

Chapter 4
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Chapter 4 GENERAL RULES OF EVIDENCE

4.01 Introduction

When a Veteran submits a claim for Chapter 31 benefits, the Vocational Rehabilitation Counselor (VRC) makes the determination for entitlement to the benefits. This chapter provides guidance for obtaining evidence necessary to make determinations for entitlement to benefits and services. Additionally, it provides definitions of terms used in applying for Department of Veterans Affairs (VA) benefits and timelines for submission of the required evidence.

4.02 References and Resources

Law: Rehabilitation Act of 1973 (Amended)

Regulations: 38 Code of Federal Regulations (CFR) 3.156
38 CFR 3.400
38 CFR 19.153
38 CFR 19.154
38 CFR 21.30
38 CFR 21.31
38 CFR 21.32
38 CFR 21.420

VA Forms (VAF): VAF 21-526, Veteran's Application for Compensation or Pension
VAF 28-1900, Disabled Veterans Application for Vocational Rehabilitation

Website: www.ebenefits.va.gov

4.03 Definition of Terms

The following are terms that are applicable in understanding the status of claims for Chapter 31 benefits:

a. Claim or Application

A claim or application refers to a formal or informal written communication requesting a determination of entitlement or potential entitlement to Chapter 31 benefits.

b. Formal Claim for Chapter 31

A formal claim for chapter 31 services is a specific claim in the form prescribed by VA to request a program of rehabilitation services or employment assistance.

The form used to establish a formal claim is VAF 28-1900 (see Appendix O, VA Forms). This form may be submitted in the following manner:

- Hard copy via personal or postal delivery
- Hard copy via Veterans Service Center or Vocational Rehabilitation and & Employment (VR&E) personnel from a Servicemember awaiting discharge and hospitalized in a military hospital or VA Medical Center (the application must be submitted with VAF 21-526, Veteran's Application for Compensation or Pension)
- Electronically via the Veterans Online Application (VONAPP) website or ebenefits at www.ebenefits.va.gov

c. Informal Claim for Chapter 31

Any written communication indicating intent to apply for rehabilitation services or employment assistance from a Veteran, a duly authorized representative, or a Member of Congress on behalf of a Veteran is considered an informal claim.

d. Original Claim

The first formal application submitted by the claimant is considered to be the original claim.

e. Pending Claim

An application, formal or informal, which is not a finally completed claim as defined below, is called a pending claim.

f. Duty to Assist

Duty to assist refers to the obligation to assist the Veteran obtain relevant records not currently in the custody of a federal department or agency, such as records from state or local governments, private medical providers, current or former employers, and other non-federal government resources. The records are necessary in developing evidence to support the Veteran for benefits when evidence of records is insufficient.

g. Finally Completed Claim

A finally completed claim is a claim that is determined allowed or disallowed by the office of jurisdiction. The decision becomes final one year after the date the Veteran is sent notification of allowance or disallowance if an appeal is not initiated and completed. However, if an appeal is filed timely and completed, the affirmed decision by the office of jurisdiction becomes final the date of the appellate decision.

h. Reopened Claim

Any application for a benefit received after an earlier claim is finally completed and closed is referred to as a reopened claim.

4.04 Duplicate Claims

If an acceptable VAF 28-1900 is filed and a Veteran is determined entitled to services, it is not necessary to file another formal claim to receive Chapter 31 benefits provided the Veteran remains in a VR&E program.

A duplicate application that does not require processing must be marked with "Duplicate Copy" and down-filed on the left side of the Counseling/Evaluation/Rehabilitation (CER) folder.

However, if the Veteran's case is discontinued, a new VAF 28-1900 is required to reopen a claim for Chapter 31 benefits. All reapplications must be forwarded to the VR&E Division for review and processing.

4.05 Routine Procedures When Evidence Must Be Requested from a Claimant

a. Incomplete Claim

If the claim is not complete at the time of original submission, all necessary evidence must be requested simultaneously to avoid delays in developing the claim.

1. Informal Claim

Upon receipt of an informal claim and if a formal claim is not filed, a VAF 28-1900 is sent to the claimant or the application form may be completed by the claimant at the first appointment. The date of receipt of the informal claim will constitute date of receipt of claim if the VAF 28-1900 is received within one year from the date the form is sent to the

claimant (38 CFR 21.31 and 21.32). The claim is not processed until a formal claim is filed.

2. Unsigned Application

If an application is received unsigned, a copy showing the date of receipt is made and retained in the office. The original is returned to the claimant for signature. The file copy is considered an informal claim under 38 CFR 21.31.

b. Period for Submission of Evidence

Generally, evidence is requested from the claimant to be submitted promptly. The period for submission is 30 days from the date of the letter requesting evidence. If requested evidence is not received within the specified period, the claim is not processed and a notification letter is sent to the claimant.

c. Extension of Controls

The 30-day period may be extended within the statutory limit when it is expected that the evidence requested would be difficult to obtain or when the claimant or his/her representative indicates that he/she is making an effort to obtain the requested evidence, but needs an extension.

d. Returned Correspondence

If any correspondence to the claimant is returned undeliverable, the letter is reviewed to determine if the claimant's address is correct. If the address used is not correct, the correspondence is resent.

If a change in the claimant's address is found, the correspondence is sent to the claimant's new address.

If a valid address for the claimant is not available, an extensive search via the Compensation and Pension Records Interchange (CAPRI), Modern Award Processing (MAP-D), must be conducted. If the extensive searches do not yield a valid address, the returned correspondence and the original envelope is filed with the original formal or informal application.

e. Address Unknown

When a request for evidence necessary to establish entitlement is addressed to the claimant's last known address, but is returned undeliverable, the time limit for submitting the evidence is not extended (see 38 CFR 3.109).

f. No Response for Request for Evidence

A claimant's failure to respond to a request for evidence is considered a failure to cooperate in providing essential information. This is adequate reason to deny entitlement or to discontinue or adjust an award of benefits.

1. When action to deny entitlement in an original or reopened claim is required because of failure to furnish evidence, the claim is disallowed and the claimant is notified in writing accordingly.
2. In the case of a running award, when action to adjust or discontinue the award is required, the claimant is furnished a notice of the proposed adverse action if the action is determined to be adverse under the provisions of 38 CFR 21.420. Upon final determination of the adverse action, the claimant is given notice of procedural and appellate rights.

4.06 Reconsideration of Claim Based on Receipt of New and Material Evidence

The claimant is required to provide new and material evidence before VA will reconsider the decision for a Finally Denied claim.

38 CFR 3.156 states that in order to qualify evidence as new, the evidence must be submitted to VA for the first time, whether in documentary, testimonial or in some other form. In addition, the date of receipt of the new evidence from the claimant may be considered as the effective date for granting the benefits (38 CFR 3.400(q)).

A reopened claim is a claim that is previously denied which VA must reconsider because new and material evidence is presented. This claim involves the review of new evidence based on a new application rather than reconsideration of prior decisions.

4.07 Claimant's Right to Appeal a Decision Not to Reopen a Claim

A claimant may appeal VA's decision for not reopening a claim because the evidence he/she submitted is not new and material or relevant to the claim. Thus, VA must provide appellate rights when a claimant is provided with notification of the decision that his/her request for reopening a previously disallowed claim is denied.