

Chapter 2
ELIGIBILITY AND DURATION OF EMPLOYMENT SERVICES

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Chapter 2 ELIGIBILITY AND DURATION OF EMPLOYMENT SERVICES

2.01 Introduction

Vocational Rehabilitation and Employment (VR&E) Service offers employment services to all eligible Veterans. This chapter covers the eligibility criteria, duration and authorization to provide VR&E Services. This chapter provides the foundation and framework, including Title 38, United States Code (U.S.C.) and Title 38, Code of Federal Regulations (CFR) provisions for eligible and job-ready Veterans seeking employment assistance.

2.02 References and Resources

Laws: 38 U.S.C. 3108, 5113
 38 U.S.C. 3117
 Rehabilitation Act of 1973, as Amended

Regulations: 38 CFR 21.47
 38 CFR 21.73
 38 CFR 21.190(d)
 38 CFR 21.197
 38 CFR 21.326
 38 CFR 21.362

VA Form (VAF): VAF 28-1902b, Counseling Record – Narrative Report

2.03 Eligibility Criteria

a. General Information

All Veterans (other than Veterans found in need of a program of independent living services) currently eligible for and entitled to vocational rehabilitation services are eligible for assistance in obtaining or maintaining suitable employment (38 CFR 21.47(a)). These individuals include:

- Veterans entitled to and needing only job readiness training and employment services.
- Veterans who are rehabilitated to the point of employability (38 CFR 21.190(d)).
- Veterans who terminated training but now need assistance to find or maintain employment.

- Veterans who were either previously rehabilitated or discontinued under the VA Vocational Rehabilitation and Employment (VR&E) Program, or a similar program under the Rehabilitation Act of 1973, who are reevaluated and found to have an employment handicap and a vocational goal that is currently feasible (38 U.S.C. 3117 and 38 CFR 21.47).
- In addition, a Servicemember who is determined fit for duty by a Physical Evaluation Board while participating in the VA VR&E Program may be offered employment services only if needed to ensure adjustment to the military occupation.

b. Responsibilities

VR&E staff will work with all eligible Veterans to help them achieve suitable employment. Employment Coordinators (EC) and Vocational Rehabilitation Counselors (VRC) are also responsible for delivering effective employment services to Veterans to assure satisfactory conduct, cooperation and participation in the planned employment services (38 CFR 21.362).

c. Eligibility of Current Participants

VR&E considers a Veteran eligible for employment services when the Veteran is determined to be "job-ready," following an initial comprehensive evaluation and provision of training in job readiness skills under a combined Individualized Written Rehabilitation Plan/Individualized Employment Assistance Plan (IWRP/IEAP). This includes when the Veteran opts for one of the following tracks:

- Rapid Access to Employment
- Reemployment with Previous Employer

Additionally, Veterans who have achieved Rehabilitation to the point of Employability (RTE) are eligible for employment services under 38 CFR 21.190(d).

A Veteran who does not meet the criteria for a serious employment handicap (SEH) and is actively participating in the VR&E program when his/her eligibility termination date (ETD) passes or entitlement is exhausted, may be provided a period of employment assistance not to exceed 18 months if he or she is determined to be employable in a suitable occupation. Additional monetary assistance, such as training and payment of

employment adjustment allowance (EAA) may not be authorized in this instance, however, the Veteran may be provided placement assistance and follow up to ensure suitable adjustment to the job. An IEAP must be developed and signed before moving the case to Job Ready status.

d. Eligibility of Prior Participants

Past participants enrolled in a vocational rehabilitation program under Chapter 31 or a similar program under the Rehabilitation Act of 1973, as amended, may be eligible for employment assistance (see 38 U.S.C. 3117 and 38 CFR 21.47). A VRC must determine that the Veteran is employable in competitive employment, sheltered workshops (now referred to as "transitional employment programs"), supported employment or other special situations at the minimum wage.

If the prior participant files a formal claim for vocational rehabilitation and the case is in a discontinued status, then the VRC must reopen the case in order to make an entitlement determination.

If the prior participant's case is in rehabilitated status and there is no reason to overturn it, the VRC must leave the case in Rehabilitated status and provide the Veteran with limited employment services.

A comprehensive assessment must be provided to each individual who applies or re-applies for services to determine entitlement to Chapter 31. If the entitlement criteria are met, the VRC will proceed with vocational exploration and rehabilitation planning to determine services needed (see M28R.IV.B.2 for additional clarification on entitlement determination). If the prior participant is not deemed entitled to services under Chapter 31, the VRC will assess whether the individual is eligible for assistance consisting solely of employment services.

Prior participants must also meet the requirement of employability under the following conditions:

1. The Veteran files a formal claim for vocational rehabilitation.
2. The Veteran has a service-connected disability that meets both of the following conditions:
 - (a) The disability was incurred on or after September 16, 1940.
 - (b) VA is paying at least the 20 percent rate of compensation for the disability, or 10 percent for a Veteran determined to have a serious employment handicap. VA will also pay compensation if the Veteran

is not receiving military retired pay. (For individuals who first applied for vocational rehabilitation before November 1, 1990, the Veteran's combined disability rating must be greater than 0 percent.

3. The Veteran completed one of the following two items:
 - A vocational rehabilitation program under the VA VR&E Program or participated in such a program for at least 90 days on or after September 16, 1940.
 - A vocational rehabilitation program under the Rehabilitation Act of 1973, as amended, after September 26, 1975, or participated in such a program for at least 90 days of post-secondary education or vocational training under 38 CFR 21.47(b) and must be employable in competitive employment, a transitional or extended employment program or another special situation at the minimum wage.
4. The Veteran has an employment handicap.

Prior participants with only employment handicap, who have ratings of 10 percent or more, can receive limited employment services under 38 U.S.C. 3117(a)(2). Limited employment services include the following:

- Direct placement in employment.
 - Referral to Disabled Veterans Outreach Program (DVOP) specialists and/or Local Veterans' Employment Representatives (LVERs).
 - Use of job development and placement specialists at state/federal rehabilitation agencies: Department of Labor Veterans Employment and Training Service, state employment security agencies or state employment services offices, also known as "One-Stop Career Centers"; Office of Personnel Management; or any other public or non-profit organization with placement services.
 - Use of any for-profit entity if otherwise cost-effective and comparably effective services from the entities above are unavailable.
- e. Eligibility after General Vocational Rehabilitation Eligibility Has Expired

VR&E may furnish a program of employment assistance to a Veteran even though the Veteran's basic period of eligibility has expired. A Veteran must have an employment handicap and be currently employable in a suitable occupation (38 CFR 21.47(d)).

f. Veterans Solely in a Program of Employment Services

A VRC may determine that a Veteran who does not meet the basic entitlement criteria, but who is eligible under 38 U.S.C. 3117, is already employable and needs only employment services to obtain or maintain suitable employment. For example, a Veteran may already have transferrable skills from a previous employer or adequate education or training to qualify for a job but needs services such as resume preparation, interviewing and job-search skills training, payment of fees to obtain certification/licensure, etc. to obtain employment. The Veteran would not be eligible to receive Employment Adjustment Allowance, since the Veteran would not progress through RTE status. If the VRC determines that a specific vocational goal is currently reasonably feasible, then the VRC should perform the following tasks:

- Document the determination on VAF 28-1902b, Counseling Record - Narrative Report (See Appendix O, VA Forms).
- Complete an Individualized Employment Assistance Plan (IEAP).
- Close Evaluation and Planning (EP) case status.
- Assign the Veteran to Job Ready (JR) case status.

2.04 Duration of Employment Assistance

a. Duration Limited to 18 Months

A period of employment assistance is limited to a total of 18 months (not including any time in Interrupted (INT) case status). Sixty days prior to a Veteran completing the training component under his/her Individualized Written Rehabilitation Plan (IWRP), the VRC must complete the Veteran's IEAP. If a combined IWRP/IEAP was initially developed, then the IEAP portion of the plan should be reviewed and revised if necessary at least 60 days prior to completion of training.

During the 18-month period, the VRC will tailor and may modify the type, duration, and phasing of employment services to accommodate the Veteran's needs. The Veteran will concentrate his/her efforts on the activities specified in the IEAP.

A Veteran who has received 18 months of employment services may not receive additional employment services. If a Veteran is unable to achieve suitable employment by the end of the 18-month period, then VR&E must

discontinue the case. A Veteran in either Rehabilitated (REH) or Discontinued (DIS) case status may do the following:

- Request additional employment assistance
- Formally reapply to the VA VR&E Program

The Veteran must be determined eligible and entitled to Chapter 31 services. Upon this determination, VR&E will offer the Veteran vocational rehabilitation services, including an additional 18 months of employment services.

NOTE: If a Veteran obtains suitable employment before exhausting 18 months of entitlement to employment services, the case manager may keep the case open and declare the Veteran "rehabilitated" after the 60-day follow-up period has been completed, even if that follow-up period extends past the 18 months. The VRC must document that all services leading to suitable employment were provided during the 18-month eligibility period.

b. Employment Assistance Not Charged Against Entitlement

The period of employment assistance is not charged against the months of entitlement under Chapter 31 (38 CFR 21.73). Accordingly, if an eligible and entitled Veteran is employable in a suitable occupation, then VR&E may provide employment assistance even though the Veteran has exhausted 48 months of Chapter 31 entitlement and is not eligible for an extension (38 CFR 21.47(d)).

In addition, the period under which a Veteran who has been hired under the Special Employer Incentives (SEI) program does not count toward the 18-month limitation of employment services. The VRC should document the period of SEI services in CWINRS Notes to include a statement indicating the period of services under which SEI was provided should be deducted from the total period of employment services. For example, if the period during which SEI was provided equals six months and the total period the Veteran's record remained in JR status in CWINRS was 23 months, the VRC would subtract six months from 23 months and note that the duration of employment services for the purposes of 28 CFR 21.73 equals 17 months. This documentation should be filed in the Veteran's Counseling/Evaluation/Rehabilitation (CER) folder.

2.05 Authorization of Employment Services

a. Commencing Date

VR&E will authorize employment services to a Veteran on the day a VRC declares that the Veteran has been rehabilitated to the point of employability and the Veteran is job-ready, and moves the Veteran from RTE case status to JR case status. A Veteran may also be found job-ready when he/she qualifies for a program consisting only of employment services under 38 U.S.C. 3117. The Veteran may receive the employment services established in the IEAP once the IEAP is signed.

Once in JR case status, Veterans will begin a period of employment services to work toward suitable employment. Veterans may receive job-related training and other rehabilitation services to achieve the employment objectives in their rehabilitation plan.

b. Termination of Employment Services

The VRC will terminate authorization for employment services the earliest of the following dates:

- The date VA finds that the authorization was in error because of an act of omission or commission either on the part of the Veteran or on the part of another individual who committed or omitted the act with the Veteran's knowledge.
- The last day of the month in which severance of service connection becomes final.
- The day preceding the date of a fraudulent act.
- The date preceding the commission of a treasonable or subversive act for which the Veteran is convicted (38 U.S.C. 3108, 5113).
- The last day VR&E provides employment services under the terms of an IEAP, when the Veteran is rehabilitated or employment services are interrupted prior to discontinuance (38 CFR 21.326).

NOTE: If a Veteran's program is interrupted, then the VRC must establish a specific date for reentry into JR case status under 38 CFR 21.197, unless 18 months of VR&E Employment Services have already been utilized.