714, an election of improved pension is final when the payee (or the payee's fiduciary) negotiates one check for this benefit and there is no right of reelection.

(b) *Aid and attendance.* A surviving spouse of a Spanish-American War veteran who is receiving or entitled to receive pension based on need for regular aid and attendance shall be paid whichever is the greater: The monthly rate authorized by 38 U.S.C. 1536 (a) and (b)

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

and 1544 or the monthly rate authorized by 38 U.S.C. 1541 and 544, as 38 U.S.C. 1541 and 1544 were in effect on December 31, 1978, based on the surviving spouse's current income and net worth. Pension under 38 U.S.C. 1541 and 1544, as in effect on December 31, 1978, is not payable if the current size of the surviving spouse's net worth is a bar to payment under § 3.252(b) or if the surviving spouse's income exceeds the applicable limitation as in effect on December 31, 1978. Elections are not required for this purpose. The change in rate shall be effective the first day of the month in which the facts warrant such change.

(Authority: 38 U.S.C. 1536)

[44 FR 45943, Aug. 6, 1979, as amended at 46 FR 11661, Feb. 10, 1981; 61 FR 67950, Dec. 26, 1996]

§ 3.713 Effective dates of improved pension elections.

(a) *General.* Except as provided in paragraph (b) of this section an election to receive improved pension shall be effective the date of receipt of the election.

(b) *Persons entitled to pension on December 31, 1978.* The effective date of an election to receive improved pension filed before October 1, 1979, by a person entitled to receive either old-law pension or section 306 pension on December 31, 1978, shall be January 1, 1979, or if to the beneficiary's advantage, at any date after January 1, 1979, and before October 1, 1979. The amount of improved pension payable from the effective date of the election shall be reduced by the amount of old-law pension or section 306 pension paid to the beneficiary for such period.

(Authority: Sec. 306(d) of Pub. L. 95-588, 92 Stat. 2497).

[44 FR 45944, Aug. 6, 1979]

§ 3.714 Improved pension elections—public assistance beneficiaries.

(a) *Definitions.* The following definitions are applicable to this section.

(1) *Pensioner.* This means a person who was entitled to section 306 or old-law pension, or a dependent of such a person for the purposes of chapter 15 of title 38, United States Code as in effect on December 31, 1978.