

Department of Veterans Affairs

§3.213

the person whose death is being established, setting forth all the facts and circumstances concerning the death, place, date, time, and cause thereof.

(f) If proof of death, as defined in paragraphs (a) through (e) of this section cannot be furnished, a finding of fact of death, where death is otherwise shown by competent evidence, may be made by an official authorized to approve such findings. Where it is indicated that the veteran died under circumstances which precluded recovery or identification of the body, the fact of death should be established by the best evidence, which from the nature of the case must be supposed to exist.

(g) In the absence of evidence to the contrary, a finding of fact of death made by another Federal agency will be accepted for the purposes of paragraph (f) of this section.

CROSS REFERENCE: Evidence of dependents and age. See §3.204.

[26 FR 1573, Feb. 24, 1961, as amended at 27 FR 1899, Feb. 28, 1962; 52 FR 19349, May 22, 1987; 59 FR 46338, Sept. 8, 1994]

§3.212 Unexplained absence for 7 years.

(a) If satisfactory evidence is produced establishing the fact of the continued and unexplained absence of any individual from his or her home and family for a period of 7 years or more and that a diligent search disclosed no evidence of his or her existence after the date of disappearance, and if evidence as provided in §3.211 cannot be furnished, the death of such individual as of the expiration of such period may be considered as sufficiently proved.

(b) No State law providing for presumption of death will be applicable to claims for benefits under laws administered by the Department of Veterans Affairs and the finding of death will be final and conclusive except where suit is filed for insurance under 38 U.S.C. 1984.

(Authority: 38 U.S.C. 108)

(c) In the absence of evidence to the contrary, a finding of death made by another Federal agency will be accepted if the finding meets the requirements of paragraph (a) of this section.

CROSS REFERENCE: Evidence of dependents and age. See §3.204.

[26 FR 1573, Feb. 24, 1961, as amended at 27 FR 1899, Feb. 28, 1962; 52 FR 19349, May 22, 1987]

§3.213 Change of status affecting entitlement.

(a) *General.* For the purpose of establishing entitlement to a higher rate of pension, compensation, or dependency and indemnity compensation based on the existence of a dependent, VA will require evidence which satisfies the requirements of §3.204. For the purpose of reducing or discontinuing such benefits, a statement by a claimant or payee setting forth the month and year of change of status which would result in a reduction or discontinuance of benefits to that person will be accepted, in the absence of contradictory information. This includes:

(1) *Veteran.* A statement by the veteran setting forth the month and year of death of a spouse, child, or dependent parent.

(2) *Surviving spouse.* A statement by the surviving spouse or remarried surviving spouse setting forth the month and year of remarriage and any change of name. (An award for a child or children who are otherwise entitled may be made to commence the day following the date of discontinuance of any payments to the surviving spouse.)

(3) *Child.* A statement by the veteran or surviving spouse (where an additional allowance is being paid to the veteran or surviving spouse for a child), or fiduciary, setting forth the month and year of the child's death, marriage, or discontinuance of school attendance. A similar statement by a child who is receiving payments direct will be accepted to establish the child's marriage or the discontinuance of school attendance. Where appropriate, the month and year of discontinuance of school attendance will be required in addition to the month and year of death or marriage of a child.

(Authority: 38 U.S.C. 501)

(4) *Parent.* A statement by a parent setting forth the month and year:

- (i) Of marriage or remarriage;
- (ii) When two parents or a parent and spouse ceased living together;

§3.214

(iii) When two parents or a parent and spouse resumed living together following a period of separation;

(iv) Of divorce or death of a spouse.

(b) *Date not reported.* If the month and year of the event is not reported, the award will be reduced or discontinued, whichever is appropriate, effective date of last payment. The payee will be requested to furnish within 60 days from the date of request a statement setting forth the date of the event. Where payments are continued at a reduced rate, the award will be discontinued effective date of last payment if the required statement is not received within the 60-day period. Payments on a discontinued award may be resumed, if otherwise in order, from the date of discontinuance if the necessary information is received within 1 year from the date of request; otherwise from the date of receipt of a new claim.

(c) *Contradictory information.* Where there is reason to believe that the event reported may have occurred at an earlier date, formal proof will be required.

CROSS REFERENCES: Abandoned claims. See §3.158. Change in status of dependents. See §3.651. Material change in income, net worth or change in status. See §3.660. Evidence of dependents and age. See §3.204.

[26 FR 1574, Feb. 24, 1961, as amended at 27 FR 1899, Feb. 28, 1962; 27 FR 11888, Dec. 1, 1962; 52 FR 19349, May 22, 1987; 61 FR 56626, Nov. 4, 1996]

§3.214 Court decisions; unremarried surviving spouses.

Effective July 15, 1958, a decision rendered by a Federal court in an action to which the United States was a party holding that a surviving spouse of a veteran has not remarried will be followed in determining eligibility for pension, compensation or dependency and indemnity compensation.

CROSS REFERENCES: Abandoned claims. See §3.158. Change in status of dependents. See §3.651. Dependency, income and estate. See §3.660. Evidence of dependents and age. See §3.204.

[31 FR 2782, Feb. 16, 1966, as amended at 52 FR 19349, May 22, 1987]

38 CFR Ch. I (7-1-13 Edition)

§3.215 Termination of marital relationship or conduct.

On or after January 1, 1971, benefits may be resumed to an unmarried surviving spouse upon filing of an application and submission of satisfactory evidence that the surviving spouse has ceased living with another person and holding himself or herself out openly to the public as that person's spouse or that the surviving spouse has terminated a relationship or conduct which had created an inference or presumption of remarriage or related to open or notorious adulterous cohabitation or similar conduct, if the relationship terminated prior to November 1, 1990. Such evidence may consist of, but is not limited to, the surviving spouse's certified statement of the fact.

[57 FR 10426, Mar. 26, 1992, as amended at 58 FR 32445, June 10, 1993]

§3.216 Mandatory disclosure of social security numbers.

Any person who applies for or receives any compensation or pension benefit as defined in §§3.3, 3.4, or 3.5 of this part, or a monetary allowance under 38 U.S.C. chapter 18, shall, as a condition for receipt or continued receipt of benefits, furnish the Department of Veterans Affairs upon request with his or her social security number and the social security number of any dependent or beneficiary on whose behalf, or based upon whom, benefits are sought or received. However, no one shall be required to furnish a social security number for any person to whom none has been assigned. Benefits will be terminated if a beneficiary fails to furnish the Department of Veterans Affairs with his or her social security number or the social security number of any dependent or beneficiary on whose behalf, or based upon whom, benefits are sought or received, within 60 days from the date the beneficiary is requested to furnish the social security number.

(Authority: 38 U.S.C. 1832, 5101(c))

(Approved by the Office of Management and Budget under control number 2900-0522)

[57 FR 8268, Mar. 9, 1992, as amended at 57 FR 27935, June 23, 1992; 65 FR 35282, June 2, 2000; 67 FR 49586, July 31, 2002; 76 FR 4248, Jan. 25, 2011]