

### § 3.904

(2) In title 18 U.S.C., sections 175, 229, 831, 1091, 2332a, and 2332b, for claims filed on or after December 17, 2003.

(3) In the Uniform Code of Military Justice, Articles 94, 104 and 106 (10 U.S.C. 894, 904, and 906);

(4) In the following sections of the Atomic Energy Act of 1954: Sections 222 through 226 (42 U.S.C. 2272-2276); and

(5) In section 4 of the Internal Security Act of 1950 (50 U.S.C. 783).

(b) *Effect on claim.* (1) Any person who is convicted after September 1, 1959, of subversive activities shall from and after the date of commission of such offense have no right to gratuitous benefits (including the right to burial in a national cemetery) under laws administered by the Department of Veterans Affairs based on periods of military, naval, or air service commencing before the date of the commission of such offense and no other person shall be entitled to such benefits on account of such person.

(2) The Attorney General will notify the Department of Veterans Affairs in each case in which a person is indicted or convicted of an offense listed in paragraphs (a)(1), (3), and (4) of this section. The Secretary of Defense or the Secretary of the Treasury, as may be appropriate, will notify the Department of Veterans Affairs in each case in which a person is convicted of an offense listed in paragraph (a)(2) of this section.

(c) *Presidential pardon.* Where any person whose right to benefits has been so terminated is granted a pardon of the offense by the President of the United States, the right to such benefits shall be restored as of the date of such pardon, if otherwise eligible.

(Authority: 38 U.S.C. 6105)

[27 FR 8591, Aug. 28, 1962, as amended at 38 FR 4511, Feb. 15, 1973; 38 FR 30106, Nov. 1, 1973; 53 FR 17934, May 19, 1988; 71 FR 44919, Aug. 8, 2006]

### § 3.904 Effect of forfeiture after veteran's death.

(a) *Fraud.* Whenever a veteran has forfeited his or her right by reason of fraud, his or her surviving dependents upon proper application may be paid pension, compensation, or dependency and indemnity compensation, if otherwise eligible. No benefits are payable

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to any person who participated in the fraud causing the forfeiture.

(Authority: 38 U.S.C. 6103(c))

(b) *Treasonable acts.* Death benefits may be paid as provided in paragraph (a) of this section where forfeiture by reason of a treasonable act was declared before September 2, 1959, and such benefits were authorized prior to that date. Otherwise, no award of gratuitous benefits (including the right to burial in a national cemetery) may be made to any person based on any period of service commencing before the date of commission of the offense which resulted in the forfeiture.

(Authority: 38 U.S.C. 6104(c))

(c) *Subversive activities.* Where the veteran was convicted of subversive activities after September 1, 1959, no award of gratuitous benefits (including the right to burial in a national cemetery) may be made to any person based on any period of service commencing before the date of commission of the offense which resulted in the forfeiture unless the veteran had been granted a pardon of the offense by the President of the United States. If pardoned, the veteran's surviving dependents upon proper application may be paid pension, compensation or dependency and indemnity compensation, if otherwise eligible, and the right to burial in a national cemetery is restored.

(Authority: 38 U.S.C. 6105(a))

[27 FR 8591, Aug. 28, 1962, as amended at 38 FR 30106, Nov. 1, 1973; 39 FR 13970, Apr. 19, 1974; 53 FR 16924, May 19, 1988]

### § 3.905 Declaration of forfeiture or remission of forfeiture.

(a) *Jurisdiction.* At the regional office level, except in VA Regional Office, Manila, Philippines, the Regional Counsel is authorized to determine whether the evidence warrants formal consideration as to forfeiture. In the Manila Regional Office the Veterans Service Center Manager is authorized to make this determination. Submissions may also be made by the director of a service, the Chairman, Board of Veterans Appeals, and the General Counsel. Jurisdiction to determine