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Chapter 3
BASIC ENTITLEMENT

3.01 Introduction

This chapter covers information related to basic entitlement and period of eligibility for a Veteran or Servicemember for the Department of Veterans Affairs (VA) Vocational Rehabilitation and Employment (VR&E) program and services. This chapter also provides the basis for establishing entitlement and eligibility to VR&E, or Chapter 31, benefits.

3.02 References and Resources

Laws:	38 United States Code (U.S.C.) 3103 38 U.S.C. 3104 Public Law (Pub. L.) 110-181, Fiscal Year 2008 National Defense Authorization Act (NDAA) Pub. L. 112-56, The Vow to Hire Heroes Act of 2011
Regulations:	38 Code of Federal Regulations (CFR) 21.40 38 CFR 21.41 38 CFR 21.42 38 CFR 21.44 38 CFR 21.45 38 CFR 21.46 38 CFR 21.47 38 CFR 21.48 38 CFR 21.73
VA Forms (VAF):	VAF 28-1900, Disabled Veterans Application for Vocational Rehabilitation

3.03 Responsibilities

a. Veterans Service Center (VSC)

The VSC makes the initial determination of a Veteran's or a Servicemember's eligibility to apply for Vocational Rehabilitation benefits by establishing service-connection for his/her disability and/or Memorandum Rating.

b. Vocational Rehabilitation and Employment (VR&E) Division

The VR&E Division makes the determination of a Veteran's or Servicemember's entitlement to Chapter 31 benefits based on his/her need for rehabilitation services due to an Employment Handicap (EH) or a Serious

Employment Handicap (SEH) that is caused by his/her service-connected disability.

3.04 Basic Entitlement to Vocational Rehabilitation Benefits and Services

Once a Veteran or a Servicemember is granted his/her service-connected disability rating, he/she must meet specific criteria for entitlement under one of the following conditions:

a. 20 Percent or more Service-Connected Disability (SCD) Rating

The Veteran must be granted a service-connected disability or combined service-connected disability rated 20 percent or more, and:

1. Must incur or aggravate a disability in active military service on or after September 16, 1940 and,

2. Must be determined by a Vocational Rehabilitation Counselor (VRC) to be in need of rehabilitation because of an EH.

b. 10 Percent SCD Rating

The Veteran must be granted a service-connected disability or combined service-connected disability rated 10 percent, and:

1. Must have incurred or aggravated the disability(ies) in active military service on or after September 16, 1940 and,

2. Must have been determined by a VRC to be in need of vocational rehabilitation services because of an SEH.

c. Memorandum Rating

A Servicemember, who is awaiting discharge form active military service, is hospitalized or receiving outpatient medical care, services or treatment for a disability, and:

1. Has been granted a temporary SCD or combined SCD rating with:

- At least 10 percent compensable and he/she originally applied for Chapter 31 benefits after March 31, 1981 and before November 1, 1990 or,

- At least 20 percent compensable and he/she originally applied for Chapter 31 benefits after November 1, 1990 and,

2. Has been determined by a VRC to be in need of rehabilitation because he/she meets the criteria for an EH.

d. Basic Eligibility and Entitlement for Severely Injured or Ill Servicemembers

Pub. L. 110-181 was enacted to provide automatic entitlement for Chapter 31 benefits to Servicemembers who are awaiting discharge due to a medical condition resulting from a serious injury or illness that occurred during active duty. Basic eligibility is based on documentation from military service and not based on the establishment of a VA disability rating or Memorandum Rating. This entitlement is established without meeting the requirement for the existence of an EH. See section 3.08 of this chapter for more specific information on this issue.

3.05 Basic Period of Eligibility

a. Time Limit for Eligibility to Receive Vocational Rehabilitation

The time limit for a Veteran's eligibility to receive VR&E benefits and services is limited to a 12-year period. This period begins on the date of the Veteran's discharge or release from his/her active military service, and ends after 12 years.

b. Deferral and Extension of the Basic Period of Eligibility

The deferral or extension of a Veteran's period of eligibility is determined by a VRC. The VRC must clearly explain and document the rationale for the decision on VAF 28-1902n, Counseling Narrative. The completed form must be filed on the right side of the Veteran's Counseling/Evaluation/Rehabilitation (CER) folder.

In addition, the VR&E Officer must provide concurrence for the decision to defer or to extend a Veteran's basic period of eligibility in writing. This documentation must also be filed on the right side of the Veteran's CER folder.

1. Deferral

The beginning date of a Veteran's basic period of eligibility may be deferred only when the Veteran is prevented from starting or continuing a Vocational Rehabilitation program under one of the following circumstances:

(a) Compensable SCD cannot be Established

A Veteran's basic period of eligibility cannot be established until the Veteran or Servicemember is notified of a rating decision for a compensable service-connected disability or combined service-connected disability rated 10 percent or more. The eligibility period begins on the day the VA notifies him/her of the rating decision.

(b) Character of Discharge is a Bar to Benefits

A Veteran's basic period of eligibility cannot begin if he/she does not meet the requirement of other than dishonorable discharge or release, and his/her character of discharge is considered to be a bar to benefits.

In this instance, a Veteran's period of eligibility may begin only under one of the following conditions:

(1) The character of the discharge or release has been changed by the appropriate authority.

(2) VA determines that the discharge or release is no longer a bar to benefits.

The beginning date of a Veteran's basic eligibility, if his/her character of discharge is no longer a bar to benefits, is the effective date of VA's determination or change in the character of discharge. (38 CFR 21.42(b)(2))

(c) Participation is Prevented by Medical Conditions

A Veteran's basic period of eligibility cannot begin if a VRC determines that the Veteran's participation in a Vocational Rehabilitation program is currently infeasible for 30 days or more because of any medical condition(s). The condition may also consist of the disabling effects of chronic alcoholism. These disabling effects include alcohol-induced physical or psychological disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, etc. These conditions must be diagnosed as a result of alcohol dependence or continual alcohol abuse.

The Veteran's basic period of eligibility commences on the date the VRC determines and notifies the Veteran in writing that his/her participation in a Vocational Rehabilitation program is currently feasible, or the Veteran is now able to pursue a rehabilitation goal.

2. Extension

The ending date of a Veteran's period of eligibility may be extended. However, this can only be completed if one of the following conditions exists:

(a) Severe Medical Condition

A VRC may extend a Veteran's period of eligibility if the Veteran has been diagnosed with a severe physical or psychological condition that prevents him/her from beginning or continuing to participate in a Vocational Rehabilitation program. This includes the conditions cited at 3.05.b.1(c) of this chapter.

(b) Serious Employment Handicap (SEH)

A VRC may extend a Veteran's period of eligibility if the Veteran has been determined to have an SEH and will require additional time and extensive services to overcome the significant impairment of his/her employability. In addition, the VRC determines the length of the eligibility extension.

(c) Program of Independent Living (IL) Services

A VRC may extend a Veteran's period of eligibility for a Veteran who is receiving IL services or assistance if the VRC determines that an extension of his/her eligibility period is necessary to achieve or maximize his/her independence in daily living.

(d) Recall to Active Duty

A VRC may extend a Veteran's basic period of eligibility if a Veteran has been recalled to active duty while participating in a vocational rehabilitation program. The extension of the period will include the length of time that he/she serves in active duty, plus four additional months.

3. Servicemembers Entitled to VR&E Services Before Discharge

A Servicemember who is found entitled to services prior to his/her discharge from active duty may receive Vocational Rehabilitation services, but his/her period of basic eligibility begins on the date of his/her discharge from active military service. The requirements for the basic period of eligibility do not apply to the administration of Vocational Rehabilitation benefits while the Veteran is on active duty.

3.06 Eligibility for Employment Assistance

The periods during which a Veteran may receive employment assistance are not subject to the required eligibility period, as described in 38 CFR 21.41 through 21.45. However, entitlement to employment assistance is limited to a total of 18 months of employment services, as described in 38 CFR 21.73. This means that although a Veteran has exhausted 48 months of his/her entitlement, he/she may continue to receive employment services. However, the period of employment services must not exceed a total of 18 months.

The period in which an employer hires a Veteran through the Special Employer Incentives (SEI) program is not subject to the eligibility period or the 48-month entitlement. Additionally, the period under which SEI is provided does not count toward the 18-month limitation on the duration of employment services. The VRC must clearly document the SEI period in the Corporate WINRS (CWINRS) Notes to ensure that entitlement and period of employment services are accurately recorded and administered.

3.07 Changes in Service Connection

Specific changes in a Veteran's rating decision will impact his/her entitlement to Vocational Rehabilitation assistance. The VRC must take necessary actions when one of the following changes occurs:

a. Severance of the SCD

A Veteran's participation in a rehabilitation program will be terminated in the instance that his/her SCD rating has been severed. The case manager must terminate the Veteran's Vocational Rehabilitation benefits effective the last day of the month that the service-connection of the Veteran's disability is severed.

b. Reduction of SCD to a Non-Compensable Disability

When a Veteran's rating has been reduced to non-compensable or 0 percent while he/she is participating in a Vocational Rehabilitation program, the Veteran may continue to participate until he/she completes the program. However, if a Veteran's case has been placed in Discontinued (DIS) status prior to completion of his/her program and the Veteran reapplies, he/she may not reenter the program.

c. Reduction or Severance of SCD while in Applicant or Evaluation and Planning Status

When a Veteran's SCD rating is severed or reduced to non-compensable while his/her case remains in Applicant (APP) status or Evaluation and Planning

(EP) status, the case manager must terminate all processes effective immediately and deny his/her application. The case manager must send a notification letter informing the Veteran and his/her designated representative that processing of his/her application has been terminated.

3.08 Entitlement Determination for Servicemembers with Severe Injury or Illness

a. Background

On January 28, 2008, Section 1631 (b)(1) of the National Defense Authority Act (NDAA) for 2008 (Pub. L. 110-181) enacted the following provisions:

"A member of the Armed Forces with a severe injury or illness is entitled to such benefits (including rehabilitation and vocational benefits, but not including compensation) from the Secretary of Veterans Affairs to facilitate the recovery and rehabilitation of such member as the Secretary otherwise provides to Veterans of the Armed Forces receiving medical care in medical facilities of the Department of Veterans Affairs facilities in order to facilitate the recovery and rehabilitation of such members."

The term "serious injury or illness" in the case of a member of the Armed Forces, is defined as an injury or illness incurred in the line of duty in the Armed Forces that may render him/her medically unfit to perform the duties of his/her office, grade, rank or rating.

The provisions for this enactment were set to expire on December 31, 2012. However, Section 231 of Pub. L. 112-56, enacted on November 21, 2011, extended the sunset date of these severely injured or ill Servicemembers' entitlement to Vocational Rehabilitation services until December 31, 2014.

b. Application and Qualifying Documentation

A Servicemember may apply and qualify for automatic entitlement under provisions of the NDAA. Entitlement under Public Law 110-181 is based on the receipt of VAF 28-1900, qualifying documentation, and attendance of the initial evaluation with the VRC. VA will accept documentation of referral to a military Physical Evaluation Board (PEB) as acceptable qualifying documentation. It is important to note that documentation to a PEB should be available for each Servicemember who is currently enrolled in the Integrated Disability Evaluation System (IDES).

VA will also accept a completed Military Service Status Referral (MSSR) as quality documentation. See Appendix AT for a copy of the MSSR. Department of Defense (DoD) personnel may complete the MSSR to refer severely ill or injured Servicemembers who are participating in the Education

and Employment Initiative (E2I), and have not been referred to a PEB, or are not enrolled in IDES.

VA will also accept proof of participation in IDES as qualifying documentation. The VRC can obtain this information via the IDES flash screen in SHARE.

Applications and qualifying information may be submitted by PEBLOs, community based health care organizations, E2I personnel, and other referrals sources, such as VA Polytrauma Centers. It is important to note that service treatment records are not necessary to establish entitlement for VR&E services if the Servicemember is enrolled in the IDES program, or if the VRC has the PEB referral or a completed MSSR.

c. Eligibility and Entitlement Information

Eligibility and entitlement to Chapter 31 services for these Servicemembers is automatically established when all the following actions occur:

- VA receives VAF 28-1900, and
- The Servicemember reports for the initial appointment, and
- VA is in receipt of appropriate qualifying documentation.

The Servicemember is entitled to the full range of services under Chapter 31, except for payment of a subsistence allowance while the Servicemember remains on active duty. If determination results in a Servicemember's need for a program of IL, only a program of IL services focusing on the transition from military to civilian life may be provided while he/she remains on active duty.

It is important to note that if the Servicemember separates from the military prior to reporting for the initial appointment with VR&E, then the individual may not be found eligible and entitled under NDAA. In these instances, the VRC must make the eligibility and entitlement determination in the same manner as for any other Veteran applicant.

d. Required Documentation

Although eligibility and entitlement for Servicemembers is automatically established per NDAA, the VRC must provide the Servicemember with a comprehensive initial evaluation, as outlined in M28R.IV.B.2. This evaluation will assist in identifying functional abilities/limitations, identify all employment handicaps, and address the feasibility of achieving a vocational goal.

The VRC must document the results of the initial evaluation on VAF 28-1902b, Counseling Narrative. The VRC will include the following statement on VAF 28-1902b:

"Based on documentation filed in the Counseling/Evaluation/Rehabilitation (CER) folder, (list qualifying documentation), the applicant has established eligibility and entitlement to chapter 31 services effective xx/xx/xxxx in accordance with PL 110-181 as extended by PL 112-56. Therefore, the usual determinations are not necessary to establish entitlement. However, the initial evaluation will be completed to assess impairment(s) to employability and to determine Employment Handicap, Serious Employment Handicap, and feasibility of achieving a vocational goal. These decisions will be the basis for rehabilitation planning regarding the type and extent of services available to, and most appropriate for, the applicant."

e. Outcome of PEB

The continued delivery of services to Servicemembers found entitled under NDAA is dependent upon the outcome of the PEB.

1. Unfit for Duty

If the Servicemember is found unfit for duty, he/she will be released from the military, thus assuming Veteran status. In these instances, if the Servicemember is receiving services under a signed rehabilitation plan prior to assuming Veteran status, then services can continue under that plan until the completion of the plan, either by the determination of rehabilitation or discontinuance, regardless of VA disability rating.

2. Fit for Duty

If a Servicemember is retained in the military, either by mutual agreement or by being determined fit for duty following the PEB process, he/she may not continue to receive services under Chapter 31, except for employment services needed to ensure adjustment to the military occupation. Following the determination that the Servicemember will remain on active duty, the VRC must provide due process and move the Servicemember's case to rehabilitated or discontinued status, as appropriate. The criteria for rehabilitation at closure would be met only if VR&E services helped the individual remain in a suitable job in the military by overcoming the impairment to employability.

Refer to M28R.V.A.7 for specific procedural guidance on the closure process.