

Department of Veterans Affairs

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(b) *Character of discharge.* (1) The basic twelve-year period of eligibility shall not begin to run during any period when the veteran had not met the requirement of a discharge or release from the active military, naval or air services under conditions other than dishonorable before:

(i) The discharge or release was changed by appropriate authority, or

(ii) The Department of Veterans Affairs determines that the discharge or release was under conditions other than dishonorable.

(2) The basic twelve-year period shall not begin to run during any period in which the veteran's discharge or dismissal was considered a bar to benefits by the Department of Veterans Affairs, before this bar is removed by the Department of Veterans Affairs.

(3) When there is a change in the character of discharge or dismissal under paragraph (b) (1) or (2) of this section the beginning date of the basic twelve-year period of eligibility is the effective date of the change. Determination of character of discharge and change in the character of discharge shall be made under the provisions of § 3.12. The ending date is twelve years from the beginning date.

(Authority: 38 U.S.C. 3103(b)(2))

(c) *Medical condition prevents initiation or continuation.* (1) The basic 12-year period of eligibility shall not begin to run or continue to run during any period of 30 days or more in which the veteran's participation in vocational rehabilitation is infeasible because of the veteran's medical condition, which condition may include the disabling effects of chronic alcoholism, subject to paragraph (c)(5) of this section. The 12-year period shall begin or resume when it is feasible for the veteran to participate in a vocational rehabilitation program, as that term is defined in § 21.35.

(2) The term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case:

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Are determined to have prevented commencement or completion of the affected individual's rehabilitation program.

(3) A diagnosis of alcoholism, chronic alcoholism, alcohol dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of *disabling effects of chronic alcoholism*.

(4) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(5) The disabling effects of chronic alcoholism, which prevent initiation or continuation of participation in a vocational rehabilitation program after November 17, 1988, shall not be considered to be the result of willful misconduct.

(Authority: 38 U.S.C. 3103(b)(1), Pub. L. 100-689)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 55 FR 40171, Oct. 2, 1990; 56 FR 15836, Apr. 18, 1991]

§ 21.44 Extension beyond basic period of eligibility because of serious employment handicap.

The basic period of eligibility of a veteran with a serious employment handicap may be extended when the veteran's employment and particular handicap necessitate an extension as necessary to pursue a vocational rehabilitation program under the following conditions:

(a) *Not rehabilitated to the point of employability.* The basic period of eligibility may be extended when the veteran has not previously been rehabilitated to the point of employability.

(Authority: 38 U.S.C. 3103(c))

(b) *Rehabilitated to the point of employability.* The veteran was previously declared rehabilitated to the point of employability, under the Department of Veterans Affairs vocational rehabilitation program, but either:

(1) The veteran's service-connected disability or disabilities have worsened to the extent that he or she is unable

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to perform the duties of the occupation in which he or she is trained, or in a related occupation; or

(2) The occupation in which the veteran was rehabilitated to the point of employability is not presently suitable in view of the veteran's current employment handicap and capabilities. (The finding of unsuitability must be based upon objective evidence developed in the course of reconsideration which shows that the nature or extent of the veteran's employment handicap and his or her capabilities are significantly different than were previously found.) or;

(3) Occupational requirements have changed and additional services are needed to help the veteran continue in the occupation in which he or she was trained or in a related field.

(Authority: 38 U.S.C. 3103(c))

§ 21.45 Extension beyond basic period of eligibility for a program of independent living services.

The period of eligibility for a veteran to pursue a program of independent living services may be extended beyond the basic twelve-year period under the following conditions:

(a) The veteran's medical condition (service and nonservice-connected disabilities) is so severe that achievement of a vocational goal is not currently reasonably feasible, or (b) the extension is necessary to ensure that he or she will achieve maximum independence in daily living.

(Authority: 38 U.S.C. 3103(d); Pub. L. (99-576) [49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50956, Dec. 19, 1988])

§ 21.47 Eligibility for employment assistance.

(a) *Providing employment services to veterans eligible for a rehabilitation program under chapter 31.* Each veteran, other than one found in need of a program of independent living services and assistance, who is otherwise currently eligible for and entitled to participate in a program of rehabilitation under chapter 31 may receive employment services. Included are those veterans who:

(1) Have completed a program of rehabilitation services under chapter 31

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and been declared rehabilitated to the point of employability;

(2) Have not completed a period of rehabilitation to the point of employability under chapter 31, but:

(i) Have elected to secure employment without completing the period of rehabilitation to the point of employability; and

(ii) Are employable; or

(3) Have never received services for rehabilitation to the point of employability under chapter 31 if they:

(i) Are employable or employed in a suitable occupation;

(ii) Have an employment handicap or a serious employment handicap; and

(iii) Need employment services to secure and/or maintain suitable employment.

(Authority: 38 U.S.C. 3102)

(b) *Veteran previously participated in a VA vocational rehabilitation program or a similar program under the Rehabilitation Act of 1973, as amended.* A veteran who at some time in the past has participated in a vocational rehabilitation program under chapter 31 or a similar program under the Rehabilitation Act of 1973 as amended, and is employable is eligible for employment services under the following conditions even though he or she is ineligible for any other assistance under chapter 31:

(1) The veteran is employable in a suitable occupation;

(2) The veteran has filed a claim for vocational rehabilitation or employment assistance;

(3) The veteran meets the criteria for eligibility described in § 21.40(a); and

(4) The veteran has an employment handicap or serious employment handicap; and

(5) The veteran:

(i) Completed a vocational rehabilitation program under 38 U.S.C. ch. 31 or participated in such a program for at least 90 days on or after September 16, 1940; or

(ii) Completed a vocational rehabilitation program under the Rehabilitation Act of 1973 after September 26, 1975, or participated in such a program