

Department of Veterans Affairs

§ 3.42

CROSS REFERENCE: Computation of service. See § 3.15.

[26 FR 1565, Feb. 24, 1961, as amended at 31 FR 14454, Nov. 10, 1966; 60 FR 18355, Apr. 11, 1995. Redesignated and amended at 66 FR 66767, Dec. 27, 2001]

§ 3.41 Philippine service.

(a) For a Regular Philippine Scout or a member of one of the regular components of the Philippine Commonwealth Army while serving with Armed Forces of United States, the period of active service will be from the date certified by the Armed Forces as the date of enlistment or date of report for active duty whichever is later to date of release from active duty, discharge, death, or in the case of a member of the Philippine Commonwealth Army June 30, 1946, whichever was earlier. Release from active duty includes:

(1) Leaving one's organization in anticipation of or due to the capitulation.

(2) Escape from prisoner-of-war status.

(3) Parole by the Japanese.

(4) Beginning of missing-in-action status, except where factually shown at that time he was with his or her unit or death is presumed to have occurred while carried in such status: *Provided, however,* That where there is credible evidence that he was alive after commencement of his or her missing-in-action status, the presumption of death will not apply for Department of Veterans Affairs purposes.

(5) Capitulation on May 6, 1942, except that periods of recognized guerrilla service or unrecognized guerrilla service under a recognized commissioned officer or periods of service in units which continued organized resistance against Japanese prior to formal capitulation will be considered return to active duty for period of such service.

(b) Active service of a Regular Philippine Scout or a member of the Philippine Commonwealth Army serving with the Armed Forces of the United States will include a *prisoner-of-war* status immediately following a period of active duty, or a period of recognized guerrilla service or unrecognized guerrilla service under a recognized commissioned officer. In those cases where following release from active duty as

set forth in paragraph (a) of this section, the veteran is factually found by the Department of Veterans Affairs to have been injured or killed by the Japanese because of anti-Japanese activities or his or her former service in the Armed Forces of the United States, such injury or death may be held to have been incurred in active service for Department of Veterans Affairs purposes. Determination shall be based on all available evidence, including service department reports, and consideration shall be given to the character and length of the veteran's former active service in the Armed Forces of the United States.

(c) A prisoner-of-war status based upon arrest during general zonification will not be sufficient of itself to bring a case within the definition of return to military control.

(d) The active service of members of the irregular forces *guerrilla* will be the period certified by the service department.

[26 FR 1566, Feb. 24, 1961, as amended at 26 FR 4612, May 26, 1961. Redesignated at 66 FR 66767, Dec. 27, 2001]

§ 3.42 Compensation at the full-dollar rate for certain Filipino veterans residing in the United States.

(a) *Definitions.* For purposes of this section:

(1) *United States* (U.S.) means the states, territories and possessions of the United States; the District of Columbia, and the Commonwealth of Puerto Rico.

(2) *Residing in the U.S.* means that an individual's principal, actual dwelling place is in the U.S. and that the individual meets the residency requirements of paragraph (c)(4) of this section.

(3) *Citizen of the U.S.* means any individual who acquires U.S. citizenship through birth in the territorial U.S., birth abroad as provided under title 8, United States Code, or through naturalization, and has not renounced his or her U.S. citizenship, or had such citizenship cancelled, revoked, or otherwise terminated.

(4) *Lawfully admitted for permanent residence* means that an individual has been lawfully accorded the privilege of residing permanently in the U.S. as an

immigrant by the U.S. Immigration and Naturalization Service under title 8, United States Code, such status not having changed.

(b) *Eligibility requirements.* Compensation is payable at the full-dollar rate based on service described in § 3.40(c) or (d) to a veteran who is residing in the United States (U.S.) and is either:

(1) A citizen of the U.S., or

(2) An alien lawfully admitted for permanent residence in the U.S.

(c) *Evidence of eligibility for full-dollar rate benefits.* (1) A valid original or copy of one of the following documents is required to prove that the veteran is a natural born citizen of the U.S.:

(i) A valid U.S. passport;

(ii) A birth certificate showing that he or she was born in the U.S.; or

(iii) A Report of Birth Abroad of a Citizen of the U.S. issued by a U.S. consulate abroad.

(2) Only verification by the U.S. Immigration and Naturalization Service to VA that a veteran is a naturalized citizen of the U.S. will be sufficient proof of such status.

(3) Only verification by the U.S. Immigration and Naturalization Service to VA that a veteran is an alien lawfully admitted for permanent residence in the U.S. will be sufficient proof of such status.

(4) VA will not pay benefits at the full-dollar rate under this section if the veteran's mailing address is a Post Office box, unless evidence from the U.S. Postal Service shows that it does not deliver mail to the veteran's street address. In order to pay benefits at the full-dollar rate, evidence (such as a driver's license, lease agreement, utility bills) must establish that the veteran is residing at a valid street address in the U.S. and receiving mail at that address.

(d) *Continued eligibility.* (1) In order to continue receiving benefits at the full-dollar rate under this section, a veteran must be physically present in the U.S. for at least 183 days of each calendar year in which he or she receives payments at the full-dollar rate, and may not be absent from the U.S. for more than 60 consecutive days at a time. However, if a veteran becomes eligible for full-dollar rate benefits on an initial basis, on or after July 1 of any

calendar year, the 183-day rule will not apply during that calendar year. VA will not consider a veteran to have been absent from the U.S. if he or she left and returned to the U.S. on the same date.

(2) A veteran receiving benefits at the full-dollar rate under this section must notify VA within 30 days of leaving the U.S. or within 30 days if he or she loses either his or her U.S. citizenship or lawful permanent resident alien status. When a veteran no longer meets the eligibility requirements of paragraph (a) of this section, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under the law, effective on the date determined under § 3.505. If such veteran regains his or her U.S. citizenship or lawful permanent resident alien status, VA will restore full-dollar rate benefits, effective the date the veteran meets the eligibility requirements in § 3.42.

(3) When requested to do so by VA, a veteran receiving benefits at the full-dollar rate under this section must verify that he or she continues to meet the residency and citizenship/permanent-resident-alien status requirements of paragraph (b). VA will advise the veteran at the time of the request that the verification must be furnished within 60 days and that failure to do so will result in the reduction of benefits. If the veteran fails to furnish the evidence within 60 days, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized, as provided in § 3.652.

(4) A veteran receiving benefits at the full-dollar rate under this section must promptly notify VA of any change of his or her address. If mail from VA to the veteran is returned to VA by the U.S. Postal Service, VA will reduce his or her payment to the rate of \$0.50 for each dollar authorized under law, effective on the date determined under § 3.505.

(e) *Effective date for restored eligibility.* In the case of a veteran receiving benefits at the full-dollar rate, if his or her payments are reduced to the rate of \$0.50 for each dollar authorized under the law, VA will resume payments at the full-dollar rate, if otherwise in order, effective the first day of the

month following the date on which he or she again meets the requirements. However, such increased payments will be retroactive no more than one year prior to the date on which VA receives evidence that he or she again meets the requirements. If payments are reduced based on an absence from the U.S. of 183 or more days during a calendar year, VA will not resume payments at the full-dollar rate before the first day of the following calendar year.

(Authority: 38 U.S.C. 107, 501(a))

[66 FR 66767, Dec. 27, 2001]

§ 3.43 Burial benefits at the full-dollar rate for certain Filipino veterans residing in the United States on the date of death.

(a) *Definitions.* For purposes of this section:

(1) *United States* (U.S.) means the states, territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) *Residing in the U.S.* means an individual's principal, actual dwelling place was in the U.S. When death occurs outside the U.S., VA will consider the deceased individual to have been residing in the U.S. on the date of death if the individual maintained his or her principal actual dwelling place in the U.S. until his or her most recent departure from the U.S., and he or she had been physically absent from the U.S. less than 61 consecutive days when he or she died.

(3) *Citizen of the U.S.* means any individual who acquires U.S. citizenship through birth in the territorial U.S., birth abroad as provided under title 8, United States Code, or through naturalization, and has not renounced his or her U.S. citizenship, or had such citizenship cancelled, revoked, or otherwise terminated.

(4) *Lawfully admitted for permanent residence* means that the individual was lawfully accorded the privilege of residing permanently in the U.S. as an immigrant by the U.S. Immigration and Naturalization Service, and on the date of death, still had this status.

(b) *Payment of burial benefits at the full-dollar rate.* VA will pay burial benefits under chapter 23 of title 38, United States Code, at the full-dollar rate,

based on service described in § 3.40(c) or (d), when an individual who performed such service dies after November 1, 2000, and was on the date of death:

- (1) Residing in the U.S.; and
- (2) Either—
 - (i) A citizen of the U.S., or
 - (ii) An alien lawfully admitted for permanent residence in the U.S.; and
- (3) Either—
 - (i) Receiving compensation under chapter 11 of title 38, United States Code; or
 - (ii) Would have satisfied the disability, income and net worth requirements of § 3.3(a)(3) of this part and would have been eligible for pension if the veteran's service had been deemed to be active military, naval, or air service.

(c) *Evidence of eligibility.* (1) In a claim for full-dollar rate burial payments based on the deceased veteran having been a natural born citizen of the U.S., a valid original or copy of one of the following documents is required:

- (i) A valid U.S. passport;
- (ii) A birth certificate showing that he or she was born in the U.S.; or
- (iii) A Report of Birth Abroad of a Citizen of the U.S. issued by a U.S. consulate abroad.

(2) In a claim based on the deceased veteran having been a naturalized citizen of the U.S., only verification of that status by the U.S. Immigration and Naturalization Service to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(3) In a claim based on the deceased veteran having been an alien lawfully admitted for permanent residence in the U.S., only verification of that status by the U.S. Immigration and Naturalization Service to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(4) In a claim for burial benefits at the full-dollar rate, evidence (which may include, for example, a driver's license, lease agreement or utility bills) must establish that the deceased veteran was, on the date of death, residing at a valid street address in the U.S.

(Authority: 38 U.S.C. 107, 501(a))

[66 FR 66767, Dec. 27, 2001]