

## §21.57

reasonable doubt shall be resolved in favor of a finding of feasibility.

(Authority: 38 U.S.C. 3105(d))

(d) *Vocational goal is reasonably feasible.* Achievement of a vocational goal is reasonably feasible for a veteran with either an employment or serious employment handicap when the following conditions are met:

(1) Vocational goal(s) has (have) been identified;

(2) The veteran's physical and mental conditions permit training for the goal(s) to begin within a reasonable period; and

(3) The veteran:

(i) Possesses the necessary educational skills and background to pursue the vocational goal; or

(ii) Will be provided services by the Department of Veterans Affairs to develop such necessary educational skills as part of the program.

(Authority: 38 U.S.C. 3104(a)(1), 3106(a))

(e) *Criteria for reasonable feasibility not met.* (1) When VA finds that the provisions of paragraph (d) of this section are not met, but VA has not determined that achievement of a vocational goal is not currently reasonably feasible, VA shall provide the rehabilitation services contained in §21.35(i)(1)(i) of this part as appropriate;

(2) A finding that achievement of a vocational goal is infeasible without a period of extended evaluation requires compelling evidence which establishes infeasibility beyond any reasonable doubt.

(Authority: 38 U.S.C. 3104(a)(1), 3106(b))

(f) *Independent living services.* The counseling psychologist shall determine the current reasonable feasibility of a program of independent living services in each case in which a vocational rehabilitation program is not found reasonably feasible. The concurrence of the Vocational Rehabilitation and Employment (VR&C) Officer is required in any case in which the counseling psychologist does not approve a program of independent living services.

(Authority: 38 U.S.C. 3100)

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(g) *Responsible staff.* A counseling psychologist in the Vocational Rehabilitation and Employment Division shall determine whether achievement of a vocational goal is:

(1) Reasonably feasible; or

(2) Not currently reasonably feasible under the provisions of paragraph (e) of this section for the purpose of determining present eligibility to receive a program of independent living services.

(Authority: 38 U.S.C. 3106(b), Pub. L. 99-576)

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50956, Dec. 19, 1988; 54 FR 37332, Sept. 8, 1989]

### §21.57 Extended evaluation.

(a) *Purpose.* The purpose of an extended evaluation for a veteran with a serious employment handicap is to determine the current feasibility of the veteran achieving a vocational goal, when this decision reasonably cannot be made on the basis of information developed during the initial evaluation.

(Authority: 38 U.S.C. 3106(c), Pub. L. 99-576)

(b) *Scope of services.* During the extended evaluation, a veteran may be provided:

(1) Diagnostic and evaluative services;

(2) Services to improve his or her ability to attain a vocational goal;

(3) Services to improve his or her ability to live and function independently in the community;

(4) An allowance as provided in §21.260.

(Authority: 38 U.S.C. 3104)

(c) *Determination.* (1) The determination of the reasonable feasibility of a veteran achieving a vocational goal will be made at the earliest time possible during an extended evaluation, but not later than the end of the period of evaluation, or an extension of that period. Any reasonable doubt as to feasibility will be resolved in the veteran's favor;

(Authority: 38 U.S.C. 3106(d))

(2) When it is reasonably feasible for the veteran to achieve a vocational

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goal, an individualized written rehabilitation plan (IWRP) will be developed as indicated in §21.84 of this part.

(Authority: 38 U.S.C. 3106(b))

(d) *Responsibility for determining the need for a period of extended evaluation.* A counseling psychologist in the Vocational Rehabilitation and Employment Division shall determine whether a period of extended evaluation is needed.

(Authority: 38 U.S.C. 3106(c))

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50956, Dec. 19, 1988; 54 FR 37332, Sept. 8, 1989; 62 FR 17707, Apr. 11, 1997]

### **§21.58 Redetermination of employment handicap and serious employment handicap.**

(a) *Prior to induction into a program.* A determination as to employment handicap, serious employment handicap, or eligibility for a program of employment services will not be changed except for:

(1) Unmistakable error in fact or law; or

(2) New and material evidence which justifies a change.

(b) *After induction into a program.* (1) The Department of Veterans Affairs will not redetermine a finding of employment handicap, serious employment handicap, or eligibility for a program of employment services subsequent to the veteran's induction into a program because of a reduction in his or her disability rating, including a reduction to 0 percent:

(2) The Department of Veterans Affairs may consider whether a finding of employment handicap should be changed to serious employment handicap when there is an increase in the degree of service-connected disability, or other significant change in the veteran's situation;

(3) A redetermination of employment handicap, serious employment handicap, or eligibility for a program of employment services will be made when there is a clear and unmistakable error of fact or law.

(Authority: 38 U.S.C. 3102, 3106)

(c) *Following rehabilitation or discontinuance.* A veteran's eligibility and

entitlement to assistance must be redetermined in any case in which:

(1) The veteran is determined to be rehabilitated to the point of employability under the provisions of §21.190;

(2) The veteran is determined to meet the requirements for rehabilitation under the provisions of §21.196; or

(3) The veteran's program is discontinued under the provisions of §21.198, except as described in §21.198(c)(3).

(Authority: 38 U.S.C. 3102, 3111)

### **§21.59 Review and appeal of decisions on eligibility and entitlement.**

A veteran may appeal decisions of the Vocational Rehabilitation and Employment staff on eligibility and entitlement to rehabilitation services to the Board of Veterans Appeals as provided in §19.2 of Title 38, CFR. However, the veteran or an accredited representative, on his or her behalf, may request administrative review by Central Office prior to filing an appeal to BVA. A case already on appeal to BVA may not be referred to Central Office for administrative review or advisory opinion.

(Authority: 38 U.S.C. 3107(c))

#### VOCATIONAL REHABILITATION PANEL

### **§21.60 Vocational Rehabilitation Panel.**

(a) *Establishment of the Panel.* A Vocational Rehabilitation Panel will be established at each field facility by the facility head. The purpose of the Panel is to provide technical assistance in the planning of rehabilitation programs for seriously disabled veterans and dependents. This purpose will be most effectively carried out through use of the services of a wide range of professionals to bring the resources of the Department of Veterans Affairs and the community to bear on problems presented in the individual case.

(Authority: 38 U.S.C. 3104(a))

(b) *Composition of the Panel.* The Panel will include, but not be limited to the following:

(1) A counseling psychologist in the VR&C (Vocational Rehabilitation and Employment) Division as the chairperson;