

## § 21.3022

## 38 CFR Ch. I (7–1–08 Edition)

decision made by VA that establishes for the person from whom such eligibility is derived—

(1) Service connection for the cause of the person's death;

(2) A service connected P&T disability; or

(3) For a member of the Armed Forces, a P&T disability incurred or aggravated in the line of duty in the active military, naval, or air service if the member is hospitalized or receiving outpatient medical care, services, or treatment, and is likely to be discharged or released from such service for such disability.

(Authority: 38 U.S.C. 5113)

(r) *Effective date of the P&T rating.* The term *effective date of the P&T rating* means the date from which VA considers that the veteran's P&T disability commenced for purposes of VA benefits, as determined by the initial rating decision.

(Authority: 38 U.S.C. 3512(d))

(s) *First finds.* The term *first finds* means the effective date of the P&T rating or the date VA first notifies the veteran of that rating, whichever is more advantageous to the child.

(Authority: 38 U.S.C. 3512(d))

(t) *Counseling psychologist* means the same as provided in § 21.35(k)(1).

(Authority: 38 U.S.C. 501, 3118(c), 3541, 3543)

(u) *Vocational rehabilitation counselor* means the same as provided in § 21.35(k)(7).

(Authority: 38 U.S.C. 501, 3118(c), 3541, 3543)

(v) *Additional definitions.* The definitions of all terms that are defined in §§ 21.1029 and 21.4200 but that are not defined in this section apply to subpart C of this part.

(Authority: 38 U.S.C. 501, 3501)

CROSS REFERENCES: *Duty periods.* See § 3.6 of this chapter.

*Persons included.* See § 3.7 of this chapter.

*Philippine and insular forces.* See § 3.40 of this chapter.

[36 FR 2508, Feb. 5, 1971, as amended at 38 FR 12110, May 9, 1973; 43 FR 35290, Aug. 9, 1978; 61 FR 26108, May 24, 1996; 61 FR 29295, June 10, 1996; 62 FR 51784, Oct. 3, 1997; 64 FR 23771, May 4, 1999; 73 FR 2423, Jan. 15, 2008; 73 FR 30488, May 28, 2008]

### § 21.3022 Nonduplication—programs administered by VA.

A person who is eligible for educational assistance under 38 U.S.C. chapter 35 and is also eligible for assistance under any of the provisions of law listed in this paragraph cannot receive such assistance concurrently. The eligible person must elect which benefit he or she will receive for the particular period or periods during which education or training is to be pursued. The election is subject to the conditions specified in § 21.4022 of this part. The provisions of law are:

- (a) 38 U.S.C. chapter 30,
- (b) 38 U.S.C. chapter 31,
- (c) 38 U.S.C. chapter 32,
- (d) 38 U.S.C. chapter 34,
- (e) 10 U.S.C. chapter 1606,
- (f) 10 U.S.C. chapter 107,
- (g) Section 903 of the Department of Defense Authorization Act, 1981,
- (h) The Hostage Relief Act of 1980, and
- (i) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 3681)

[54 FR 33886, Aug. 17, 1989, as amended at 57 FR 29798, July 7, 1992; 61 FR 20728, May 8, 1996]

### § 21.3023 Nonduplication; pension, compensation, and dependency and indemnity compensation.

(a) *Child; age 18.* A child who is eligible for educational assistance and who is also eligible for pension, compensation or dependency and indemnity compensation based on school attendance must elect whether he or she will receive educational assistance or pension, compensation or dependency and indemnity compensation.

(1) An election of educational assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or