

### § 3.952

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

#### § 3.952 Protected ratings.

Ratings under the Schedule of Disability Ratings, 1925, which were the basis of compensation on April 1, 1946, are subject to modification only when a change in physical or mental condition would have required a reduction under the 1925 schedule, or an increased evaluation has been assigned under the Schedule for Rating Disabilities, 1945 (looseleaf edition), after which time all evaluations will be under the 1945 schedule (loose-leaf edition) only. Such increased evaluations must be of an other than temporary nature (due to hospitalization, surgery, etc.). When a temporary evaluation is involved, the 1925 schedule evaluation will be restored after the period of increase has elapsed unless the permanent residuals would have required reduction under that schedule, or unless an increased evaluation would be assignable under a 1945 schedule (looseleaf edition) rating. In any instance where the changed condition represents an increased degree of disability under either rating schedule but the evaluation provided by the 1945 schedule (looseleaf edition) is less than the evaluation in effect under the 1925 schedule on April 1, 1946, the 1925 schedule evaluation and award are protected.

[26 FR 12766, Dec. 30, 1961]

#### § 3.953 Pub. L. 85-56 and Pub. L. 85-857.

(a) *In receipt of or entitled to receive benefits on December 31, 1958.* Any person receiving or entitled to receive benefits under any public law administered by the Department of Veterans Affairs on December 31, 1958, may, except where there was fraud, clear and unmistakable error of fact or law, or misrepresentation of material facts, continue to receive such benefits as long as the conditions warranting such payment under those laws continue. The greater benefit under the previous law or the corresponding section of title 38 U.S.C., will be paid in the absence of an election to receive the lesser benefit.

(Authority: Section 10, Pub. L. 85-857)

(b) *Emergency officers' retirement pay.* Any person who was receiving, or entitled to receive, emergency officers' re-

tirement pay, or other privileges or benefits as a retired emergency officer of World War I, on December 31, 1958, under the laws in effect on that day, will, except where there was fraud, clear and unmistakable error as to conclusion of fact or law, or misrepresentation of material facts, continue to receive, or be entitled to receive, emergency officers' retirement pay at the rate otherwise payable on December 31, 1958, and such other privileges and benefits, so long as the conditions warranting such pay, privileges, and benefits under those laws continue.

(Authority: Section 11, Pub. L. 85-857)

(c) *Service connection established under prior laws.* In the absence of fraud, misrepresentation of material facts or clear and unmistakable error, all cases where compensation was payable on December 31, 1957, for disability service connected under prior laws, repealed by Pub. L. 85-56, including those service connected under the second proviso of section 200 of the World War Veterans' Act, 1924, as amended, are protected by section 2316(b), Pub. L. 85-56 and section 10, Pub. L. 85-857 as to both service connection and rate of compensation, so long as the conditions warranting such status and rate continue. Any disability so service connected may be evaluated under the Schedule for Rating Disabilities, 1945 (looseleaf edition) and benefits awarded on the basis thereof, as well as special monthly compensation under 38 U.S.C. 1114, provided such action results in compensation payable at a rate equal to or higher than that payable on December 31, 1957. Where a changed physical condition warrants reevaluation of service-connected disabilities, compensation will be awarded under the provisions of 38 U.S.C. 1114.

[26 FR 1608, Feb. 24, 1961, as amended at 26 FR 8561, Sept. 13, 1961; 26 FR 12766, Dec. 30, 1961]

#### § 3.954 Burial allowance.

When any person who had a status under any law in effect on December 31, 1957, which afforded entitlement to burial benefits dies, the burial allowance will be paid, if otherwise in order, even though such status does not meet

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the service requirements of 38 U.S.C. ch. 23.

(Authority: 38 U.S.C. 2305)

[26 FR 1608, Feb. 24, 1961]

### §§ 3.955–3.956 [Reserved]

#### § 3.957 Service connection.

Service connection for any disability or death granted or continued under title 38 U.S.C., which has been in effect for 10 or more years will not be severed except upon a showing that the original grant was based on fraud or it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge. The 10-year period will be computed from the effective date of the Department of Veterans Affairs finding of service connection to the effective date of the rating decision severing service connection, after compliance with § 3.105(d). The protection afforded in this section extends to claims for dependency and indemnity compensation or death compensation.

(Authority: 38 U.S.C. 1159)

[33 FR 15286, Oct. 15, 1968]

#### § 3.958 Federal employees' compensation cases.

Any award approved prior to September 13, 1960, authorizing Department of Veterans Affairs benefits concurrently with an award of benefits under the Federal Employees' Compensation Act based on a finding that the same disability or death was due to civilian employment is not affected by the prohibition against concurrent awards contained in 5 U.S.C. 8116(b).

[41 FR 20408, May 18, 1976]

#### § 3.959 Tuberculosis.

Any veteran who, on August 19, 1968, was receiving or entitled to receive compensation for active or inactive (arrested) tuberculosis may receive compensation under 38 U.S.C. 1114(q) and 1156 as in effect before August 20, 1968.

(Authority: Pub. L. 90-493; 82 Stat. 809)

[33 FR 16275, Nov. 6, 1968]

#### § 3.960 Section 306 and old-law pension protection.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, any person eligible to elect improved pension under § 3.711 or 3.712 who is in receipt of section 306 or old-law pension on December 31, 1978, shall in the absence of an election to receive improved pension, continue to receive such pension at the monthly rate payable on December 31, 1978.

(b) *Termination.* Pension payable under paragraph (a) of this section shall be terminated for any one of the following reasons:

(1) A veteran pensioner ceases to be permanently and totally disabled.

(2) A surviving spouse pensioner ceases to meet the definition of *surviving spouse* in 38 U.S.C. 101(3).

(3) A child pensioner ceases to meet the definition of *child* in 38 U.S.C. 101(4).

(4) A section 306 pensioner's countable annual income, determined under §§ 3.250 to 3.270, exceeds the applicable amount stated in § 3.26(a).

(5) An old-law pensioner's countable annual income determined under §§ 3.250 to 3.270 exceeds the applicable amount stated in § 3.26(c).

(6) A section 306 pensioner has a net worth of such size that it is reasonable that some part of it be consumed for the pensioner's maintenance. Evaluation of net worth shall be made under § 3.263.

(c) *Reduction.* The pension rate payable under paragraph (a) of this section shall be reduced by the amount of any additional pension payable by reason of a dependent upon the loss of such dependent. A veteran or surviving spouse who no longer has any dependents shall not continue to receive either section 306 pension or old-law pension if countable annual income exceeds the appropriate rate in § 3.26(a), (b), or (c).

(d) *Finality of termination.* Termination of section 306 pension or old-law pension for one of the reasons listed in paragraph (b) of this section precludes a person from thereafter establishing entitlement under any other pension