

§21.4136

Finding Aids section of the printed volume and on GPO Access.

§21.4136 Withdrawals or nonpunitive grades may result in nonpayment.

(a) *General.* VA will not pay benefits to an individual for a course from which the individual withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless:

(1) The individual withdraws because he or she is ordered to active duty; or

(2) All of the following criteria are met:

(i) There are mitigating circumstances;

(ii) The individual submits a description of the circumstances in writing to VA either within one year from the date VA notifies the individual that he or she must submit the mitigating circumstances or at a later date if the individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(iii) The individual submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3680(a))

(b) *Representative mitigating circumstances.* The following circumstances, which are not all inclusive, are representative of those that VA considers to be mitigating provided they prevent the individual from pursuing the program of education continuously:

(1) An illness of the individual;

(2) An illness or death in the individual's family;

(3) An unavoidable geographical transfer resulting from the individual's employment;

(4) An unavoidable change in the individual's conditions of employment;

(5) Immediate family or financial obligations beyond the control of the individual that require him or her to sus-

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pend pursuit of the program of education to obtain employment;

(6) Discontinuance of the course by the school;

(7) Unanticipated active duty for training;

(8) Unanticipated difficulties in caring for the individual's child or children.

(Authority: 38 U.S.C. 3680(a))

(c) *Failure to complete a course for the educationally disadvantaged.* If the individual fails to satisfactorily complete a course under 38 U.S.C. 3491(a) without fault, VA will consider the circumstances that caused the failure to be mitigating. This will be the case even if the circumstances were not so severe as to preclude continuous pursuit of a program of education.

(d) *Withdrawals after May 31, 1989.* In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the individual received educational assistance under 38 U.S.C. chapter 32, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.

(Authority: 38 U.S.C. 3680(a)(3))

(e) *Withdrawals during a drop-add period.* If the individual withdraws from a course during a drop-add period, VA will consider the circumstances that caused the withdrawal to be mitigating, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.

(Authority: 38 U.S.C. 3680(a))

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §21.4136, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§21.4138 Certifications and release of payments.

(a) *Advance payments.* (1) VA will make payments of educational assistance in advance when:

(i) The veteran, servicemember, reservist, or eligible person has specifically requested such a payment;