

# Appendix 10-A

## Overview of Title 38

### United States Code

#### Chapters 18,31,35,36

#### **Chapter 18**

#### **Vocational Training and Rehabilitation for Children with Spina Bifida or Other Covered Birth Defects.**

##### **Purpose**

Vietnam veterans' children who have spina bifida or other covered birth defects may receive a vocational oriented program of training, education, employment services, and other supportive assistance designed to allow the child to achieve suitable employment.

##### **Program Length**

A child's program must be planned to provide no more than 24 months of training to prepare the child for employment. A child may receive up to an additional 24 months of training if the initially planned program proves unsuccessful in getting the child employed.

##### **Program Description and Limitations**

This program mirrors the Chapter 31 vocational rehabilitation and employment program for service-disabled veterans, with certain exceptions. A child can receive the full range or evaluative, program planning, training, and employment services that a service-disabled veteran can receive. In addition to the limitation on training program length, the following exceptions apply to what would normally be provided under Chapter 31:

- No subsistence allowance and no Revolving Fund advances
- No automobile adaptive equipment
- No more than 30 days of extended evaluation of employability
- No independent living programs, although limited supportive services are permitted to a child in a vocational program

#### **Chapter 31**

#### **Training and Rehabilitation for Veterans with Service-Connected Disabilities**

##### **Legislative Intent**

Title 38, U.S.C., Chapter 31, Section 3100, directs the VR&E Program to provide services and assistance necessary to enable veterans with service-connected disabilities to become employable, and to obtain and maintain suitable employment; or if necessary, to achieve independence in daily living to the maximum extent feasible.

##### **Objective**

Job acquisition, in a suitable work situation, is the stated objective of the vocational rehabilitation program (38 Code of Federal Regulations 21.1). During the evaluation process, personal assessments, occupational research and individual life goals are reviewed relative to future job considerations. The second stated objective of the

vocational rehabilitation program is to provide entitled seriously disabled veterans all services necessary to enable them to achieve maximum independence in daily living.

### **Scope**

VR&E counselors develop rehabilitation plans that will assist veterans in accomplishing their program goals of suitable employment. Chapter 31 services can include: comprehensive evaluation services, vocational exploration and counseling, educational and personal adjustment counseling, financial assistance for vocational and educational training expenses, medical treatment, tutorial assistance, reader or sign language interpreter services, employment services, case management services, work adjustment training, and adult basic instruction. Suitable employment is defined as employment that:

- Is both stable and continuing,
- Is consistent with a veteran's pattern of interests, aptitudes, and abilities; and
- Does not aggravate a veteran's disabilities.

While the primary focus of the VR&E program is providing necessary assistance to enable service-connected disabled veterans to prepare for, achieve, and maintain suitable employment, the program also serves veterans whose service-connected disabilities impact their capacity to seek out and maintain suitable employment. VR&E provides independent living services to assist veterans in becoming more independent in their daily living activities. Entitlement to independent living services and assistance pertains when a vocational goal by a veteran is not reasonably feasible, the veteran shall be entitled to a program of independent living services and assistance designed to enable such veteran to achieve maximum independence in daily living. The term "independence in daily living" means the ability of a veteran, without the services of others or with a reduced level of the services of others, to live and function within the veteran's family and community.

### **Eligibility and Application**

Title 38 of the United States Code, Section 3101, states that the term "employment handicap" means an impairment resulting in substantial part from a disability (which diminishes a veteran's ability) to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests. Although the veteran's disability is not the only criteria upon which an employment handicap may be determined, it plays a predominant role in the process of defining the existence of an employment handicap.

In the past, Congress established an eligibility requirement of 30% combined service-connected rating. At present, a person shall be entitled to a rehabilitation program under the terms and conditions of Chapter 31 if the veteran has a service-connected disability rated at 20 percent or more that was incurred or aggravated in service on or after September 16, 1940; or is hospitalized or receiving outpatient medical care, services, or treatment for a service-connected disability pending discharge from the active military, naval, or air service, and the Secretary determines that the person is suffering from a disability which will likely be compensable at a rate of 20 percent; and is determined by the Secretary to be in need of rehabilitation because of an employment handicap. Eligibility is also applicable if the person is a veteran who has a service-connected disability rated at 10 percent which was incurred or aggravated in service on or after

September 16, 1940; and is determined by the Secretary to be in need of rehabilitation because of a serious employment handicap.

Veterans meeting basic eligibility requirements submit VA Form 28-1900; the veteran has the option of providing VA with a completed paper form or submitting the form electronically over the Internet. VA Form 28-1099 provides the veteran with basic information on entitlement as well as a brief explanation on the different services that might be provided.

Period of eligibility is defined as up to 12 years from the date VA notifies a veteran that they have a qualifying compensable disability. If certain conditions prevented the veteran from participating in a program of rehabilitation or if a veteran is determined to have a serious employment handicap, the 12-year limit may be waived.

### **Determination**

The elements that are to be considered in the determination of an Employment Handicap are detailed in 38 CFR 21.51 and the following definitions provide guidance to VR&E counselors:

- Employment Handicap (E.H.) is an impairment of the individual veteran's ability to prepare for, obtain, or retain employment consistent with his or her abilities, aptitudes, and interests. The impairment results in substantial part from a service-connected disability. For veterans rated at 20% or more, a finding of employment handicap results in a finding of entitled.
- Serious Employment Handicap (S.E.H.) represents a significant impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with his or her abilities, aptitudes, and interests. The S.E.H. results in substantial part from a service-connected disability. For veterans rated at 10% and for veterans whose 12-year period of basic eligibility has passed, the finding of an S.E.H. is necessary to establish entitlement.

The VR&E Counselor must determine if the veteran has experienced restrictions on employability caused by:

- The veteran's service-connected disabilities
- The veteran's non service-connected disabilities
- Deficiencies in education and training
- Negative attitudes toward people with disabilities
- The impact of alcoholism and drug abuse
- Consistency with abilities, aptitudes and interests
- Other pertinent factors

An employment handicap exists when *all* of the following conditions are met:

- The veteran has an impairment of employability;
- The veteran's service-connected disability materially contributes to the impairment;

- The veteran has not overcome the effects of the impairment through employment in an occupation consistent with his or her pattern of abilities, aptitudes, and interests.

### **Relationship of Disability to Employment Handicap**

The veteran's service-connected disability need not be the sole or primary cause of the employment handicap but it must "materially contribute" to the impairment. That is, its effects must be identifiable, measurable, or observable.

The Court of Veterans Appeals (COVA) in *Davenport v. Brown* (1995) set aside regulations that required a causal nexus relationship between a veteran's service-connected disability and an employment handicap or serious employment handicap. Public Law 104-275 redefined the terms "employment handicap" and "serious employment handicap" to include a requirement for impairment resulting in substantial part from a service-connected disability effective with applications received on or after October 9, 1996.

Once determined that a veteran has an employment handicap, the issue of a service-connected-disability substantial contribution to the employment handicap has been established.

The primary difference between an employment handicap and a serious employment handicap under Public Law 104-275, is one of degree of vocational impairment, not service-connected disability. Guidance for VR&E counselors is contained in 38 CFR 21.51, VBA Circular 28-97-1, and VR&E Service Policy Bulletin 99-1.

### **Program Services**

The Chapter 31 program provides the following services and benefits to help veterans achieve the stated objective of their vocational rehabilitation plan:

#### **a) Counseling and Evaluation**

Every applicant for Chapter 31 benefits receives an individualized evaluation of his or her need for services which includes a comprehensive assessment of interests, aptitudes, abilities, limitations imposed by disability, and rehabilitation needs.

#### **b) Vocational Training Benefits**

Chapter 31 provides school tuition, fees, books, and training supplies. Specific tools, such as computers, art supplies, mechanical tools, and the like may be provided as required of the educational or training program. Tutoring services are provided to meet the individual's needs.

#### **c) Monthly Subsistence Allowance**

Veterans in approved vocational rehabilitation training are paid a non-taxable monthly subsistence allowance. Effective October 1, 2003, the following monthly rates are in effect:

**Monthly Subsistence Allowance**

Type of Training	Training Time	No Dependents	One Dependent	Two Dependents	Each Additional Dependent
Institute of Higher Learning*	Full Time	\$464.97	\$576 .76	\$679 .66	\$49.55
	¾ Time	\$349.37	\$433.20	\$508.15	\$38.10
	½ Time	\$233.77	\$289.65	\$340.46	\$25.42
OJT, Farm Cooperative, Apprenticeship	Full Time	\$406.54	\$491.63	\$566.59	\$36.85
	Full Time	\$464.97	\$576 .76	\$679 .66	\$49.55
Extended Evaluation	¾ Time	\$349.37	\$433.20	\$508.15	\$38.10
	½ Time	\$233.77	\$289.65	\$340.46	\$25.42
	¼ Time	\$116.87	\$144.82	\$170.23	\$12.68
Independent Living	Full Time	\$464.97	\$576.76	\$679.66	\$49.55
	¾ Time	\$349.37	\$433.20	\$508.15	\$38.10
	½ Time	\$233.77	\$289.65	\$340.46	\$25.42

\*Institutional training also includes unpaid or nominally paid OJT or work experience in a federal, state, local, or Indian tribal government agency.

d) Medical Benefits

Chapter 31 program recipients are entitled to every medical service necessary to assist him or her in completing the program of services. These benefits include the full range of medical and dental services required for the individual's needs.

e) Case Management Services

A Vocational Rehabilitation and Employment Service case manager is assigned to each Chapter 31 recipient. This case manager is responsible for ensuring the delivery of all services to the recipient, and for offering all necessary assistance to help the recipient successfully complete the program of services.

f)Independent Living Services

Veterans who are determined to be unable to achieve suitable employment are offered a comprehensive evaluation of their needs as well as all services necessary to assist them to achieve maximum independence in their daily living. Such services may include medical treatment, special instruction in daily living activities, purchase of special equipment and/or supplies, and modification of their living quarters.

g) Employment Services

Most Chapter 31 participants have a program goal of attaining and retaining suitable employment. Case managers are tasked with assisting participants in identifying, applying for, and retaining suitable jobs for at least 60 days. Program participants who are enrolled in a training program which involves primarily a classroom setting often wait until their training programs are nearing completion to avail themselves of job placement services.

### **Duration of Chapter 31 Rehabilitation Programs**

The duration for a veteran's participation is defined by specific type of VR&E service and provisions are in place for extensions should that determination be made:

- Extended evaluation (when VA is unable to determine reasonable feasibility for achievement of a vocational goal) – up to 12 months with additional extensions if necessary of up to 6 months
- Achievement of a vocational goal – up to 48 months (extensions may be granted for veterans determined to have a serious employment handicap and if certain other conditions apply)
- Achievement of an independent living goal – up to 24 months

### **Chapter 35 Special Restorative Training**

#### **Eligibility**

Spouses and children who otherwise qualify for Dependent's Education Assistance under Chapter 35, United States Code, may receive special restorative training to overcome or lessen mental or physical disabilities.

#### **Benefits**

A spouse or child receives comprehensive evaluative services from a Vocational Rehabilitation and Employment Service counselor to determine the best program of services. A case manager then assists the spouse or child throughout the program of services.

For high tuition programs, the spouse or child may also receive accelerated payment of the Educational Assistance Allowance. The normal entitlement limit may be extended to allow the spouse or child to achieve the goals of the special restorative training program

### **Chapter 36 Educational and Vocational Counseling**

#### **Eligibility**

Staff members of the Vocational Rehabilitation and Employment (VR&E) Service may provide educational and vocational counseling to the following individuals:

- Service members within 180 days of planned discharge or release from active duty under conditions other than dishonorable
- Veterans within 1 year after discharge or release from active duty under conditions other than dishonorable
- Individuals currently eligible to receive any VA administered program of educational assistance; for example, Chapter 30 or 35 under title 38 United States Code

#### **Services**

This counseling may include vocational and other related testing, interpretation of test results, guided job exploration, development of one or more suitable vocational goals, and identification of training facilities that could help the veteran qualify for employment in a chosen vocational goal.

## Appendix 10-B

# Educational Benefits and Services

An overview of Chapter 31 educational related benefits is listed in Appendix 10-A. Non-VR&E educational benefits include the Montgomery GI Bill for Active Duty or Selected Reserve and the Veterans Educational Assistance Program. An overview of these education programs follows:

- **The Montgomery GI Bill - Active Duty (MGIB)** program provides up to 36 months of education benefits. This benefit may be used for degree and certificate programs, flight training, apprenticeship/on-the-job training, and correspondence courses. Remedial, deficiency, and refresher courses may be approved under certain circumstances. Generally, benefits are payable for 10 years following your release from active duty. This program is also commonly known as Chapter 30. The rate for Montgomery GI Bill (Chapter 30) benefits for approved full-time studies is \$985 effective October 1, 2003. When MGIB eligibility is based on an obligated period of active duty of two years, the amount of MGIB education benefits increases from the current full-time monthly rate of \$546 to \$800 effective October 1, 2003.
- **The Montgomery GI Bill - Selected Reserve (MGIB-SR)** program is available to members of the Selected Reserve that includes the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve and Coast Guard Reserve and the Army National Guard and the Air National Guard. This benefit may be used for degree and certificate programs, flight training, apprenticeship/on-the-job training, and correspondence courses. Remedial, deficiency, and refresher courses may be approved under certain circumstances.
- **The Veterans Educational Assistance Program (VEAP)** is available if the veteran first entered active duty between January 1, 1977 and June 30, 1985 and the veteran elected to make contributions from his or her military pay to participate in this education benefit program. The veteran's contributions are matched on a \$2 for \$1 basis by the Government. This benefit may be used for degree and certificate programs, flight training, apprenticeship/on-the-job training, and correspondence courses. Remedial, deficiency, and refresher courses may be approved under certain circumstances.

Under Chapter 31, educational opportunities are an enabling factor and a component of a vocational rehabilitation plan to assist the veteran in obtaining or maintaining suitable employment. The Montgomery GI Bill provides the veteran with a monthly educational benefit to help defray the cost of tuition, books, and fees. When comparing Chapter 31 to Chapter 30, there are differences and the exhibit below outlines some basic distinctions between the two programs:

### Comparison of Chapters 31 and 30 Education Benefits and Services

Type of Service or Benefit	Chapter 31	Chapter 30
Time period that a veteran can use service or benefit	12 years after most recent C&P rating decision	10 years after discharge from duty status
Eligibility Determination	Yes	Yes
Entitlement Decision	Yes	No
Duration of Benefits	48 months	36 months
Counseling and Evaluation Services	Yes	No
Vocational Training Benefits	VA pays the full cost of tuition, fees, and books at an institution of higher learning approved by VR&E Counselor. A computer and other aids or services to assist the veteran can be purchased by VA.	Limited monthly benefit. Current amount for full time student is \$985.
Monthly Subsistence Allowance	Yes, the amount depends on number of dependents and status of veteran in training.	No
Medical Benefits	Yes, if veteran's vocational plan is impacted.	No
Case Management Services	Yes	No
Independent Living Services	Yes	No
Employment Services	Yes	No