

## § 21.52

## 38 CFR Ch. I (7–1–10 Edition)

### § 21.52 Determining serious employment handicap.

(a) *Requirements for determining serious employment handicap.* For each individual who is found to have an employment handicap, a CP or VRC must make a separate determination of whether the individual has a serious employment handicap. For the purposes of an initial evaluation under § 21.50, a serious employment handicap will be found to exist only if a CP or VRC determines that the individual meets each of the following conditions:

(1) *Significant vocational impairment.* The individual has a significant vocational impairment; that is, a significant impairment of the ability to prepare for, obtain, or keep employment in an occupation consistent with his or her abilities, aptitudes, and interests, considering the factors described in § 21.50 and paragraph (b) of this section.

(2) *Effects of significant impairment not overcome.* The individual has not overcome the effects of the significant vocational impairment through employment in, or qualifying for employment in, an occupation consistent with his or her abilities, aptitudes, and interests. This includes an individual who qualifies for a suitable job, but who does not obtain or keep the job for reasons beyond his or her control.

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

(3) *Contribution of the service-connected disability(ies) to the individual's overall significant vocational impairment.*

(i) Except as provided in paragraph (a)(3)(ii) of this section, the service-connected disability(ies) must contribute in substantial part to the individual's overall significant vocational impairment. This means that the disability(ies) must have an identifiable, measurable, or observable causative effect on the overall significant vocational impairment, but need not be the sole or primary cause of the serious employment handicap.

(Authority: 38 U.S.C. 3101)

(ii) For determinations made on applications for vocational rehabilitation filed on or after March 30, 1995, but before October 9, 1996, the individual's service-connected disability(ies) need

not contribute to the individual's overall significant vocational impairment.

(b) *Factors for assessment during the initial evaluation, when determining whether a significant vocational impairment exists.* The combination of all restrictions and their effects on the individual define the extent of the vocational impairment and its significance. When determining whether the individual has a significant vocational impairment, VA will develop and assess the following factors and their effects:

- (1) Number of disabling conditions;
- (2) Severity of disabling condition(s);
- (3) Existence of neuropsychiatric condition(s);
- (4) Adequacy of education or training for suitable employment;
- (5) Number, length, and frequency of periods of unemployment or underemployment;
- (6) A pattern of reliance on government support programs, such as welfare, service-connected disability compensation, nonservice-connected disability pension, worker's compensation, or Social Security disability;
- (7) Extent and complexity of services and assistance the individual needs to achieve rehabilitation;
- (8) Negative attitudes toward individuals with disabilities and other evidence of restrictions on suitable employment, such as labor market conditions; discrimination based on age, race, gender, disability or other factors; alcoholism or other substance abuse; and
- (9) Other factors that relate to preparing for, obtaining, or keeping employment consistent with the individual's abilities, aptitudes, and interests.

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

[72 FR 14043, Mar. 26, 2007]

### § 21.53 Reasonable feasibility of achieving a vocational goal.

(a) *Requirement.* The Department of Veterans Affairs shall determine the reasonable feasibility of achieving a vocational goal in each case in which a veteran has either:

- (1) An employment handicap, or
- (2) A serious employment handicap.

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

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(b) *Definition.* The term *vocational goal* means a gainful employment status consistent with the veteran's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3101(8))

(c) *Expeditious determination.* The determination of reasonable feasibility shall be made as expeditiously as possible when necessary information has been developed in the course of initial evaluation. If an extended evaluation is necessary as provided in §21.57 a decision of feasibility shall be made by the end of the extended evaluation. Any 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&E) 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)

(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;