

Chapter 2
SERVICEMEMBERS FOUND FIT FOR DUTY
AND VETERANS RECALLED TO ACTIVE DUTY

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Chapter 2
SERVICEMEMBERS FOUND FIT FOR DUTY
AND VETERANS RECALLED TO ACTIVE DUTY

2.01 Introduction

This chapter clarifies policy and procedures regarding Servicemembers who are found entitled to Chapter 31 benefits, and later determined fit to return to duty; and Veterans participating in the Chapter 31 program who are recalled or voluntarily return to active duty. Statutory and regulatory references are provided throughout the chapter.

2.02 References and Resources

Laws: 10 United States Code (U.S.C.) 688
 10 U.S.C. 12301
 10 U.S.C. 12302
 10 U.S.C. 12304
 38 U.S.C. 3103

Regulations: 38 Code of Federal Regulations (CFR) 21.46
 38 CFR 21.283

Resources: M21-1MRIV.ii.3.A.2

VA Forms (VAF): VAF 28-1900, Disabled Veterans Application for Vocational
 Rehabilitation

2.03 Fit For Duty Determination

a. Impact on Chapter 31 Services

A Servicemember who is determined fit for duty by a Physical Evaluation Board (PEB) while participating in the Chapter 31 program may not receive further services under Chapter 31, except for employment services to ensure adjustment to the military occupation. Refer to M28R.III.B.2 for more information about the Integrated Disability Evaluation System (IDES).

b. Case Closure Options

1. Rehabilitated

The criteria for rehabilitation at closure would be met only if Vocational Rehabilitation and Employment (VR&E) services helped the individual remain in a suitable job in the military by overcoming the impairment(s) to employability.

2. Discontinued

If the individual cannot continue participation in the Chapter 31 program, or will receive no further services, and does not meet the criteria for declaration of rehabilitated status, he/she should be placed in Interrupted status to prepare for discontinuance. See M28R.V.A.6 for procedures on providing services during interrupted status, and M28R.V.A.7 for procedures on discontinuing cases.

2.04 Recalled to Active Duty

a. Impact on Chapter 31 Services

Veterans Affairs (VA) disability compensation payments will be terminated when an individual is recalled for active duty. However, the VA service-connected disability rating is not severed. If the individual is able to continue participation in the vocational rehabilitation process, he/she may continue to receive the same Chapter 31 benefits and services as a Servicemember with a memorandum rating. The Vocational Rehabilitation Counselor (VRC) must re-evaluate the plan of services to determine whether the individual is able to continue planned services. If the individual is not able to continue participating under Chapter 31, the VRC should decide whether to move the case toward rehabilitation based on the suitability of the current military job or toward discontinuance and consider whether an MRG is appropriate.

Note: Service-connection is predominately severed only when a Clear and Unmistakeable Error (CUE) is identified. This means that the service-connection was granted in error. Even if a condition has improved, the most that may happen is that rating would be reduced in evaluation, but as long as it still meets the criteria as being related to service, it would not be severed. More information about severance due to CUE can be found in M21-1MRIV.ii.3.A.2.

b. Impact on Basic Period of Eligibility

If VA determines that a Veteran is prevented from participating in, or continuing in a program of vocational rehabilitation as a result of being recalled to active duty the Veteran's period of eligibility and resulting Eligibility Termination Date (ETD) must be extended. 10 U.S.C. 688, 12301, 12302, and 12304 provide the statutory guidance on ordering a return to active duty. 38 U.S.C. 3103 and 38 CFR 21.46 state that the extension is equal in length to the recall period, plus four months. This extension allows for additional vocational assessment and the development of an appropriate rehabilitation plan. An extension would not be needed for individuals that are able to continue their Chapter 31 program while on active duty.

To calculate this extension, subtract the Entered on Active Duty (EOD) date from the Released from Active Duty (RAD) date and add four months. The EOD and RAD dates are found on the Servicemember's or Veteran's Corporate WINRS (CWINRS) folder under the Personal tab. This extension should be processed after discharge when a Veteran reapplies for VR&E benefits so that the actual RAD date can be used and an accurate extension granted.

c. Impact on Subsistence Allowance and Employment Adjustment Allowance (EAA)

A Servicemember on active duty may not be paid a subsistence allowance or an EAA. Entitlement months must be manually charged against active duty Servicemembers for time spent in training (i.e., full-time, three-quarter-time, half-time, or less than half-time depending on enrollment) even though they do not receive subsistence allowance by following the guidance in M28R.V.B.8.

d. Case Closure Options

The VRC must adhere to the following guidelines if he/she decides to move the case toward rehabilitation, discontinuance, or a MRG:

1. Rehabilitated

If the Servicemember meets the criteria for declaration of rehabilitation in accordance with 38 CFR 21.283, follow guidance provided in M28R.V.A.7 to move the case to Rehabilitated status.

To process the rehabilitation in CWINRS:

- Use Reason Code 25, "Alternative Suitable Employment Goal Achieved - Rehabilitated"
- Then select the Detail Reason Code 25C, "Veteran to Return to Active Duty"

2. Discontinued

If the Servicemember meets the criteria for closing the case in Discontinued status with a Maximum Rehabilitation Gain (MRG), then proceed with this action. See M28R.V.A.7 for procedural guidance MRG closures.

If the criteria for MRG are not met, close the case in discontinued status in accordance with guidance provided in M28R.V.A.7.

2.05 Voluntary Return to Active Duty

a. Impact on Chapter 31 Services

Veterans Affairs (VA) disability compensation payments will be terminated when an individual voluntarily returns to active duty. However, the VA service-connected disability rating is not severed. The same procedures outlined in section 2.04.a of this chapter should be followed when an individual voluntarily returns to active duty.

b. Impact on Basic Period of Eligibility

Individuals who volunteer to return to active duty are not eligible for an eligibility extension. An extension in the basic period of eligibility is only authorized for those individuals who are recalled to active duty.

c. Impact on Subsistence Allowance and EAA

A Servicemember on active duty may not be paid a subsistence allowance or an EAA. The same procedures outlined in section 2.04.c of this chapter must be followed to manually charge entitlement months against active duty Servicemembers for time spent in training.

d. Case Closure Options

If the VRC should decide to move the case toward rehabilitation, discontinuance, or a MRG, the same procedures outlined in section 2.04.d of this chapter must be followed.

2.06 Applications Following Rehabilitation or Discontinuance

Individuals reapplying for VR&E benefits using VAF 28-1900, Disabled Veterans Application for Vocational Rehabilitation, (see Appendix O, VA Forms) following rehabilitation or discontinuance may reenter the Chapter 31 program based on the entitlement criteria in place at the time of re-application. See M28R.IV.A.2 for procedural guidance on application processing.