



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

January 27, 2009

Director (00/21)
All VA Regional Offices and Centers

Fast Letter 09-05

SUBJ: New Notice and Development Paragraphs for Dependency and Indemnity Compensation (DIC) Claims.

Purpose

The purpose of this letter is to provide information and guidance on the use of new “What The Evidence Must Show” (WTEMS) notice and development paragraphs for DIC claims in Modern Award Processing-Development (MAP-D).

All regional offices (ROs) and centers must use both the new WTEMS notice and the development paragraphs for original and reopened DIC claims. The Office of General Counsel approved the language contained in the new notice and paragraphs. Therefore, local changes are not permitted unless authorized by the Compensation and Pension (C&P) Service.

Background

In *Hupp v. Nicholson*, 21 Vet. App. 342 (2007), the United States Court of Appeals for Veterans Claims (the Court) held that when VA receives a detailed claim for DIC under 38 U.S.C. § 1310, it must provide a detailed notice to the claimant.

Specifically, the Court held that, under section 38 U.S.C. § 5103(a), the notice must include the following elements:

- A statement of the conditions, if any, for which a veteran was service connected at the time of death;
- An explanation of the evidence and information required to substantiate a DIC claim based on a previously service-connected condition; and
- An explanation of the evidence and information required to substantiate a DIC claim based on a condition not yet service connected.

Page 2.

Director (00/21)

New DIC “What The Evidence Must Show” Notice

The new WTEMS notice (see Enclosure A) combines the previous DIC notice language, one of the new *Hupp* requirements, and, although not required by the Court, language regarding DIC under 38 U.S.C. § 1318.

For all claims for DIC, replace the current WTEMS notice with the new notice. The new WTEMS notice may be copied or downloaded from the C&P Service Procedures website at <http://vbaw.vba.va.gov/bl/21/Products/index.htm>. We will update MAP-D at the earliest opportunity.

New DIC Development Paragraphs

Six new DIC development paragraphs were created to meet the Court’s requirements. They are listed in the charts in Enclosure B by their title and will be available in MAP-D as soon as possible. In deciding which chart to use, the VSR must first consider whether the veteran had any service-connected disability established before death. The appropriate paragraph is then selected from the chart based on the particular circumstances of the claim under review (e.g, a previously denied disability is claimed as cause of death). Place the selected paragraph in the duty-to-notify letter under the section titled, *What Do We Still Need From You?*

The VSR can find a list of all claimed conditions that were decided during the veteran’s lifetime on the coded page of the last rating decision or from such sources as the C&P Share Master Record Rating Data Screen or the Corporate Inquiry (Rating Information tab). Reasons for any prior denials of service connection may be found on the coded page or in the *Reasons for Decision* section of the applicable rating decision. All rating decisions since March 2007 are accessible in Virtual VA.

Questions

Questions about this fast letter should be e-mailed to VAVBAWAS/CO/212A.

/S/
Bradley G. Mayes
Director
Compensation and Pension Service

Enclosures

Enclosure A

What the Evidence Must Show for DIC Benefits

To support a claim for Dependency and Indemnity Compensation (DIC) benefits based on a service-connected disability established during the veteran's lifetime, the evidence must show:

- The veteran died while on active military service; **OR**
- The veteran had a service-connected disability(ies) that was either the principle or contributory cause of the veteran's death; **OR**
- The veteran died from a nonservice-connected injury or disease **AND** was receiving, or entitled to receive, VA compensation for a service-connected disability rated totally disabling
 - For at least 10 years immediately before death; **OR**
 - For at least 5 years after the veteran's release from active duty preceding death; **OR**
 - For at least 1 year before death, if the veteran was a former prisoner of war who died after September 30, 1999.

To support a claim for DIC benefits based on a disability that was not service connected or for which the veteran did not file a claim during his or her lifetime, the evidence must show:

- An injury or disease that was incurred or aggravated during active military service, or an event in service that caused an injury or disease; **AND**
- A physical or mental disability that was either the principle or contributory cause of death. This may be shown by medical evidence or by lay evidence of persistent and recurrent symptoms of disability that were visible or observable; **AND**
- A relationship between the disability associated with the cause of death and an injury, disease, or event in military service. Medical records or medical opinions are generally required to establish this relationship.

Enclosure B

New DIC Development Paragraphs

Veteran had one or more S/C disabilities

| Scenario | Paragraph Title: Paragraph Text |
|---|--|
| No disability was claimed as the cause of death... | <i>DIC Disability Not Specified or DIC Disability Previously Granted-S/C:</i> During the veteran's lifetime, service connection was established for [<i>insert disability(ies)</i>]. In order to support your claim, you need to submit evidence that shows a service-connected disability was the primary or contributory cause of death. |
| S/C disability claimed as the cause of death... | <i>DIC Disability Not Specified or DIC Disability Previously Granted-S/C:</i> During the veteran's lifetime, service connection was established for [<i>insert disability(ies)</i>]. In order to support your claim, you need to submit evidence that shows a service-connected disability was the primary or contributory cause of death. |
| Previously denied disability claimed as the cause of death... | <i>DIC Disability Previously Denied-S/C:</i> During the veteran's lifetime, service connection was established for [<i>insert disability(ies)</i>]. We denied service connection for [<i>insert claimed cause of death</i>] because we did not have evidence of [<i>insert reason for denial</i>]. In order to support your claim, you need to submit evidence that shows a disability was incurred or aggravated during service and was the primary or contributory cause of death. |
| New disability (never rated) claimed as cause of death... | <i>DIC Disability Not Decided-S/C:</i> During the veteran's lifetime, service connection was established for [<i>insert disability(ies)</i>]. Service connection was not considered for [<i>insert claimed cause of death</i>]. In order to support your claim, you need to submit evidence that shows a disability was incurred or aggravated during service and was the primary or contributory cause of death. |

Enclosure B (cont'd)

Veteran had no S/C disabilities

| Scenario | Paragraph Title: Paragraph Text |
|---|--|
| No disability was claimed as the cause of death... | <i>DIC Disability Not Specified-No S/C:</i> During the veteran's lifetime, service connection was not established for any disability. In order to support your claim, you need to submit evidence that shows a disability was incurred or aggravated during service and was the primary or contributory cause of death. |
| Previously denied disability claimed as the cause of death... | <i>DIC Disability Previously Denied-No S/C:</i> During the veteran's lifetime, service connection was not established for any disability. We denied service connection for [<i>insert claimed cause of death</i>] because we did not have evidence of [<i>insert reason for denial</i>]. In order to support your claim, you need to submit evidence that shows a disability was incurred or aggravated during service and was the primary or contributory cause of death. |
| New disability (never rated) claimed as cause of death... | <i>DIC Disability Not Decided-No S/C :</i> During the veteran's lifetime, service connection was not considered for [<i>insert claimed cause of death</i>]. In order to support your claim, you need to submit evidence that shows a disability was incurred or aggravated during service and was the primary or contributory cause of death. |