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Chapter 2 EVALUATION AND PLANNING DETERMINATIONS

2.01 Introduction

Before a Veteran or Servicemember can receive services from the Department of Veterans Affairs (VA) Vocational Rehabilitation and Employment (VR&E) program, a Vocational Rehabilitation Counselor (VRC) must make a determination as to whether or not he/she is entitled to services (see 38 United States Code (U.S.C.) 3102 and 38 Code of Federal Regulations (CFR) 21.40) based on a comprehensive initial evaluation. There must be an official entitlement determination on all claims for VR&E services.

Once the VRC makes the determination, the VRC is required to determine whether or not it is currently feasible for the Veteran or Servicemember to obtain and maintain suitable employment (38 U.S.C. 3101). This chapter contains the statutory and regulatory provisions regarding the evaluation and planning determination process.

2.02 References and Resources

Laws: 38 U.S.C. 3101
 38 U.S.C. 3102
 38 U.S.C. 3106
 38 U.S.C. 3109
 38 U.S.C. Chapter 11
 Public Law (Pub. L.) 110-181, National Defense
 Authorization Act (NDAA)
 Pub. L. 112-56, Vow to Hire Heroes Act

Regulations: 38 CFR 3.105
 38 CFR 21.33
 38 CFR 21.40
 38 CFR 21.44
 38 CFR 21.48
 38 CFR 21.50
 38 CFR 21.51
 38 CFR 21.53
 38 CFR 21.57
 38 CFR 21.78
 38 CFR 21.196
 38 CFR 21.198

VA Forms (VAF): VAF 28-0800, Vocational Rehabilitation and Employment
 Program Orientation

VAF 28-1902b, Counseling Record - Narrative Report
VAF 28-1902i, Counseling Record - Medical Information and
Related Findings
VAF 28-1902w, Rehabilitation Needs Inventory
(RNI)
VAF 3288, Request for and Consent to Release
of Information from Claimant's Records
VAF 28-8606, Notes from Counseling and Next Steps
VAF 3542, Authorization to Report – Voucher for Mileage
Allowance

2.03 Roles and Responsibilities During an Initial Evaluation

a. Vocational Rehabilitation and Employment Officer (VREO)

The VREO is responsible for the management of all VR&E initial evaluation activities, which includes providing guidance and direction to VR&E staff and oversight of VR&E decisions for entitlement to services.

b. Vocational Rehabilitation Counselor (VRC)

The VRC facilitates the Veteran or Servicemember's full participation and understanding of the initial evaluation process through the use of a comprehensive one-on-one initial interview. To do this, the VRC:

1. Obtains information needed to make the entitlement determination including Employment Handicap (EH) (see section 2.11 in this chapter for information on EH); Serious Employment Handicap (SEH) (see section 2.12 in this chapter for information on SEH) and current feasibility for achievement of an employment goal (see section 2.13 in this chapter). The VRC uses the information found in VAF 28-1902w, Rehabilitation Needs Inventory (RNI) (provided by the Veteran or Servicemember), and other information obtained from medical records, intake interview, etc., when making this decision.
2. Conducts and/or coordinates vocational evaluations.
3. Conducts and/or coordinates extended evaluations when appropriate.
4. Conducts and/or coordinates evaluation of independent living needs.
5. Documents and justifies the decision making process in Corporate WINRS (CWINRS); updates Claim Processing tab, Disposition and Entitlement Determination fields; and on VAF 28-1902b, Counseling Record - Narrative

Report. See section 2.15 in this chapter for information on how to complete VAF 28-1902b.

c. Contract Counselor

The VRC may use a contract counselor for some elements of the comprehensive initial evaluation in order to expedite the process. The contract counselor conducts activities relating to initial or vocational evaluations under the direction of the VREO, Assistant VREO (AVREO) or VRC.

The role of the contract counselor is limited to the development of information necessary for the VRC to make entitlement determination and rehabilitation planning decisions. The contract counselor cannot make eligibility, entitlement, or feasibility decisions. In addition, the contract counselor cannot develop or sign a plan of service, deny a benefit, process payments, or take any adverse action. The VRC is responsible for each of these actions, as well as all inherently governmental decisions.

d. Employment Coordinator (EC)

The EC assists the VRC and the Veteran in the development of the rehabilitation plan by providing labor market information, employment and salary information, job specific information and other information related to the successful hiring of the Chapter 31 program participants. In addition, the EC assists Veterans and Servicemembers in the use of the Job Resource Lab (JRL). See M28R.IV.B.5 for information on using the JRL.

e. Program Support Specialist (PSS)

The PSS is a member of the administrative staff. He/she processes the Chapter 31 application through the Generated Eligibility Determination (GED) by obtaining the Veteran or Servicemember's prior training information. The PSS may also verify the Veteran or Servicemember's Service-Connected Disability (SCD) rating or National Defense Authorization Act (NDAA) eligibility. He/she needs this information to calculate the amount of entitlement (number of months the Veteran has in order to participate in the Chapter 31 program), and to determine the basic period of eligibility by establishing the Veteran's Eligibility Termination Date (ETD).

f. Veteran or Servicemember

The Veteran or Servicemember cooperates with the VRC in completing the initial evaluation, attends the Chapter 31 orientation, and participates in the evaluation process and all entitlement determination and rehabilitation planning activities.

2.04 Comprehensive Initial Evaluation and Entitlement Determination Criteria

a. Criteria for Comprehensive Initial Evaluation

A comprehensive initial evaluation must be provided to all eligible Veterans or Servicemembers who file an application for vocational rehabilitation services and meet the following criteria per 38 CFR 21.50 and 38 CFR 21.40:

1. Veterans with a SCD

Veterans with a SCD under 38 U.S.C. Chapter 11 who incurred or aggravated the disability(ies) in active military, naval or air service on or after September 16, 1940.

2. Servicemember Awaiting Discharge

Servicemembers awaiting discharge from active military, naval or air service, are hospitalized or receiving outpatient medical care, services or treatment for a disability that VA will likely determine to be an SCD. In addition, VA must have determined that the hospital or other medical facility providing the hospitalization, care, service or treatment is doing so under contract or agreement with the Secretary concerned or is under the jurisdiction of the Secretary of VA or the Secretary concerned.

Whenever possible, hospitalized Veterans or Servicemembers should be provided an evaluation at the facility where they are receiving medical treatment.

3. Individual with a Disability

An individual who has a disability, or combination of disabilities, that will likely be:

- At least 10 percent compensable under 38 U.S.C. Chapter 11 and he/she originally applied for assistance under 38 U.S.C. Chapter 31 after March 31, 1981 and before November 1, 1990
- At least 20 percent compensable under 38 U.S.C. Chapter 11 and he/she originally applied for assistance under 38 U.S.C. Chapter 31 on or after November 1, 1990

4. Entitlement Under NDAA

As a result of the enactment of Pub. L. 110-181 (NDAA) and the extension provided under Pub. L. 112-56, (Vow to Hire Heroes Act), a Servicemember who incurs a serious illness or injury that may render

him/her unable to perform his/her military duties is determined eligible and entitled to Chapter 31 services without regard to a VA SCD rating, Memorandum Rating or a determination of EH.

Although entitlement is automatic if the Servicemember provides VAF 28-1900, qualifying documentation, and attends the initial appointment, VR&E must still provide the Servicemember with a comprehensive initial evaluation in order to identify the extent of services available to, and most appropriate for, the Servicemember. The VRC will document the determination of EH, SEH and/or the feasibility of achieving a vocational goal on VAF 28-1902b (see section 2.15 in this chapter for information on how to fill out the VAF 28-1902b). The VRC must include the following statement on VAF 28-1902b:

“Based on documentation filed in the CER folder, (list qualifying documentation), the applicant has established eligibility and entitlement to Chapter 31 services effective xx/xx/xxxx in accordance with PL 110-181, as extended by PL 112-56. Therefore, the usual determinations are not necessary to establish entitlement. However, the initial evaluation will be completed to assess impairment(s) to employability and to determine Employment Handicap, Serious Employment Handicap, and feasibility of achieving a vocational goal. These decisions will be the basis for rehabilitation planning regarding the type and extent of services available to, and most appropriate for, the applicant.”

It is important to note that if the Servicemember separates from the military prior to reporting for the initial appointment with VR&E, the Servicemember may not be found eligible and entitled under PL 110-181, as extended by PL 112-56. The individual no longer meets the criteria of being a Servicemember and the application will be processed as a Veteran. An IDES proposed rating, a VA memorandum rating, or a final VA rating would be needed for eligibility purposes, and an entitlement decision must be made if the individual is not a Servicemember when reporting for the initial appointment.

b. Criteria for Entitlement Determination

There must be an official entitlement determination on all claims for Chapter 31 benefits. The VRC must process the entitlement determination as follows:

1. Individual Fails to Attend Initial Evaluation

If the Veteran or Servicemember fails to report for the initial evaluation, the VRC must send a 10-day notification letter prior to discontinuing the

claim. The VRC is not required to complete VAF 28-1902b in these instances.

2. Individual Attends Initial Evaluation

If the Veteran or Servicemember attends the initial evaluation, but does not complete the evaluation, the VRC must make an entitlement determination based on the available information. The entitlement decision, whether positive or negative, must be documented in VAF 28-1902b. See section 2.15 of this chapter for procedures on the how to complete VAF 28-1902b. The VRC must inform the Veteran or Servicemember of the entitlement decision in writing. If the Veteran or Servicemember does not respond to the entitlement decision, the VRC must provide due process prior to discontinuing the case.

If the Veteran or Servicemember attends the initial evaluation and fully participates in the evaluation, then the VRC will provide a comprehensive evaluation as described in the remainder of this chapter.

2.05 Comprehensive Approach to the Initial Evaluation

Only a VRC may conduct a Veteran or Servicemember's comprehensive initial evaluation.

a. Tools for Initial Evaluation

An initial evaluation must provide a thorough and extensive approach for collecting, reviewing and analyzing the extent and effects of a Veteran or Servicemember's SCD or Non-Service-Connected Disability (NSCD) condition(s) indicated in his/her life history data, such as work history, education, training, family and community adjustment. If available, the VRC may use the following tools to assist with the completion of the initial evaluation:

- Previous evaluation of abilities, aptitudes and interests
- Results of vocational/psychological assessments
- Results of evaluations and reevaluations by a medical consultant
- Information garnered from the Vocational Rehabilitation Panel (VRP)
- Information garnered from VA Health Administration (VHA) medical records

- Information garnered from the Veteran's private medical records
- Information garnered from State vocational rehabilitation counselors
- Current RNI

b. Previous Chapter 31 Program Participant

If a Veteran or Servicemember is a previous Chapter 31 program participant, the VRC must ensure that he/she obtains the individual's previous Counseling/Evaluation/Rehabilitation (CER) folder and checks Benefits Delivery Network (BDN), CWINRS, and Share for historical information.

When a Veteran or Servicemember has a prior record of Chapter 31 program participation, the VRC must review the reasons for prior case closure during the course of the comprehensive evaluation. For both prior rehabilitations and prior discontinuances, the VRC must determine that the circumstances that contributed to the prior rehabilitation or discontinuance would prevent the Veteran from benefiting from additional vocational rehabilitation. If the prior case was closed in rehabilitated status, or in discontinued status with a finding of maximum rehabilitation gain (MRG), the VREO or designee must concur with re-opening the case if the Veteran or Servicemember reapplies less than one year after the date of prior case closure.

Written authorization must be obtained from the Veteran or guardian prior to requesting information on previous training and medical background from sources other than the Veteran, Servicemember or VA. The correct form to use is VAF 3288, Request for and Consent to Release of Information from Claimant's Records.

c. Impact of Medical Marijuana on the Initial Evaluation

A Veteran's use of medical marijuana may not bar access to a program of vocational rehabilitation services. If the Veteran meets the basic entitlement criteria set forth in 38 CFR 21.40, and described in detail in this chapter, then he/she will be allowed entrance into the VR&E program. While basic entitlement is not affected, the VRC must consider the impact of the use on medical marijuana on the feasibility of certain vocational goals.

2.06 Use of the Initial Evaluation

A comprehensive initial evaluation for a Veteran or Servicemember must include, but is not limited to, the following:

- Development and analysis of information necessary to obtain a general understanding of the whole individual
- Determination of the effect(s) of his/her SCD and NSCD condition(s) on obtaining employment
- Assessment of other life circumstances
- Evaluation of his/her capacity for suitable employment and/or independence in daily living (38 U.S.C. 3109)
- Entitlement determination to Vocational Rehabilitation Services, and if he/she meets the criteria for EH or SEH (38 U.S.C. 3106)
- Discussion of his/her vocational skills and needs
- Identification of barriers that may impact his/her employability
- If he/she is determined not entitled to vocational rehabilitation services, a referral to other resources and programs for which he/she may qualify

2.07 Counseling as Part of the Initial Evaluation Process

Professional counseling services are crucial to the entire rehabilitation process and indispensable to the proper choice, provision and use of rehabilitation services. The VRC must use counseling methods to thoroughly understand the Veteran or Servicemember's situation, to help in properly addressing barriers which may impact successful program participation and completion and to identify the services he/she needs to overcome these barriers.

2.08 Severance of Service-Connection or Reduction to a Non-Compensable Degree

If a Veteran who has applied for VR&E receives a rating action which proposes severance of service-connection or reduction to a non-compensable degree or zero percent and his/her initial evaluation has not begun or is in process, all processes relating to the determination of entitlement or induction into training must be immediately suspended. If the proposed rating action becomes final, his/her application must be denied as specified in 38 CFR 21.48 and 38 CFR 3.105.

2.09 Initial Evaluation for a Veteran VA Employee

All applicants requesting Chapter 31 benefits, including Veteran VA employees working in a Regional Office (RO), are required to meet with a VRC to complete a comprehensive initial evaluation. Due to the sensitive nature of the counseling

process, these evaluations must not be completed at the RO where the Veteran applicant is employed.

The policy for completing an initial evaluation for a Veteran VA employee is as follows:

A comprehensive evaluation will be conducted in person and an entitlement decision will be made at the RO's designated "sister station" (see Appendix T for list of RO sister stations). When temporarily transferring cases to sister stations, consideration should be given to required travel and other factors that could delay or disrupt the evaluation process.

If the Veteran VA employee is unable to make the trip to the sister station due to his/her disability or other life circumstances, the employing RO could contract out a comprehensive assessment to a contract counselor and then send the file with the contracted assessment to the sister station. A VRC at the sister station could then meet with the Veteran by video conferencing for the entitlement decision. If there is no VetSuccess contract in place, the RO would locally procure this service, with the assistance of the contract specialist responsible for that RO. If a VetSuccess contract exists, the employing RO would use it to procure the contracted services.

After the Veteran VA employee's evaluation and entitlement decision is completed at the sister station, the CER folder will be transferred back to the initiating RO. If the Veteran VA employee is found entitled to services, a VRC will be assigned to develop and implement the rehabilitation plan. The CER folder will be maintained in locked files.

2.10 Satisfactory Conduct and Cooperation

It is essential that the Veteran or Servicemember cooperates and maintains satisfactory conduct during the evaluation process. The VRC must apply sound counseling principles to secure and sustain the Veteran or Servicemember's cooperation. The VRC must look at underlying issues that may be affecting the Veteran's ability or desire to cooperate in the initial evaluation. The VRC should thoroughly review the Veteran or Servicemember's medical records and information garnered at the initial evaluation appointment if available to help him/her to understand the source of the Veteran or Servicemember's noncooperation. If the VRC is not able to ascertain why the Veteran or Servicemember is not cooperating after reviewing his/her records and discussing it with him/her, the VRC must inform the Veteran or Servicemember in writing of a possible discontinuance of services due to his/her non-cooperation and unsatisfactory conduct.

If after the written notification, the Veteran or Servicemember's non-cooperation continues, the initial evaluation will be suspended and the VRC must inform the Veteran or Servicemember of the suspension in writing (because VR&E policy requires that VRCs no longer move cases from Evaluation and Planning (EP) status to Interrupt (INT) status, but rather keeps the claimant in their current status). The letter must:

- Provide the decision
- Provide justification for the decision
- Outline steps necessary to resume the evaluation process

2.11 Employment Handicap (EH)

a. Definitions

1. EH

An EH is defined as an impairment resulting in substantial part from an SCD, that affects the Veteran's ability to prepare for, obtain or maintain suitable employment that is consistent with his/her pattern of measured and/or demonstrated abilities, aptitudes and interests.

2. Reasonably Developed Job Skills

The term reasonably developed job skills refers to a recognized grouping of skills, knowledge and abilities that are transferable among related occupations and acquired through training and experience.

3. Stable and Continuous Employment

Stable and continuous employment is defined as employment in one position, or a series of similar positions, for periods of three to five years with no or few breaks. It is further defined as current work, other than temporary employment (unless the work characteristically involves temporary but continuous assignments). Employment alone is not evidence of stable and continuous employment.

4. Suitable Employment

- Employment which is consistent with the Veteran's expressed interests, aptitudes and abilities that can be measured and/or demonstrated
- Does not aggravate the Veteran or Servicemember's disability(ies)

- Is stable and continuing
- Requires reasonably developed skills

b. Existence of a Vocational Impairment

The term vocational impairment refers to restrictions on employability caused by one or more of the following factors:

- The effects of the Veteran or Servicemember's SCD(s) or NSCD(s)
- Deficiencies in education and training
- The potential impact of employers' negative perceptions about the Veteran or Servicemember's disability(ies)
- Other pertinent factors that result in restrictions on employability such as a lack of stable, continuing and suitable employment

c. Vocational Impairment Assessment

The answers to the following questions can assist the VRC in determining the presence of a vocational impairment:

- Is the Veteran or Servicemember employable in suitable occupations for which persons without a disability can compete and qualify?
- Does the Veteran or Servicemember possess training and/or education that qualifies him/her for suitable employment?
- Does the Veteran lack job seeking skills?
- Does the SCD/NSCD result in any limitations which may preclude certain types of employment?
- Is there a clear potential for negative attitudes toward the Veteran or Servicemember because of disabilities or other reasons?
- Did the Veteran or Servicemember's comprehensive evaluation identify restrictions on employment, which would result in the absence of stable, continuing and suitable employment?

If the VRC determines that the Veteran or Servicemember does not have a vocational impairment, the individual is not entitled to services.

d. Duty to Assist

The VRC has a legal duty to assist the Veteran or Servicemember in developing evidence to support his/her claim for vocational rehabilitation benefits and services when evidence of record is insufficient. Examples of evidence include: medical treatment records, employer evaluations and records of prior training. For more information on duty to assist, see 38 CFR 21.33.

e. Potential Sources of Information for Determining the Existence of a Vocational Impairment

The following sources of information may be used when determining that a vocational impairment exists:

- RNI
- VHA and/or private medical records
- Rating Decisions
- Labor Market Information
- Academic records or transcripts
- Prior counseling documentation
- VRC knowledge of limitations associated with the disability(ies) and if not, consult a medical reference
- History of employment and earnings, including resume, performance appraisals, position descriptions, attendance records, consultation with other service providers/professionals and the Veteran or Servicemember's self-report

f. Potential Impairments

The following factors must be considered in determining if a vocational impairment exists:

- Physical limitations
- Psychosocial limitations
- Cognitive limitations
- Mobility limitations

- Sensory limitations
- Chronic pain
- Deficiencies in education and/or training, including civilian certifications or licensure
- Employer bias against persons with disabilities, including issues such as anticipated poor work performance and the need for accommodation
- Lack of reliable transportation
- History of unstable work
- History of incarceration(s)
- Stigma associated with employees having a mental illness perceived to be unable to cope with typical stress inherent in the work place

g. Contribution of the SCD to the Vocational Impairment

The SCD must contribute in a substantial part to the vocational impairment. The effects must be identifiable, measurable and/or observable. When evaluating evidence that the vocational impairment results in substantial part from the SCD(s), the VRC must clearly show how the SCD impacts the Veteran or Servicemember's ability to prepare for, obtain and maintain employment consistent with his/her abilities, aptitudes and interests. The SCD need not be the sole cause of the vocational impairment, but must contribute to the vocational impairment in more than a trivial or technical manner.

Note: The NSCD may compound the effects of the SCD on the impairment of employability; however, a NSCD alone can never be the sole basis of entitlement.

h. Overcoming the Effects of the Vocational Impairment

An individual may overcome the effects of the impairment of employability through employment in, or qualifying for employment in, an occupation consistent with his/her abilities, aptitudes and interests. This situation includes an individual who qualifies for a suitable job, but who does not obtain or maintain the job for reasons within his/her control (38 U.S.C. 3102 and 38 CFR 21.51).

i. Evaluating Veterans or Servicemembers for Overcoming the Impairment

1. If the Veteran or Servicemember is not prepared and/or qualified for employment in a suitable occupation, or the individual is prepared and/or qualified for employment in a suitable occupation but has failed to obtain or retain employment for reasons beyond his/her control, the individual has not overcome the effects of the impairment.
2. If the individual is prepared and/or qualified for employment in a suitable occupation, but has failed to obtain or retain employment for reasons within his/her control, he/she has overcome the effects of the impairment. This determination will be made on a case-by-case basis and will be based on the preponderance of evidence that leads the VRC to believe that the Veteran chooses not to be employed.

j. EH Determination

An EH is present when all of the following exist:

- The Veteran or Servicemember has a vocational impairment
- The Veteran or Servicemember's SCD contributes in substantial part to the impairment
- The Veteran has not overcome the effects of his/her impairment of employability through employment in, or qualifying for employment in an occupation consistent with his/her abilities, aptitudes and interests. This includes an individual who qualifies for a suitable job, but does not obtain or keep the job for reasons beyond his/her control (38 U.S.C. 3102 and 38 CFR 21.51)

k. Prompt Notification of the Determination

The VRC must promptly provide the Veteran or Servicemember with a verbal and written notification indicating that he/she is or is not entitled to services and explaining the determination. As a general rule, whenever possible, provide notification within 45 days from the date of the application and immediately after the entitlement decision is made.

2.12 Serious Employment Handicap (SEH)

a. Definitions

1. SEH

SEH is defined as a significant impairment of an individual's ability to prepare for, obtain or retain employment consistent with his/her abilities, aptitudes and interests.

2. Significant Impairment

Significant restrictions caused by SCD and NSCD disabilities, deficiencies in education and training, negative attitudes toward the disabled and other pertinent factors

Note: Significant impairment is assessed in terms of the magnitude of the vocational impairment as it relates to the difficulty projected for the individual to achieve rehabilitation.

b. Factors for Determining SEH

Factors to consider in determining if a Veteran or Servicemember has an SEH include, but are not limited to:

- Number of disabling conditions
- Severity of disabling condition(s)
- Existence of a neuropsychiatric condition
- Deficiencies in education and training for suitable employment
- Negative attitudes toward the disabled
- Long or substantial period of unemployment or unstable work history
- A pattern of reliance on government support programs, such as welfare, SCD compensation, SCD pension, Workers' Compensation, Social Security Disability Insurance, etc.
- Withdrawal from society
- Extent and complexity of needed rehabilitation services and other evidence of significant restrictions on employability, e.g., high

unemployment, age, race, sexual orientation and gender discrimination issues, etc.

- Other factors that relate to preparing for, obtaining or maintaining employment consistent with the individual's abilities, aptitudes and interests (38 U.S.C. 3102 and 3106)

c. When Determining SEH is Required for Entitlement to Services

A finding of a significant vocational impairment and SEH is required for entitlement to VR&E services if the Veteran or Servicemember's SCD is rated at a combined 10 percent, or his/her ETD is expired or months of remaining entitlement are exhausted and cannot be extended on the basis of an EH (see 38 CFR 21.44 and 38 CFR 21.78).

d. Additional Benefits Available to Veterans or Servicemembers with an SEH

Veterans with an SEH are eligible for additional benefits, which may not be provided to Veterans who do not have an SEH (see 38 CFR 21.57). Benefits include:

- Possible extension of the 12-year period of eligibility
- Possible extension of the duration of a rehabilitation program beyond 48 months, if required to complete the program
- Extended evaluation services
- Possible independent living services
- More extensive supplies and services for Veterans approved to pursue self-employment (see M28R.VI.A.9)

e. SEH Determination

1. If the VRC determines that a significant vocational impairment and an SEH exists, the VRC must find the Veteran entitled to a program of VR&E services and provide assistance consistent with additional VR&E benefits available to Veterans with an SEH.
2. If the VRC determines that an SEH does not exist, the Veteran has a 10 percent SCD rating, the ETD has expired and/or the Veteran has no entitlement remaining, the VRC will deny entitlement to Chapter 31 services.

f. Prompt Notification of the Determination

The VRC must promptly provide the Veteran with a verbal and written notification indicating that he/she is or is not entitled to services and explaining the determination. As a general rule, whenever possible, provide notification within 45 days from the date of the application and immediately after the entitlement decision is made.

2.13 Feasibility of Achieving a Vocational Goal

In every case where a VRC has determined that an EH exists, the VRC must also determine whether achievement of a vocational goal is currently reasonably feasible (38 CFR 21.53).

a. Definitions

1. Vocational Goal

The term vocational goal is defined as gainful employment status consistent with the Veteran's abilities, aptitudes and interests.

2. Current Reasonable Feasibility

Achievement of a vocational goal is currently reasonably feasible when the following conditions exist:

- One or more vocational goals have been identified
- The Veteran's physical, psychological and cognitive functioning permits training for the goals to begin within a reasonable period of time
- The Veteran either has the educational skills and background to pursue the vocational goal or will receive services through VA to develop these skills as part of his/her rehabilitation program

3. Gainful Employment

- Employment that is income-producing, either on a full or part-time basis, or self-employment
- Employment in a special situation, such as a rehabilitation facility (consider employment in a rehabilitation facility as gainful employment if it is the least restrictive employment environment based on the Veteran's functional ability). For example, a rehabilitation facility may be appropriate for a Veteran with a severe traumatic brain injury

4. Non-Gainful Employment

- Employment is therapeutic in nature (e.g. Compensated Work Therapy [CWT]) or work performed while the Veteran participates in an Individual Extended Evaluation Plan (IEEP). Employment therapeutic in nature usually pays below the established minimum wage. For more information on IEEPs, see M28R.IV.C.3
- Temporary in nature and the occupational field is not normally characterized by temporary job assignments (e.g., union electrician work)

5. Reduced Work Tolerance

A limitation of the rate of pursuit of a rehabilitation program due to the impact of disability(ies) for a Veteran for whom the achievement of a vocational goal is otherwise feasible.

Note: When the question of reduced work tolerance arises, the VRC will request a medical opinion from a VA treatment provider (38 CFR 21.312 e). The VRC needs to be very clear in his/her request as to what the Veteran's functional limitations and/or capabilities are in regard to the chosen employment goal. Using information garnered from the medical opinion, the VRC can establish the rate of pursuit the VA will consider for either full or part-time program participation. For information on how to request a medical opinion, see M28R.IV.B.4.

b. Considerations for a Feasibility Determination

A feasibility determination is made in order to determine whether or not the Veteran has the potential to profit from rehabilitation services and achieve a vocational goal. The determination should be made as soon as possible, but only after reviewing the circumstances under which current reasonable feasibility may or may not be found to exist.

c. When a Feasibility Determination Cannot be Made

If, as the result of an evaluation, the VRC cannot resolve the issue of current reasonable feasibility, the VRC may authorize an extended evaluation for Veterans with an SEH.

d. Actions Following a Feasibility Determination

The following actions should be taken following each of the feasibility determinations listed below:

1. If the VRC determines that achievement of a vocational goal is currently reasonably feasible, the VRC will proceed with the rehabilitation process to the development of a viable vocational goal.
 2. If the VRC cannot determine if achievement of a vocational goal is currently reasonably feasible and the Veteran has an SEH, the VRC will proceed with the rehabilitation process and develop an IEEP.
 3. If the VRC cannot determine if achievement of a vocational goal is currently reasonably feasible or determines that the achievement of a vocational goal is not reasonably feasible and the Veteran does not have an SEH, the VRC will determine that the Veteran is not entitled to services and close the case. If the VRC expects the Veteran's condition to improve within 12 months from the date of the determination, the VRC will diary the case at six and 12-month intervals to ascertain if the Veteran's condition has improved, and the achievement of a vocational goal is feasible.
 4. If the VRC determines that achievement of a vocational goal is not currently reasonably feasible, and the Veteran has an SEH, the VRC will evaluate the Veteran for an Individual Independent Living Plan (IILP). For more information on how to develop and administer an IILP, see M28R.IV.C.9.
 5. If the VRC determines that achievement of a vocational goal is not currently reasonably feasible and the individual is a Servicemember, the Servicemember can receive IL services under Pub. L. 110-181, NDAA.
- e. Required Documentation to Veterans Service Center (VSC)

The VRC must provide the VSC with a copy of the VAF 28-1902b when the Veteran or Servicemember's SCD is less than 100 percent. The VSC rating board will reconsider the Veteran or Servicemember's rating if the infeasibility finding is based on factors associated with the SCD.

Note: The Veteran or Servicemember may also request a letter from the VRC stating that a determination has been made that the achievement of a vocational goal is not currently reasonably feasible. After receipt, the Veteran may choose to submit the letter to the VSC.

f. Reviews of Infeasibility

The determination of current reasonable feasibility is subject to ongoing review throughout the Veteran or Servicemember's rehabilitation program. Changes in circumstances may require a reconsideration of the vocational

goal and, if necessary, a reevaluation of that goal. The VR&E Division will review determinations of infeasibility as warranted by the facts of each case and either retain or change the determination, as appropriate. A review of EH cases should be ongoing to determine whether or not a Veteran or Servicemember's situation changes warranting an SEH.

2.14 Narrative Synthesis

The narrative synthesis provides the following:

- The basis for counseling and assistance throughout the rehabilitation process
- Allows the VRC to revisit and review the information in order to clarify his/her understanding and implications for providing additional services
- Must contain reasoning which is clear to professionals and nonprofessionals
- Must logically support legal determinations, including EH, SEH, current, reasonable feasibility for achieving a vocational goal and how the services included in the plan will lead to rehabilitation

2.15 VAF 28-1902b, Counseling Record-Narrative Report

VAF 28-1902b includes information necessary to develop a comprehensive evaluation of the Veteran's abilities, aptitudes, and interests, and provides the foundation for plan development. VAF 28-1902b is composed of two parts:

a. Part I-Certification of Entitlement/Current Feasibility

Select the appropriate boxes to document the results of the determinations in Part II based on the following:

- If the Veteran or Servicemember has a vocational impairment, then continue evaluating the Veteran for services.
- If the Veteran or Servicemember does not have a vocational impairment, then the Veteran is not entitled to services.
- If the Veteran or Servicemember's SCD contributes in substantial part to the vocational impairment, then continue evaluating the Veteran or Servicemember for services.
- If the Veteran or Servicemember's SCD does not contribute in substantial part to the vocational impairment, then the Veteran or Servicemember is not entitled to services.

- If the Veteran or Servicemember has overcome the effects of the vocational impairment, then he/she is not entitled to services.
- If the Veteran or Servicemember has not overcome the effects of the vocational impairment, then continue evaluating him/her for services.
- If the Veteran or Servicemember has an EH, an SCD rating of at least 20 percent and is within his/her ETD, then continue evaluating him/her for services.
- If the Veteran or Servicemember does not have an EH, then he/she is not entitled to services.
- If the Veteran or Servicemember has an SEH, then continue evaluating him/her for services.
- If the Veteran or Servicemember does not have an SEH but has an EH, then continue evaluating him/her for services.
- If the achievement of a vocational goal is currently reasonable and the Veteran or Servicemember has either an EH or SEH, then continue evaluating for services.
- If the achievement of a vocational goal is not currently reasonable and the Veteran or Servicemember has an SEH, then evaluate him/her for independent living services.
- If the achievement of a vocational goal cannot currently be determined and the Veteran or Servicemember has an SEH, an IEEP is required. For more information on IEEPs, see M28R.IV.C.3.

b. Part II-Counseling Narrative

Provide a narrative summary of the initial evaluation and entitlement determination under the following headings in the following order:

1. Eligibility and Entitlement Data

Some demographic data will be merged from CWINRS. CWINRS should be refreshed to ensure accuracy. This section should contain basic demographic information and any pertinent information that would be taken into consideration during the entitlement process and/or will affect the types of services VR&E will provide for the Veteran or Servicemember's particular situation, i.e. civilian work history, military

history, past wages, reasons for leaving employment. Sources of information include, but are not limited to:

- Medical records/rating decision
- RNI
- Academic records
- Employment and earnings records
- Counseling consultation
- Prior Chapter 31 records
- Other information provided by the Veteran

2. Assessment of Interests, Aptitudes and Abilities

This section lists the Veteran or Servicemember's overall pattern of interests, aptitudes and abilities and includes transferable skills and discusses the implications of the assessment results for rehabilitation planning. If vocational testing is not completed, a justification is documented with an explanation of how the interests, aptitudes and abilities were assessed.

3. Vocational Impairment

This section describes the impairments or functional limitations resulting from both the Veteran's SCD/NSCD conditions and residual capacities.

Areas to explore include, but are not limited to:

- Physical
- Psychosocial
- Cognitive
- Mobility
- Sensory limitations
- Chronic pain

- Deficits in education and/or training
- Lack of transportation
- Unstable work history
- Incarcerations
- Housing
- Financial issues, etc.

Sources of information include, but are not limited to:

- Medical records/rating decision
- Employment records or evaluations
- Records of prior training
- RNI
- Labor Market Information
- Veteran's Self-Report
- VAF 28-1902i, Counseling Record - Medical Information and Related Findings

Note: VA has a legal duty to assist the Veteran in developing evidence for entitlement.

4. Contribution of the SCD(s) to Vocational Impairment

This section explains how the effects from only the SCD condition substantially contributes in an identifiable, measurable and observable manner on the overall vocational impairment.

Note: The contribution from the SCDs conditions need not be the sole or primary cause of an EH.

5. Overcoming the Effects of Impairment

This section explains whether the Veteran has/has not overcome the effects of any presented impairment to employment.

If the Veteran is employed, address employment stability, compatibility with Veteran's disability conditions and consistency with Veteran's pattern of interests, aptitudes and abilities.

If the Veteran is unemployed, address qualifications for suitable employment, efforts to seek employment and whether the unemployment is outside of the Veteran's control. Significant justification is required if the Veteran is not employed, yet found to have overcome the impairment.

6. EH

Taking into consideration the vocational impairment, contribution of the SCD(s) to the impairment, whether or not the Veteran has overcome the impairment and the results of vocational testing, choose the situation which explains the determination of whether or not the criteria for an EH exists.

7. SEH

For all individuals found to have an EH, an SEH determination must be made and explained before plan development.

Below are some examples of possible significant impairments of the Veteran's ability to prepare for, obtain or retain employment:

- Number of disabling conditions
- Severity of disabling condition(s)
- Negative attitudes towards the disabled
- Unstable work history
- Long or substantial periods of unemployment or unstable work history
- Extent and complexity of needed rehabilitation services
- A pattern of reliance on government support programs (e.g., welfare, Workers' Compensation, Social Security, etc.)
- Other evidence of significant restrictions on employability (e.g., high unemployment, age, race, sexual orientation, and gender discrimination issues, etc.)

- Record of or current neuropsychiatric condition(s)
- Alcohol/Substance abuse
- Frequent hospitalizations
- Chronic pain
- Withdrawal from society
- Insufficient education/training for suitable employment
- Difficulties with communicating
- Criminal record

Explain how each factor identified contributes significantly to the impairment of employability. If there is evidence of multiple or significant factors without a decision of SEH, clear and comprehensive explain why the criteria of SEH were not met.

8. Reasons for Prior Case Closure

As part of the comprehensive entitlement assessment, the VRC will review the reasons a Veteran's or Servicemember's prior Chapter 31 case was closed, if a prior case exists. For rehabilitated cases, the VRC must ensure that a determination for overturning the previous rehabilitation decision is made and explained as required by 38 CFR 21.196(c). For discontinued cases, including cases categorized as MRG closures, the VRC must explore the reasons for prior discontinuance to determine if they have been removed per 38 CFR 21.198(c), and explain the decision.

If the comprehensive evaluation reveals that the reason(s) for discontinuance cannot be removed, regardless of whether the basic entitlement criteria are met, the VRC will inform the Veteran that he/she is not entitled to further benefits because the reasons for prior program discontinuance have not been resolved. This is a negative entitlement determination that must be documented using VAF 28-1902b.

9. Entitlement Determination

Select the entitlement determination that resulted from a compilation of the above information and indicates the date the Veteran was notified of the entitlement decision.

Note: The VRC must promptly provide the individual with a verbal and written notification explaining the determination indicating that they are:

- Entitled
- Not Entitled: Reasons for prior discontinuance or rehabilitation not removed
- Not Entitled: No EH
- Not Entitled: No SEH – 10 percent SCD
- Not Entitled: No SEH - ETD expired

10. Feasibility Determination

Whether achievement of a vocational goal is/is not considered to be reasonably feasible. Areas to address include:

- Is the Veteran physically and mentally stable?
- Have suitable vocational goals been identified?
- Has or will the Veteran receive educational skills to pursue a vocational goal?
- Will use of reduced work tolerance enable completion of a program?

In every case when a VRC has determined that an EH exists, the VRC must also determine whether achievement of a vocational goal is currently reasonably feasible.

If the decision is deferred for additional evaluation, it must be documented on a VAF 28-1902b once the feasibility determination is made.

If current reasonable feasibility cannot be determined and the Veteran meets the criteria for an SEH, an IEEP must be developed.

If not currently reasonably feasible and the Veteran meets the criteria for an SEH, there must be compelling evidence that establishes infeasibility beyond any reasonable doubt. Document the infeasibility determination and evaluate for independent living services.

11. Next Steps

Indicate the next steps in the plan development process on the VAF 28-8606, Notes from Counseling and Next Steps prior to the conclusion of the initial interview.

Review the entitlement, feasibility determination and next steps with the Veteran.

Sign and date Part II and place the form on the right side of the CER folder.

2.16 Entitlement Determination Documentation in Corporate WINRS (CWINRS)

a. Entitled

If the Veteran is entitled (38 CFR 21.40), complete the CWINRS Claims Disposition tab – date Veteran was notified of entitlement. The operator will access the Case Status Command Button and check off the 719 Control Code.

b. Not Entitled

If Veteran is not entitled, the operator will update the case status in CWINRS using the following procedure:

- Close in Applicant or Evaluation and Planning status with the appropriate reason code and open Discontinued case status
- Open the Chapter 31 Master Record in BDN and complete the disallowance process
- Using the Claims Adjudication (CADJ) command, access the 408 screen and enter an "X" corresponding to the reason for disallowance:

65 - Entitlement Exhausted (no SEH)

66 - Beyond ETD (no SEH)

AA - Declared Ineligible (SCD rating reduced to 0 percent or severed prior to Chapter31 entitlement determination)

BB - Not Entitled (no EH)

CC - Failure to pursue (from applicant or evaluation and planning prior to an entitlement determination)

DD - Other (requires entry in Remarks section)

- In the Next Screen field on the 408 screen, enter 501 to access the Authorization functions on the 501 screen (Note: The employee who authorized the GED may not authorize a Disallowance on the same record)
- Enter "Y" in the Authorize field to authorize the disallowance transaction
- Enter "N" in the Authorize field to reset the transaction if an error was made on the 408 screen. When "N" is entered on the 501 screen, the operator must make entries on the S99 "Disposition" screen - enter VRC in the location field and "N" in the folder with claim field. The same or new employee may make the corrections on the 408 screen and resume disallowance processing
- The Authorizer will sign the generated tear sheet and file it in the CER folder

c. Pre-Chapter 31 Salary Documentation for Servicemembers

The VRC will document the Servicemember's pre-Chapter 31 salary on VAF 28-1902b, BDN and CWINRS. Document his/her current rank/pay grade (example: Sergeant First Class, E-7) and his/her pre-Chapter 31 salary as \$0. In BDN and CWINRS, use 0000 in the Pre-Chapter 31 salary field to document the Servicemember's Pre-Chapter 31 salary. For more information on documenting information in BDN and CWINRS, see M28R.III.A.2.

2.17 Documents Used to Conduct an Initial Evaluation

Documentation serves numerous purposes, including:

- Provides the rationale and justification for legal determinations which approve or deny rehabilitation services
- Serves as a safeguard to prevent waste, fraud or abuse
- Serves as a record of activities, actions and decisions throughout the rehabilitation process
- Provides a historical record that the VRC can use to clarify his/her understanding of the individual's case

- Contains information that may be used in additional evaluation, counseling and planning activities
- Serves as the basis for reviews to assess the quality of the services provided
- Provides the basis for rehabilitation planning

Note: VAFs are located in Appendix O, VAFs, and CWINRS letters are located in Appendix AF, VA Letters. VRCs may use a CWINRS note in lieu of a VA form as long as the information in the CWINRS note contains all the information requested in the VA form. A VRC may not use a CWINRS note in lieu of a VA form that requires a signature.

a. VA Forms

Document	Description	Requirement
VAF 28-1900, Disabled Veterans Application for Vocational Rehabilitation	Serves as a formal claim for Chapter 31 benefits and services	Mandatory - must be signed and filed in the CER folder
VAF 28-1902w, Rehabilitation Needs Inventory (RNI)	Used to collect information about the eligible individual	Mandatory – must be signed and filed in the CER folder
VAF 29-8739a, Protection of Privacy Information	Explains processes, rights and responsibilities under the Privacy Act	Mandatory - must be signed and filed in the CER folder
VAF 21-4142, Authorization for Release of Information	Required to request records from a non-VA source	Mandatory (when needed) - must be signed and filed in the CER folder
VAF 28-1902c, Counseling Record-Test Results	May be used to record test results	Optional - must be signed and filed in the CER folder
VAF 28-1902i, Counseling Record-Medical Information and Related Findings	May be used to record disability limitations, request a medical opinion and document need for reduced work tolerance	Optional – must be signed and filed in the CER folder
VAF 28-1902b, Counseling Record-Narrative Report	Documents information developed during the initial evaluation to explain the entitlement determination and rehabilitation needs	Mandatory - must be signed and filed in CER folder
VAF 28-8606, Notes from Counseling and Next Steps	Used to document tasks to be completed and the next appointment	Mandatory - must be signed, a copy given to the Veteran and original filed in CER folder

VAF 4107, Your Right to Appeal Our Decision	Informs Veteran or Servicemember of his/her appellate rights following an adverse action	Mandatory - must be provided to the Veteran and a copy filed in the CER folder
VAF 28-0800, Vocational Rehabilitation and Employment (VR&E) Program Orientation	Provides the Veteran or Servicemember with a written orientation/overview of the VR&E program	Mandatory – must be signed and filed in the CER folder
VAF 28-1902n, Counseling Record-Narrative Report (Supplemental Sheet)	Supplementary documentation for VAF 28-1902b, Counseling Record – Narrative Report, which is used to record vocational exploration actions	Mandatory or VRC may document the required information in a CWINRS case note

Note: In addition to using VAF 28-0800, the “VetSuccess for Life” orientation DVD and VetSuccess PowerPoint must be used in all orientation sessions with Veterans and Servicemembers.

b. CWINRS Letters

CWINRS Letter	Description
Initial Evaluation Appointment with VRC	Provides initial appointment information
Disallowance - No EH	Required to explain the denial of benefits and services following a determination that the Veteran or Servicemember does not have an EH
Disallowance – No SEH	Required to explain the denial of benefits and services following the determination that the Veteran or Servicemember does not have a SEH
Disallowance – Remain in Rehabilitated or Discontinued Status	Required to explain the denial of benefits and services following the determination that the reasons for prior case closure in Rehabilitated or Discontinued status have not been removed
10-Day Letter or Stop Action – Missed Eval	Required to advise the Veteran or Servicemember that “no showed” for his/her initial evaluation appointment, that he/she has 10 days from the date of the letter to contact VR&E

