

§ 21.7073

38 CFR Ch. I (7-1-08 Edition)

§ 21.7073 Entitlement for some individuals who establish eligibility during the open period or who establish eligibility before involuntary separation.

(a) *Individuals who establish eligibility during the open period.* (1) The provisions of this paragraph apply to a veteran or servicemember who:

(i) Establishes eligibility by withdrawing an election not to enroll as provided in § 21.7042(c);

(ii) Has less than \$1,200 deducted from his or her military pay; and

(iii) Before completing the period of service which the individual was obligated to serve on December 1, 1988, the individual:

(A) Is discharged or released from active duty for a service-connected disability, a medical condition which preexisted that service, or hardship; or

(B) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(C) Is discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service, if that period was less than three years, or 30 months, if that period was at least three years; or

(D) Is involuntarily discharged or released from active duty for convenience of the Government as a result of a reduction in force, as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3018(b)(3))

(2) A veteran described in paragraph (a)(1) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in

part-time basic educational assistance) equal to the lesser of:

(i) A number of months determined by multiplying 36 by a fraction the numerator of which is the amount by which the basic pay of the individual has been reduced as provided in § 21.7042(e)(2) and the denominator of which is \$1,200, or

(ii) The number of months the veteran has served on continuous active duty after June 30, 1985.

(Authority: 38 U.S.C. 3013(c))

(b) *Individuals who establish eligibility following involuntary separation.* (1) The provisions of this paragraph apply to a veteran who establishes eligibility by meeting the provisions of § 21.7045 of this part.

(Authority: 38 U.S.C. 3018A)

(2) A veteran described in paragraph (b)(1) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of—

(i) 36 months, or

(ii) The number of months the veteran served on active duty.

(Authority: 38 U.S.C. 3013)

[59 FR 24053, May 10, 1994, as amended at 65 FR 67266, Nov. 9, 2000]

§ 21.7074 Entitlement to supplemental educational assistance.

In determining the entitlement of a veteran or servicemember who is eligible for supplemental educational assistance VA shall—

(a) Calculate the veteran's or servicemember's entitlement to basic educational assistance on the day he or she establishes eligibility for supplemental educational assistance, and

(b) Credit the veteran or servicemember with the same number of months and days entitlement to supplemental educational assistance as the number calculated in paragraph (a) of this section.

(Authority: 38 U.S.C. 3023; Pub. L. 98-525)