§ 21.3023 Nonduplication; pension, compensation, and dependency and indemnity compensation.

(a) Child; age 18. A child who is eligible for educational assistance and who is also eligible for pension, compensation or dependency and indemnity compensation based on school attendance must elect whether he or she will receive educational assistance or pension, compensation or dependency and indemnity compensation.

(1) An election of educational assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or dependency and indemnity compensation on account of the child based on school attendance on or after the age of 18 years. The bar is equally applicable where the child has eligibility from more than one parent.

(2) Payment of pension, compensation or dependency and indemnity compensation to or on account of a child after his or her 18th birthday does not bar subsequent payments of educational assistance.

(3) An election of educational assistance to or on account of a child after his or her 18th birthday does not bar subsequent payments of educational assistance.

(b) Child; under 18 or helpless. Educational assistance allowance or special restorative training allowance may generally be paid concurrently with pension, compensation or dependency and indemnity compensation to or on account of a child. The bar is equally applicable where the child has eligibility from more than one parent.

(c) Child; election. An election by a child under this section must be submitted to VA in writing.

(1) Except as provided in paragraph (c)(2) of this section, an election to receive Survivors' and Dependents' Educational Assistance (DEA) is final when the eligible child commences a program of education under DEA (38 U.S.C. chapter 35). Commencement of a program of education under DEA will be deemed to have occurred for VA purposes on the date the first payment of DEA educational assistance is made, as evidenced by negotiation of the first check or receipt of the first payment by electronic funds transfer.

(2) An election based on erroneous information furnished by an authorized representative of the Department of Veterans Affairs is not considered final.

(3) A child other than a helpless child, whose eligibility was based on a finding that the veteran had a permanent total service-connected disability and who commenced a program of education under DEA may not thereafter qualify as a dependent for disability compensation purposes if the veteran is later found to be less than permanently and totally disabled, or for pension, compensation or dependency and indemnity compensation after the veteran’s death.

(d) Spouse or surviving spouse. Educational assistance allowance or special restorative training allowance may be paid for an eligible spouse or surviving spouse concurrently with pension, compensation or dependency and indemnity compensation.

(E) Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3222, 3681

74 FR 14665, Mar. 31, 2009

(a) Civilian employment. The provisions of this paragraph are applicable to cases where there is eligibility for benefits from the Office of Workers’ Compensation Programs, under the Federal Employees’ Compensation Act (FECA) based on the disability or death as a result of civilian employment of the veteran from whom eligibility for educational assistance is derived.

(1) Child, spouse or surviving spouse. A person who is eligible for educational assistance and is also eligible for Office of Workers’ Compensation Programs benefits, under the Federal Employees’ Compensation Act (FECA) must elect which benefit he or she will receive.

(2) Veteran, spouse and child—surviving spouse and child. An eligible person may receive educational assistance notwithstanding that the Office of Workers’ Compensation Programs benefits under the Federal Employees’ Compensation Act (FECA) are being paid to a veteran, or surviving spouse.

(b) Military service. The provisions of this paragraph are applicable to cases where there is eligibility for benefits from Office of Workers’ Compensation Program, under the Federal Employee’s Compensation Act (FECA) based on the disability or death as a result of military service by the veteran from whom eligibility for educational assistance is derived.

(1) Child, spouse or surviving spouse. A person who is eligible for educational assistance and is also eligible for Office of Workers’ Compensation Programs benefits, under the Federal Employees’ Compensation Act (FECA) must elect which benefit he or she will receive.

(2) Veteran, spouse and child—surviving spouse and child. An eligible person may receive educational assistance notwithstanding that the Office of Workers’ Compensation Programs benefits under the Federal Employees’ Compensation Act (FECA) are being paid to a veteran, or surviving spouse.

CROSS REFERENCE: Federal Employees’ Compensation. See § 3.708 of this chapter.

§ 21.3025 Nonduplication; Federal programs.

Payment of subsistence allowance and special training allowance is prohibited to an otherwise eligible person—

(a) Who is on active duty and is pursuing a course of education which is being paid for by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service); or

(b) For a unit course or courses which are being paid for under 5 U.S.C. chapter 41.

(Authority: 38 U.S.C. 3681(a))

[61 FR 26108, May 24, 1996]

Claims

§ 21.3030 Claims.

The provisions of subpart B of this part apply with respect to submission of a claim for educational assistance under 38 U.S.C. chapter 35, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 38 U.S.C. 3513, 5101, 5102, 5103)

[64 FR 23772, May 4, 1999]