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THROUGHOUT!



Benjamin Krause

VOC REHAB SURVIVAL GUIDE FOR VETERANS

Learn what the VA will not tell you

Fourth Edition

2012

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Part I: Introduction

Focus:

Who this research guide is written for and why.



**IT'S WRITTEN WITH THE SOLDIERS IN MIND,
FIRST, FOREMOST AND FOREVER.**

This guide is actually a kit full of examples and templates that are designed to give you some of the information you need to execute a well formatted claim for benefits that could get approved the first time around.

Since appeals take forever, be sure to consult a veteran service officer or lawyer about your claim prior to filing documents with the VA. This is not intended as legal advice. Instead, treat this information as educational, to help you learn about the process prior to applying or if you get stuck.

Appeals take forever.

Ensuring your claim does not make it into

the “round file” (garbage can), or to the appeal level is vital for success. This kit will help you get it right the first time around because you will have a more grounded understanding of the program and the rules that govern its usage.

Dept. of Veterans Affairs Motto

When you travel to Washington DC, the VA proudly displays the words following words from Abe Lincoln: “to care for him who shall have borne the battle, and for his widow and his orphan -”

But maybe the time has come to read that quote in its full context.

"With malice toward none, with charity for all, with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation's wounds, to care for him who shall have borne the battle, and for his widow and his orphan - to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations."

Abraham Lincoln



Simple Reality:

Washington DC has no clue about veterans.



That's me. I know what you're probably thinking, "He looks like a really damn serious guy."

This is my "stop screwing with veterans" look that I put on when I travel to Washington D.C. to advocate for all of you. There is a reason for it.

Your elected officials are so removed from all of you that it takes guys like me to tell them about issues veterans face. Those on Congress are putting out numerous fires, and keeping track of every group's issues can be and is overwhelming.

For example: one legislator's office on a Veterans Committee told me they had around 30,000 veterans in their state. In reality, the number was 700,000.

In that same state I just talked about, the VA pays \$1.5 billion in just disability compensation & pension payments. That money stays in the economy. It doesn't go to foreign banks or offshore investments. It is spent in the local economy. Knowledge of the veteran population in that instance could sway how the senator votes.

In D.C., numbers matter because they mean votes. The more votes there are, the more that group can leverage them in exchange for attention on Capital Hill. In that state, they had no idea about vets because they were unaware of the leverage vets have. I am changing that paradigm.

The Department of Veterans Affairs is the same way. Similarly, it seems shocking that the same agency in charge of veterans benefits has little to no understanding of the day to day grind veterans face when trying to get our benefits.

These people are dealing with huge budgets and millions of you. As a result, just as in war, the veteran is pushed into a numbers game. They cannot save us all, even if they tried.

This is why you're here. You are here to learn how to advocate for yourself. Knowing your rights is the only way to ensure you are getting the benefits to which you are entitled.

You have an opportunity to change your life with a free education, Independent Living money, or funding for a new business. These benefits can be in access of \$100,000. Only a fool would squander this opportunity. Do not be that guy.



Our History:

How DisabledVeterans.org got kicked off.

This is important:

That is a picture with Director Ruth Fanning in Washington D.C. in March 2012. Ruth is the head of the entire VA Voc Rehab program. Yes, she is the Grand Puba of all things Rehabilitation and is your overlord for the next few years.

She is a great person, and, like most people within the VA, is dealing with mountains of regulations and other requirements before she can even address specific issues for veterans. Despite this, she does have time at the end of the day to pick up the phone or send a concerned email back to a frustrated veteran.

Looking back to the picture, we probably look somewhat chummy right? Well, it wasn't always that way.

In 2010, I started a CBS Evening News with Katie Couric investigation into Voc Rehab. Their report started off like this:

"A two-month CBS News investigation of the Department of Veteran's Affairs' (VA) most important benefit program helping disabled vets return to work, a benefit most vets call "Voc Rehab," revealed a program which is beset with contracting and staffing problems -- which often throws needless roadblocks in front of eligible veterans, and which either tolerates or can't prevent wrongful benefit denials for some of the nation's most deserving former warriors."

Needless to say, I didn't win any friends within the VA at that time. However, within days, I did get immediately approved to attend law school and my disability compensation appeal was approved. Both of which were in the appeals process. Magic.

Like many of you, I do not give up when it comes to my benefits. It took some oversight from an outside media source to get the VA to take immediate action. While not perfect, at least it worked.

Like CBS, I try to help all veterans get the most out of their benefits using journalism to expose issues within the system. If any of you have problems, please email me and I'll do what I can to either help or contact the right people to get things sorted out.





"A man who is good enough to shed his blood for his country is good enough to be given a square deal afterwards. More than that no man is entitled, and less than that no man shall have."

~ Theodore Roosevelt, 1903

Why I made this guide.

HOW CAN YOU KNOW WHAT YOU DO NOT KNOW?

Answer: you cannot.

I wrote this guide for two reasons, for both veterans and lawyers. First, I wanted all veterans, college educated or not, to have equal access to their benefits. Second, most lawyers and VSO's know very little about how to get things done in Voc Rehab. Plus, as one lawyer told me, there's no money in it. So, finding a lawyer to help with your disability claim is one thing. When it comes to Rehabilitation, you're on your own. That's why I made this guide.

This 4th Edition is a complete revision of the Voc Rehab Survival Guide, re-written and redesigned. It incorporates basic principles of research pathfinders and legal writing into lay terms that most veterans can understand. After all, if few lawyers will represent veterans on this subject during their appeals with the VA, then we, as veterans, need to rely on ourselves.

A little background. After publishing some articles on Military.com in 2009, hundreds of veterans emailed me with questions and comments about the program within one week. No one at the time was writing about Voc Rehab. The VA was no exception. At that time, only a couple disability benefits guides

even touched on the program, giving the subject at best 3 pages. Sadly, not much has changed since then.

The big problem? Many vets have no idea what the program can do for them. Some had the same problem I had during my first meeting. If you don't know the rules, you can't play by them. Worse yet, the rules can be used against you.

The goal. I take a different approach with this guide than some other veterans advocates. Rather than telling you the black letter regulations, I make a point to make a point. My goal? To not only help you get your benefits, but to help you get the most out of those same benefits. Rather than becoming a desk jockey, many veterans use the guide to attend law school or become doctors.

If I can teach you to think like those same leaders who caused the current mess in DC, you will not only learn how to win by playing their game, but you'll know how to spot those jokers a mile away.

What's their game? Use the laws and rules to their advantage to take your home or run your business into the ground or outsource your jobs. Mega lobbyists write legislation



Congress signs without much of a thought of the true impact on Americans. Laws are created that benefit only a few power brokers. Meanwhile, the rest of us fight it out for jobs at Big Box Mart. This needs to change and you're going to help me do it.

Hopefully, this guide will in some small way keep them from selling you their snake oil. Veterans are great at spotting trouble. Once you have a great education or business or career, you'll be able to do something to help our whole country, whether by getting into the political system or becoming a "job creator" yourself.

Here, I will reorient your perception of your benefits so that you use them to their fullest extent, the way Congress actually intended. The more you utilize your benefits, the better our country will be.

The solution. Well-educated bankers and businessmen know how to play the game.

Here's your first lesson. In reading through the guide, take note between the information Vocational Rehabilitation supplies you with on the [Chapter 31 Vocational Rehabilitation](#) home page compared to this guide: <http://www.vba.va.gov/bln/vre/>

Does their information answer:

- What can I fully expect and accomplish with the program?
- What training can I receive?
- What are the regulations?
- What have others done?

Immediately, you should notice that this course is over 100 pages. The VA's page on Voc Rehab is only 1 page.

Here is my take. That website provides no specific answers. It encourages you to just trust the VA to do its best.

You're here because you know better than to trust the system. You are here to become your own best advocate, and hopefully the VA will also help you do that. Maybe not.

The VA is using a form of Game Theory. Yes, it's a psychological "game." The VA believes if veterans know the rules, then those same veterans will lie, cheat and steal to get benefits they don't deserve.

How does that make you feel? You are guilty of being a liar and a cheat with no trial. Meanwhile, felons in prison are at least innocent up until they are convicted.

But you, you are a veteran. For some reason, you deserve less consideration than a felon.

If you disagree with my opinion, take a look at [VetSuccess.gov](#) Chapter 31 page and ask yourself "why is this so vague?" Read the excerpt on the next page and you'll learn why; it's vague on purpose.

Watch any hearing at the House Committee on Veterans Affairs when they discuss changes to the disability system.

Witnesses to Congress say veterans should not be trusted because of the risk of fraud.

The VA is afraid that veterans (those formerly trusted with the most sensitive secrets of our nation's security) will cheat, steal and be generally dishonest when it comes to getting the benefits we already earned.



Game Theory and Acoustic Separation

I recently researched an area within Game Theory & Economics about Decision Rules published in the Harvard Law Review. The title was *Decision Rules and Conduct Rules: On Acoustic Separation in Criminal Law*, written by Meir Dan-Cohen.

What it is. Imagine a world where there are two kinds of rules. Decision rules and conduct rules. Most everyone knows the conduct rules (thou shalt not kill) but few know the decision rules (how judges decide punishment for things like murder under duress).

Decision makers (like judges and Voc Rehab Counselors) keep the rules vague so they can have maximum flexibility. This flexibility gives them the power to make decisions on an individual level without needing a great deal of oversight. But, a lack of oversight can result in abuses of power, which accounts for many problems within the VA system.

Acoustic separation is the divide between the deciders and everyone else - researcher Dan-Cohen likened the separation to the one way glass used for interrogation. While the decision makers can see and hear us, we cannot see or hear them.

What this means. In Voc Rehab, the rules are vague on purpose. It allows the counselors a great deal of flexibility. The VA does not provide candidates with a rule book, and a common Google search reveals laws and rules that are difficult to find much less interpret. In a perfect world with perfect people, that would be fine and counselors could make great decisions to help veterans. Knowledge of the rules would not matter.

Unfortunately, a lot of veterans have rather antagonistic experiences with their counselors. Some counselors are racist. Some are anti-veteran. Some are just inexperienced. Regardless of the background issue, once the decision is made, it may be final. If the veteran does not know what the rules are, they can be misled by a bad actor and needlessly accept an unfavorable decision.

The reason for the ambiguity is simple; the VA is worried that veterans will manipulate the system if they know the rules. While felons get the benefit of the doubt, veterans do not. Veterans are not informed of their rights or that anything they say can be used against them.

To the VA, the risk is that the veteran gets into a program of training that is ill-suited for that person. Instead, they want the veteran to rely on the VA being the good steward with American tax dollars. Seem like a good idea?



Basic VA Facts Sheet

Voc Rehab & Employment: The 30,000 Foot View

NUMBERS	
BREAKDOWN	
Annual Budget	\$1,200,000,000
Veterans in VR&E	115,000
Regional Offices	54
New Applicants	65,000 Yearly
of those 65,000	
18% Will Complete Program	
<u>Every hour</u>	
7 Veterans apply	
• 1 Will be rehabilitated	
• 6 Will drop-out	
<u>Average cost per drop-out</u>	
• \$3,200	
<u>Times 51,000 yearly drop-outs</u>	
• \$162,000,000 in Taxes*	

*Based on extrapolated statistics :
[2007 Veterans Employability Survey](#)

The purpose of this facts sheet is to scare the hell out of you and to serve as a call to action for any veteran advocate or lawyer reading over this material.

The fact is this, the VA has struggled for years to properly implement this benefit the way Congress intended. Instead, come Voc Rehab officials hold many benefits out of the reach of deserving veterans. Other veterans are forced to sign up for training tracks in which they have little to no interest. This is why many drop out.

Data Sources

This paper collates data from 4 primary sources:

1. [The Vocational Rehabilitation & Employment Program for the 21st Century Veteran, 2004. <http://tinyurl.com/cked9w5>](#)
2. [Audit of Vocational Rehabilitation & Employment Program Operations, 2007 <http://tinyurl.com/c7zz693>](#)
3. [2007 Veterans Employability Survey <http://tinyurl.com/cr5gaj>](#)
4. [VA Vocational Rehabilitation and Employment: Better Incentives, Workforce Planning, and Performance Reporting Could Improve Program \(VERS\), 2009 <http://tinyurl.com/95qved7>](#)

Check these out to read the facts about the VA and Voc Rehab yourself.

\$717 Billion

Cost to taxpayers for caring for the Disabled Veterans returning from the current wars in Iraq and Afghanistan.

"The Three Trillion Dollar War"

-Joseph Stiglitz
Economist
Nobel Prize Winner

VR&E Unprepared

Eighty percent of VR&E offices admitted in 2009 that they are not ready to deal with the needs of future veterans. Twelve percent claimed to be totally unprepared.

Discrimination



Still seen as area needing improvement within the VR&E Counselor ranks.

Benefits' Restriction

Be on the lookout for future administrations to continue to view Veterans Benefits as a source of deficit spending reductions.



Brass Tacks of Researching

LEARN ABOUT THE VA & VOC REHAB

Before I get too ahead of myself, I want to cover the basics of researching for your claim. There are modes of research we need to talk about first because not all veterans have the same level of familiarity with web research online. Other veterans may prefer having the text in book form rather than electronic. I will repeat these topics in Essential 4. Repetition is an important tool for understanding and learning, which is why I do it.

	Physical Data	Online Data
Free	Libraries <ul style="list-style-type: none">• Public county library systems• Public and private universities Veteran Service Organizations <ul style="list-style-type: none">• Like the VFW or DAV• County Service Organizations Employment Agencies State Capitals' Libraries Dept of Veterans Affairs	Databases <ul style="list-style-type: none">• Google• Google Scholar• Government Printing Office• Federal Register• THOMAS• National Archives• www.VA.Gov• VA Board of Appeals• US Court of Appeals• WebMD• Legal Information Institute• Justia• vLex
Paid	Reference resources <ul style="list-style-type: none">• LexisNexis Veterans Benefits Manual & Related Laws and Regulations CD-ROM	Databases <ul style="list-style-type: none">• Westlaw• LexisNexis



Bodies of Information for Background

Here are the laws and other information you need to know about that set the groundwork for Vocational Rehabilitation as we know it today. This will all unfold through this guide, but I want you to be aware of what it is ahead of time. Note: none of these lists are exhaustive. These lists are intended to provide a jump off point for your research.

1. Law and Regulations from Congress

- ❖ H.R. 5288: Veterans Rehabilitation and Education Amendments of 1980
- ❖ Public Law 96-466
- ❖ 38 USC Sections 3100 to 3120
- ❖ 38 CFR Part 21.1 to 420
- ❖ M-28 Advisory Rules
- ❖ Legislative History
- ❖ Federal Register

2. Employment Information

- ❖ Employment trends
- ❖ Salary information
- ❖ Training
- ❖ College placement
- ❖ Self-Employment plans
- ❖ Graduation rates

3. Appeals Cases

- ❖ VA Board of Appeals
- ❖ US Court of Appeals for Veterans Claims
- ❖ US Court of Appeals for the Federal Circuit

4. Medical Data

- ❖ Types of Disabilities
- ❖ Job impacts
- ❖ Medical opinions
- ❖ Medical research
- ❖ Rehabilitative techniques
- ❖ Treatment success rates

We will not talk about 2-4 until later within the guide. For now, I want to talk about laws and regulations so that you can get a good historical overview of what Voc Rehab is supposed to do. I also set out resources for you to do your own research.



Laws and Regulations Background

Here are the laws and regulations with a bit of history. While there are a lot of “for pay” resources out there, the government has done a great job lately of creating functional websites. When combined with local public libraries, you can get all the information you need.

A little story called Chapter 31 Vocational Rehabilitation

H.R. 5288: Veterans Rehabilitation and Education Amendments of 1980

Important? Knowing the background of Voc Rehab and the intention of Congress can help you reason with your counselor in a way practically no other veteran will do.

This is the Bill Congress approved to improve Chapter 31. Title I of this House Report sets out the modern foundation of what we know today as Chapter 31 Vocational Rehabilitation and Employment. The most important component of this legislation is the overview of what Voc Rehab is supposed to do:

“[It revises] existing veterans’ vocational rehabilitation provisions in order to provide all services necessary to enable veterans with service-connected disabilities to attain maximum independence, to become employable, and to obtain and maintain suitable employment.”

Find it: <http://thomas.loc.gov/cgi-bin/bdquery/z?d096:H.R.5288>:

It became **Public Law 96-466** and is now codified statutes within **38 USC Sections 3100 to 3122**. Statutes are laws that are binding. Anything binding on a decision maker or veteran is called a Primary Source. Everything else is called a Secondary Source and can be used for persuasive purposes only.

Information on this process is only important insofar as your level of curiosity relating to the subject. Voc Rehab pays particular attention to 38 USC 3100 - 3120 and very little to the history and intent of Congress. However, intent of Congress does matter.

38 CFR Part 21.1 to 420 is the Code of Federal Regulations that control Voc Rehab. These regulations tell us how the Dept of Veterans Affairs interpreted 38 USC 3100-3120. While not



Laws and Regulations Background

laws, these regulations are basically laws, not exactly but almost as binding. Whenever it is updated, we can locate the updates in the **Federal Register**.

- Next, we have **M-28 Advisory Rules**. The M-28 tells us how Chapter 31 Vocational Rehabilitation & Employment interpreted and intended to carry out 38 CFR Part 21. This is a secondary source. More on this on the next pages.
- Last, there is the **Legislative History**. The legislative history is also a secondary source and is all the information, including floor debates, that are compiled that tells us what the Legislators intended to do. When it comes to Legislative History, law librarians are the best resource to help sift through the information.

Legislative History of Public Law 96-466

Best places to look for legislative history will be [THOMAS](#) which is the main website for the Library of Congress. This resource is free and online. [FDsys](#) is the database maintained by the Government Printing Office. This resource is free and very easy to navigate when compared to older websites. If there is a public library nearby or university library, you may be able to find similar sources in print form. Ask the research librarian where they keep their governmental resources.

- Find it - THOMAS: <http://thomas.loc.gov/cgi-bin/bdquery/z?d096:H.R.5288>
- Find it - FDsys: <http://www.gpo.gov/fdsys/>

United States Code (USC) & Code of Federal Regulations (CFR)

The first is a Primary Source and the second is basically binding. These sources of law will be your money maker when it comes to your claim. Knowing what the laws and regulations state will set you apart from other veterans. We will discuss these in greater depth later. FDsys is the official system used by the Governmental Printing Office.

Search for 38 USC 3100 to start your research and 38 CFR Part 21 using Google or Bing. This will usually lead you to governmental resources, but there are some noteworthy private resources as well. Other sources for this information are:

- Find it - USC: <http://tinyurl.com/38trhoc>



Finding Laws and Regulations

LAW AND REGULATION OVERVIEW: KNOW WHAT THEY KNOW

- Find it - CFR: <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

These are all about the same but the layout varies slightly. You can also find these using Westlaw and LexisNexis, but these sources are expensive and unjustifiable when you can find the same information using free governmental and nonprofit resources.

Federal Register

Great resource to read about the intent of changes to the CFR. Many Voc Rehab offices do not keep up on this information, which is supposedly binding on their decisions. Be sure to check if there have been any updates to the regulations involved in your claim.

- Find it - Federal Register: <https://www.federalregister.gov/>



HOW TO FIND THE LAWS AND REGULATIONS THAT ARE IMPORTANT

Statutes and regulations. These are important and understanding how to use them to your advantage can be the difference between getting approved for medical school or being pushed into the Rapid Re-Employment track.

There are three things you can use to your advantage. The first are the statutes, [38 USC §§ 3100 - 3122](#). These are binding on the VA and interpreted by the Secretary of the VA. The interpretation of the statutes is found within regulations, [38 CFR Part 21.1 - 430](#). Then, the CFR is interpreted into guideline book called the [M28](#) by the VA. We will dive into the what the M28 is on the following pages.

- Find it: M28: <http://www.benefits.va.gov/warms/M28.asp>

About the gavels. The number of statutes is small and vague but have the most authority, which is why we gave it a big gavel. As they are interpreted by the respective agency, the number of regulations grows but the authority of those rules are diminished. Finally, we have the interpretive guidelines of the M28, which carry very little authority but are very specific.



STATUTES



CODE OF FEDERAL REGULATIONS



M28 CHAPTER 31 CASE MANAGEMENT





HOW TO FIND THE LAWS AND REGULATIONS THAT ARE IMPORTANT

Now that you have read over the main statutes and regulations that are important, I want you to refocus on the two most important paragraphs, again.

Here are the two most important paragraphs you will read for Voc Rehab. They set out the what the program is supposed to be applied. Notice the language, “maximum independence” and “maximum extent feasible.” Many counselors still claim they are only obligated to provide the minimum amount of benefits. However, that cannot be reconciled with the language Congress decided on when the Statute was drafted. It is also not how the Secretary interpreted the Statute.

Click on the hyperlinks to go straight to the information you seek.

38 USC §3100

“The purposes of this chapter are to provide for all services and assistance necessary to enable veterans with service-connected disabilities to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment.”

38 CFR Part 21.1(a)

“(a) Purposes. The purposes of this program are to provide to eligible veterans with compensable service-connected disabilities all services and assistance necessary to enable them to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment.”

Important CFR's

38 CFR Part 21.50-53: Sets up the standards for your initial meeting with Voc Rehab.

38 CFR Part 3.105: This tells your counselor when they can change or cancel your training plan.

38 CFR Part 21.94-98: These regulations tell you how to request a change to your own plan.

38 CFR Part 21.283: When you are almost done with training read over how they are supposed to process your final rehabilitation decision prior to employment.

38 CFR Part 21.284: If you have ever used Voc Rehab, you can get back into the program. This regulation sets out the standard, and it's a tough one.

Find them: <http://tinyurl.com/crjktbj>



Pamphlets and Guides from the VA

M28 - Vocational Rehabilitation & Employment Manual

This is the overall manual that Voc Rehab will use when making decisions about a veterans claim. It is essentially their bible for conduct and how to decide claims and appeals. In all, it is around 300 pages and you will need to download each subchapter separately into a word document. This makes it somewhat difficult to read. However, reading it is well worth your time. The following links are to sub components of the M28.

- Find it: <http://www.benefits.va.gov/warms/M28.asp>.

The following are sections within the M28.

- [**M28-1 Vocational Rehabilitation and Counseling Procedures Under 38 USC Chapter 31**](#)
- [**M28-2 Adjudication Division Procedures Under 38 USC Chapter 31**](#)
- [**M28-3 Internal Control in Vocational Rehabilitation and Counseling**](#)

As stated previously, these guidelines are just that, guidelines. They will have no controlling authority. However, a veteran can use them to their advantage during a meeting in persuading the counselor. For example, if the counselor refuses to provide a computer, the M28 provides that a counselor can approve a computer for a veteran.

Moving forward: take notes on which statutes, rules and guidelines support your claim the most. Pick out the language you believe will most impact a decision-maker in your favor.

When you write your claim for benefits, meaning your application letter, incorporate the words into your supporting statements. This will help you align your facts in a way that is the most helpful to a counselor. The more helpful your claim is, the higher your likelihood of success in getting the kind of training you want.



Part II: Seven Essentials

SUMMARY

Vocational Rehabilitation 101 includes a factual breakdown of the program and then dive bombs into the 7 Essentials for the Voc Rehab win.

The 7 Essentials were the easiest way I could think of to break down the application process.

Its purpose is provide you with a systematic way to prepare for your first Voc Rehab meeting.

The goal is make you confident. So much so in fact that the counselor will approve your request for training during the first meeting.

While it doesn't always work that way, many veterans are approved the first time around. Good luck!

Essential 1: Decide to win

It's the well prepared disabled veterans who win at Voc Rehab. This lesson will cover:

- Orientation to the right mindset
- How to develop your playing field
- Overview of what needs to be done for success
- Learn about the VA

Essential 2: Find your dream job

Many of us have no idea what we want to do after the military. This lesson will cover:

- Brainstorming techniques
- Ideas on what Chapter 31 has done for other veterans

Essential 3: Identify the path for your goal

Here is how to research your way to a new career through Chapter 31. This lesson will cover:

- Where to research careers
- What Voc Rehab Counselors will expect from your plan
- How to make those pieces fit your playing field



Summary Continued

Essential 4: Learn the law

This lesson will cover:

- Where to find the regulations
- Which ones are pertinent to the first stages of the process
- How to understand the regulations

Essential 5: Learn the cases

These will show you how veterans have erred in the past. This lesson will cover:

- Where to find appeals cases
- How to benefit from the mistakes of other veterans
- How to interpret errors made by Voc Rehab to your advantage

Essential 6: Make your plan

You now have a lot of data and information. This lesson will cover:

- How to take the data and make it apply to you
- What is important for the counselor to know about your training program
- Research techniques for colleges or business training

Essential 7: Refine your presentation

Almost home. This lesson will cover:

- How to make your presentation attractive
- Summarization techniques that work
- KISS: Keep it simple stupid - A refresher to the cliche



Essential 1: Decide to Win

THE NITTY GRITTY OF FINDING A CAREER GOAL: PATHFINDER APPROACH

1

In Essential 1, we establish the groundwork that will set you up for a successful mindset. Essential 2 will set you up to learn how to tap into who you are so that you can align your purpose with your career goal. These two Essentials will set you up

for the remaining five lessons. Pay attention and read carefully.

This mindset will help you get the Voc Rehab goal you desire, not the goal Voc Rehab wants to give you. Here, you will read the following topics:

- Use Game Theory to prepare
- Decide to win
- Introduction to 7 Essentials for game day
- Learn about your opponent - the VA

Now we begin. **Essential 1: Decide to Win**

According to Theodore Roosevelt, all veterans are entitled to a Square Deal. For veterans, the Square Deal consists of the benefits to which all were promised before putting on the uniform and swearing an oath.

The oath is what bound us to make a sacrifice for the U.S. That sacrifice could have been up to and including your life. Once you signed on the dotted line, the only way out early was death or dishonor.

On the other hand, the government is afforded much more flexibility. Just look at the headlines. *Military Retirement Cuts. Disability Claims Backlog Reaches 1.3 Million. Veteran Suicides At All Time Highs.* I'll give you a little secret. D.C. doesn't give a damn about you. You're just a number.

Now, shake it off. Let's get down to business.

Like any business, the government also operates on limited funds, your tax dollars. A lot of that money goes to fund wars in foreign countries, where disabled veterans are made. Not as much money is allocated to care for those same veterans when they return. To save funds to pay for other things, the government robs from Peter to pay Paul. Guess what, you're Peter.

Game Theory. It's all about perception. Perceiving that the VA is the opponent, and that the opponent will try to keep benefits from you gives you the advantage.

The opponent has two moves, to cooperate or not. If they cooperate, you win. If they do not cooperate, you at least stand a chance.



Without preparation and correct perception, you may lose.

In Voc Rehab, it's the persistent and well-prepared veterans who win. The qualified veterans who give up, lose. Don't give up. Instead, prepare for the game. **Decide to win.**

Bill's win. Vocational Rehabilitation and Employment (VR&E) is the chance of a lifetime. It's important to get it right the first time. Some time ago, I received the following letter from a veteran who followed my advice. We will call him Bill and follow him for the duration of this guide:

Ben,
I just wanted to let you know that I was accepted into the program. The case worker said that I was one of the most prepared and organized applicants that she has seen. (All thanks to you for that). She proposed that I work on researching a degree in Social work since I listed that as an interest. The VA form 28-8606 she gave me states MSW as the proposed program. I was in shock of the whole situation and did not think to ask her about how long my entitlement was. I have researched MSW before and know that it could take six years to complete.

Well, I just wanted to let you know how it went and say thank you again.

Bill (Fake Name)

Bill got it right. He will get 72 months of benefits, two years more than the published 48 month maximum. How? He

knew his opponent and seized the opportunity to win.

Thousands of veterans have followed the steps of this guide over the past few years. Now, Bill is no longer the only most prepared veteran. Many vets all over the US have written me with the same report. "I was the most prepared veteran they ever saw." Anyone can be a Bill. It just takes work and persistence.

Seven lessons until "game day." We will call these the Seven Essentials to your Voc Rehab win. Your first meeting with Voc Rehab is perhaps the most important meeting of your life. It is "game day" in spades - a chance to pull yourself up by the bootstraps, literally.

What is at stake? The rest of your life. An ability to help family. An ability to impact your community. An ability to change and improve, forever.

A successful result could allow you to complete a professional degree such as MD, JD or MBA. Or, it could allow you to study something you're passionate about like social work, theology, journalism, construction or plumbing.

After you complete the online application on the Department of Veterans Affairs site, you have a couple weeks to prepare for game day, your first meeting. I've written Vocational Rehabilitation 101 to help you prepare. For every lesson, there will be tasks to complete. This is the first.

Your first meeting will either be the kick-off to a life you want or a loss you'll regret.



It is up to you. Decide to win and back up your decision by getting to know your opponent and adopting a set of strategic attitudes.

Before most college and professional football games, scouts are sent out to learn about the strategies and capabilities of the opposition. I am your scout, having faced the opponent numerous times. This is my report you should choose to follow for a game day victory.

Know your opponent. To win, you need to know your opponent. Here are five things to know about the VA:

1. The VA is a typical bureaucracy. It talks out of both sides of its mouth. One side is promising you benefits. The other side is saying you can't have them. I call this the block and tackle insurance companies use.
2. The VA is all about preventing unnecessary spending. To them, reducing costs is a big deal. And yes, you are a cost. Using Game Theory, the VA knows you have two options if denied. Take the denial and go away. Or, appeal, which takes years and delays the pay out for your benefits. Either way, it keeps tax dollars in the coffers to go for another cause, perhaps to pay an overcharging government contractor.
3. Voc Rehab failed its own audit conducted by the VA VR&E Task Force. It has failed this same audit for almost 30 years (DVA, 2004):

Total Voc Rehab funding divided per veteran in program – over \$30,000.

82 percent of all qualified veterans starting the Voc Rehab process will not finish.

66 percent of surveyed veterans report a bad experience with VR&E.

The audit concluded, "In general, the current VR&E service delivery system is out of date, data poor, and understaffed to meet the needs of today's veterans with service-connected disabilities."

4. The national average for completing college is double that of VR&E college bound participants. This means Voc Rehab Counselors (VRC) are very cautious about who they let into the program and what they approve.
5. Not all VRCs are created equal. They all have too large a caseload. Some handle it well and others do not. I get a ton of emails from veterans about their VRC's blowing off emails and calls. We will talk more about this in upcoming chapters. Just know, if you have problems, it can get sorted out but will take time.

Adopt strategic attitudes. Now that you've received your scouting report, let's turn to strategy.

In life, there are no guarantees, but going into the game with your head on straight will improve your chances of success.

Prepare yourself to win by adopting the following attitudes. Print them out and learn them. Make them yours.

First, be proactive. You do not want to get tangled up in the land of appeals and poor



guidance. Be your own best friend and advocate.

Second, know it's not about you. The problems you will encounter existed prior to your involvement. It is not your fault and has nothing to do with you. Remember this when you get frustrated or upset.

Third, use honey, not vinegar. You know how the saying goes, "It is easier to attract flies with honey than with vinegar." The flies are your benefits. Don't lose sight of the goal.

Fourth, care more than they do. You will be the one who cares the most about your case and therefore you are the one who will have the most passion about it. Don't get me wrong, many VRCs care deeply, but still you must care the most.

Fifth, manage your own case. This is a process you will need to manage because they may not have the time to do it for you. Yes, it is supposed to be their job but it is your life. No one else will need to walk a day in your shoes but you.

Sixth, don't assume it will be done right and on time. Unfortunately, it is not realistic or in your best interest to make this assumption. Look over every document you receive with a fine toothed comb before signing anything.

Begin today. The game is on. The win is yours if you are qualified and play it well.

Prior to enlistment, recruiters made promises to us. Some came true and others had as much truth to them as those spewed

by a used car salesman wanting to offload that dusty jalopy in the back lot. "For you, my friend, a special car at a special price." Yeah, right.

I want to help you get it right so you can come out the other side with the prize you were promised. Your first, and most important, task is to decide to win.

Ready? The ball's been passed to you.

Next Essential: Tap into your purpose. We'll look at ways to sort out your purpose and what you want to make of it. Before you go there, I created a list of resources for you based on the information in Essential 1.

DVA. (2004). "The Vocational Rehabilitation and Employment Program for the 21st Century Veteran." Retrieved May 4, 2007, from Department of Veterans Affairs. Web site: <http://www1.va.gov/op3/page.cfm?pg=22>

GAO. (2003). "College Completion." Retrieved May 31, 2007, from United States General Accounting Office. Web site: <http://www.gao.gov/new.items/d03568.pdf>



Resources for Essential I

Learn about the VA & Voc Rehab

How to use: these resources are a non-exhaustive list of governmental websites with the exception of the Rand Corporation. Click on the links selected to learn more about issues within the VA and Vocational Rehabilitation. The reports available from each site will allow you to understand more about the problems and successes veterans will face when using the Voc Rehab program. If a resources is included below, I consider it very useful for background information.

These links may change without notice. The title is hyperlinked at the beginning of each bullet and the respective site URL is provided at the end, as well. If they no longer work, place the organization name into a search box to locate the website and begin your research.

- ◆ [House Committee on Veterans' Affairs](#): What is it? A website for the House of Representatives Committee on Veterans' Affairs. Check under Hearings and Subcommittees to learn more about immediate and past issues veterans are experiencing with the VA. Click on the Subcommittee on Economic Opportunity to learn more about specific programs like the GI Bill, Veteran Employment, and VETSuccess. The latter, VETSuccess, is connected with Voc Rehab. The website is easy to use and straight forward.
 - ➡ The site contains archived hearings and transcripts going back to 1997. You can read testimony and supporting evidence provided during each hearing. This can be helpful in that it will give you perspective about the issues. It will also give you a firm understanding of the longstanding issues within the VA.
 - ➡ Find it: <http://veterans.house.gov/>
- ◆ [Senate Committee on Veterans' Affairs](#): What is it? A website for the Senate Committee on Veterans' Affairs. Check under Hearings, Issues, and Legislation to learn about current issues. Hearings are a great place to start because you will find testimony straight from Director Ruth Fanning about Voc Rehab. The website is easy to use and straight forward.
 - ➡ This site contains archived hearings dating back to 2005. Similar to the House Committee site, reading over testimony on particular issues can be helpful.
 - ➡ Find it: <http://veterans.senate.gov/>



- ◆ **[VA Office of Inspector General](#)**: What is it? This is the internal VA inspection engine that keeps the VA accountable internally. It also keeps VA honest regarding how it is performing. This branch of the VA does not list specifics when the information would be harmful to the VA or expose VA to liability. Go to this website and perform a search for Vocational Rehabilitation. The website is easy to use and straight forward.
 - ➡ Oversight Reports are the most helpful. The site contains reports and audits dating back to 1996. From 1996 to 2012, the number of published reports increased from 6 per year to 200 per year. This is a lot of information but allows the reader to recognize patterns and trouble spots in the VA.
 - ➡ Find it: <http://www.va.gov/oig/>
- ◆ **[US Government Accountability Office](#)**: What is it? The GAO is independent of all agencies and serves as the “congressional watchdog.” It monitors how agencies like the VA are spending taxpayer dollars. As above, do a search. Type in the term “Vocational Rehabilitation” to see what reports are available about the program. You can also do this about the VA in general. For this, type in “Veterans Affairs.” The website is easy to use and straight forward.
 - ➡ The reports date back to 1922.
 - ➡ Find it: <http://www.gao.gov/index.html>
- ◆ **[Vocational Rehabilitation & Employment Homepage](#)**: What is it? This is the main page that Voc Rehab claims provides all the information veteran needs know prior to a meeting. There is not a ton of information on here that will specifically prepare you for the first meeting you have with the VA. However, you can find out certain specifics your disability compensation must be in order to qualify. The website is difficult to use and the information is not straightforward.
 - ➡ Find it: <http://www.vba.va.gov/bln/vre/>
- ◆ **[Vocational Rehabilitation & Employment Report to Congress](#)**: What is it? This document is the jackpot of information relating to how Voc Rehab is doing. It covers various breakdowns of veterans involved with the program, their successes, etc. For example, over 80 percent of all Voc Rehab participants use longterm services. This means the vast majority of Voc Rehab users get some form of retraining and or schooling. Female participants tend to earn \$3,000 more per year than male participants after completing the program. The list of facts go on and on.
 - ➡ Find it: http://www.vba.va.gov/bln/vre/doc/2010_longstdy.pdf
- ◆ **[Vocational Rehabilitation Subsistence Rates](#)**: What is it? This is the page that will show you how much a veteran will receive per month in stipend money while in



school. The amount varies depending on the number of dependents the veterans has and the type of schooling. For the purpose of finding stipend amounts, this webpage is straightforward and easy to read.

- ➡ Find it: <http://www.vba.va.gov/bln/vre/sa.htm>

♦ **VetSuccess.gov:** What is it? This is the job finding service for veterans who use Voc Rehab and similarly suited services from the VA. You will need an account set up in order to use certain parts of the website to find work. It will require you to set up a resume and other information to help with your job search.

- ➡ Find it: <http://vetsuccess.gov/>

♦ **Rand Corporation:** What is it? Rand is a think tank and research nonprofit. Rand claims to provide objective analysis. In reality, the analysis they provide tends to lean toward privatization of government systems and supports reductions in benefits. Regardless of its intent, many legislators rely on Rand's reports for guidance in policy making. For that reason, it is important to be aware of the conclusions the think tank makes. The website is easy to use and you should be able to sign up for an account easily.

- ➡ Find it: <http://www.rand.org/>

Moving forward: Take notes as you gain background knowledge about the VA and Voc Rehab. The more detailed you can get pertaining to successes and deficiencies within the program, the higher your chances will be of thinking through future problems before they arise.

➡ For example, less than 1 percent of all veterans in Voc Rehab are approved for self-employment. This does not mean veterans are not applying for the benefit. It means Voc Rehab is not awarding that option for rehabilitation. Knowing key issues like that will help you develop a realistic training track in your mind prior to your meeting. In doing this, you will lower your chances of being denied by being more prepared than a normal veteran.



Essential 2: Find your dream job

2

You are in a seven-lesson preparation for your first meeting with Voc Rehab. In lesson one you focused on the first Essential: Decide to win. Now we look at Essential 2: Choose a direction.

Here's a new way of thinking. Rather than going into the first meeting trying to get a benefit, look at it a different way.

Your goal in the first meeting is to secure funding for training that will prepare you for a new career. Your career goal will lead you to a new life wherein you hope to build a new future where you are the happiest.

The happiest lives are centered in one's purpose and flow out from there. We'll get to that, but first here is a simple rundown of some of what Voc Rehab can offer you:

Restart your career. Voc Rehab is a unique opportunity for veterans to restart their careers without incurring out-of-pocket expense. This is especially true for older veterans recently receiving Comp & Pension for the first time or receiving increases to their disability rating. It can be a way some veterans extent their schooling to cover professional and graduate level degrees.

Attend College or Graduate School. For a college track, Voc Rehab Counselors (VRC) can approve up to

\$25,000 per year for tuition without needing additional signatures. Northwestern tuition was \$33,000 per year when I attended, so attending a "high cost" university is possible in certain situations. The goal is to complete your education within 48 months, unless additional schooling is approved. If it is, you can receive approval for in excess of 72 months or longer. I have been approved for 84 months, or 7 years.

Receive vocational training. For vocational training, like HVAC or electrician, Voc Rehab will pay for the training, both classroom and on-the-job, assuming the program is through a reputable and/or accredited facility. I may also buy you the requisite tools necessary for a job.

Start your own business. For self-employment, Voc Rehab can spend up to \$25,000 per year on your training, inventory, equipment and other items without additional approvals. This number can be much higher, depending on the situation, sometimes beyond \$100,000. If you can imagine any industrial or service sector need that can be proven with documentation, the VA will pay for you to develop your business and provide you with training necessary for success. I have heard of VR&E paying contractors \$5,000 to develop business plans for vets. This track is shorter than a strictly educational track, with the goal being to turn a profit in 18 months.



Example. You met Bill in Essential 1. Bill was an unemployed systems administrator until his position was terminated. Notice, he lost his job for reasons that were outside of his control. That is important. If you quit with the hope of getting into Voc Rehab, you will probably be denied. Here, Bill's disabilities prevented him from continuing to work within that field. This is also important. Your service connected disability must impact your ability to find or hold employment in your field or a related field.

Bill developed some ideas of where an education might benefit his career and not impact his disabilities. The three areas he began to look into were management, computer programming and social work. The first two training fields built on Bill's prior expertise, but the last field was his passion. He really wanted to help other veterans improve their lives. The VRC liked his passion and approved the track. No fighting; no appeal. This is an unusual event and certainly not what happened to me.

Think about what Bill did. He went into his first meeting knowing what he wanted. He wanted to complete a Masters Degree in Social Work (MSW), which takes 4 years for an undergrad and 2-3 years of graduate coursework, or 72-84 months. He received what he wanted.

In my case, I was approved to complete a Juris Doctorate, which takes three years, after already using 46 months of benefits to complete my bachelor's degree. In Lesson Four, I will tell you about a woman

pursuing a Master's Degree in Theology and the court ruling that partially supported it.

How to tap into your purpose. So if you don't know what career direction to take, how do you figure it out? I suggest you start by tapping into your purpose and your passion first, then get specific about a career.

I asked Jan Black of Quiddity, Inc. (jan@quiddityonline.com) to offer you some suggestions. Jan helps people define what they're all about (their purpose) and what they want to make of it (their passion brought to the marketplace). She helped me focus and develop The VetSet concept and writings which led into me writing this guide and DisabledVeterans.org.

As a favor to our veteran community, Jan agreed to have an online conversation with us on this process. By the end of 2012, we will have the capability of doing that in our member forum.

For now, here are Jan's suggestions. Ask yourself:

1. What am I all about? Justice, education, making engines work, planning, surfing, selling, entertaining / performing, empowering, teaching, creating, inventing, guiding, analyzing, organizing, keeping numbers straight, leading, competing, writing, telling stories, healing, negotiating, rescuing, adventuring, nurturing? Something else?



2. What do three people who inspire me see in me?
3. What achievements, or moments, in my life most thrilled me and why? What role did I play?
4. What direction does my heart seem to want me to go?
5. What dream did I once have for myself? Or what dream is forming for me now?

Remember, at this point you just need a strong sense of who you are and what you might want to make of it; you don't need specific details about career choices. That will come next.

There are many resources out there and online that can help you know your purpose and your strengths. Books like "Now, Discover Your Strengths" by Marcus Buckingham and Donald O. Clifton (also available as an audio book) can be helpful. And of course there are groups, courses, and private consultation and coaching that can help you know your purpose.

Many veterans, including my old self, always felt help should be free. "It was free when I was in the military. Why shouldn't it be free now?"

Now that I've been a civilian for 10 years, I can honestly say, you get what you pay for. If you pay little, expect little. That also includes your time and your own research. The more effort you put into this process, the more likely it is that you will succeed.

When looking for answers to purpose and seeking help, ask yourself this question, "How much is happiness and fulfillment worth for the rest of my life?" Average lifetime earnings are estimated to be over \$1.5 million. Is it worth \$10, \$150, \$1,000 or more to get this right and be fulfilled while earning your \$1.5 million? To me, my happiness is worth a lot and I've been willing to invest to make it happen. What's your answer?

So dig in and sort it out. Learn what you're all about so you are ready for the next step. The next step will be your ultimate win with Voc Rehab and the eventual life you have hoped for.

Next Essential: Choose three career options. You will learn how to research careers in a way that will help the VRC approve your plan the first time around.



Resources to Learn about your Purpose

How to use: this list will broaden your perspectives ranging from career advancement to news. It includes alternative news and media resources that broaden my perspective. Resources like this are important because they differentiate you as a person when you speak with your counselor during your all important first meeting.

During the claims process, it will help hone your conversation skills with your counselor as you become more familiar with the relevant vocabulary. This is psychologically important because people tend to subconsciously warm up to others who are more like themselves. If you learn to talk and act like your counselor, it could only help your ability to get approval for a training program that may otherwise be out of reach.

O*NET Interest Profiler: What is it? A free national database that will connect your interests with a career that might work for you. It lists job types with training requirements.

- Find it: <http://www.mynextmove.org/explore/ip>.

Psychology Today: What is it? This is an online magazine publishing company. Katharine Brooks manages a section for this company online that is a collection of different resources for someone in the middle of transition exploration.

- Find it: <http://www.psychologytoday.com/blog/career-transitions>.

King, Emily, *Field Tested*. (American Management Association, New York, NY, 2012). What is it? A great text by Emily King that speaks to problems veterans face when transitioning out of the military mindset. It's written from the Human Resources perspective and will help you learn "corporate speak."

- Find it: Purchase through Amazon, or find at your local library. <http://www.amazon.com/Field-Tested-Recruiting-Managing-Retaining/dp/0814417795>
- LCSH: Veterans - Employment - United States

Google "Life Coach": What is it? Google is a well known search engine that can find almost anything. There are tons of life coaches out there who can help you turn your life around.

- Find it: <http://www.google.com>

Tragedy and Hope: What is it? This is a coalition of like minded media gurus who are collectively tackling issues that are undermining our republic. It is nonpartisan and truth-oriented. Critical thinking is mandatory.

- Find it: <http://www.tragedyandhope.com/>



Essential 3: Find the path

LEARN HOW TO TAKE ACTION TO MEET YOUR GOALS

3

There are five lessons left in your preparation for your first Voc Rehab meeting. The goal is to secure funding for the education/training and/or career direction you have chosen. This will set you up for the life you want to build for yourself and those you love.

Take a look at the picture to the right. If you look close, the fence cuts across the hopscotch blocks. It is a great metaphor for what this guide will help you avoid. Imagine the fence links as being regulations the VA may use to keep you from your goal. It's barely noticeable with at a quick glance, but it's there and will trip you up if you're not careful. We will teach you how to climb that fence with ease.

Essential 1 was Decide to Win, and Essential 2 was Tap into your Purpose. We'll take those and use them to complete the remaining 5 Essentials, which are action items.

Here they are:

Essential 3: Choose three career options. Research occupations within your range of interest to learn which areas in the labor market are growing: [O*Net](#).

Essential 4: Know the Rules. Read the regulations guiding Voc Rehab counselors: [38 CFR Part 21 - Vocational Rehabilitation and Employment](#).

Essential 5: Know the Past. Read Voc Rehab decisions from the Board of Veterans' Appeals: Decisions Search.

Essential 6: Make Your Plan. Formulate your plan on how you will achieve your desired occupation through education or self-employment.

Essential 7: Refine your presentation. Develop your presentation to the Voc Rehab Counselor using Word or PowerPoint.

For Essential 3, it's time to choose three career options. VR&E will want you to present three career options or more. These can have the same training tracks with different career selections. We will cover various steps in this Essential. Read it over first, then come back and begin the processes we discuss.

Look at websites like [O*NET Online](#) for career information and other sources. Fit this information with your case. This is easy enough to do with the Department of Labor. I will include an example of how this process works at the end of Essential 3.



In Essential 2, you tapped into your purpose and strengths. Use this, along with your talents, knowledge, and experience to develop a list of career options. Don't limit yourself only to what you have done; open up to what you want to do. The purpose of education and training, remember, is to equip you to do what you don't know how to do – not yet.

As you search, keep in mind that the Voc Rehab counseling psychologist will be primarily concerned with projected growth in employment trends and educational requirements.

Back to Bill. Bill narrowed his search to three areas: manager, programmer, and social worker. On O*NET, he typed in each of the three occupations in the box marked "Occupational Quick Search." Here were the results:

Information Systems Manager: Growth listed as "Faster than average (14% to 20%). Education level: Mainly bachelor's degree or higher.

Computer Programmer: Growth listed as "Decline slowly or moderately (-3% to -9%). Education level: Mainly bachelor's degree or higher.

Social Worker: Growth listed as "Much faster than average (21% or higher). Educational level is Bachelor's degree or higher.

Of these three, Bill was the most passionate about Social Work. To become a social worker in the current market, a person must complete a Master's Degree in Social Work.

With no prior undergraduate work, this would require 6 years of college, at least.

Ben's experience. In my case, I wanted to be a lawyer when I first went through the program. At the time, VR&E told me they do not put people through law school. While this is not actually true, I did have to reconsider my career options at that time. VR&E pushed me to select a career of Management. For this, I selected a major of Business Communications. My goal later changed to Investment Banker with a major of Economics.

Your research. You can select any career path as long as you can provide evidence that proves there will be jobs when you graduate.

Do not rely on VR&E to provide you with the correct information. When I recently reentered the program, I was told they would never approve a track of "Lawyer." The basis for this decision was that the job market for lawyers was not increasing, supposedly. But according to O*NET, this claim was not supported by FACTS. In reality, the demand for lawyers was forecasted to increase over the next 10 years.

Applied to you. So now it is your turn. Consider the following:

- What you've learned about your purpose,
- What you know you are good at *and* enjoy doing,
- What you think you might like to accomplish in a career and



Now, find at least three career options with these in mind.

There is no shortage of resources to help you zero in on your career options. There are books, courses, career assessments, and career coaching available to you. And there are valuable resources on the internet. For example, check out the Vault Guides and The Wall Street Journal.

Another way to approach this is to choose an industry you would like to work in and explore jobs within it. For example, you may love the music industry but believe there isn't work there because you aren't a musician. The truth is, every possible position that exists outside the music industry exists inside it. The same is true of the sports industry, travel, technology, communications.

I suggest you talk with people who inspire you and whose work you admire. Even if you don't know them well, or at all, ask to buy them a cup of coffee and get their read on what they'd do in your position. If they live in another part of the world, email them or comment on their blog.

Remember, you will need to support your final three choices with proof that there will be a market for your work once your education is complete. Do your research well so you can overcome any challenges. It is worth the effort, believe me.

Self-Employment and the Entrepreneurial Option

Within Voc Rehab, there is an option to qualify for benefits that will fund part of a startup company. They can approve up to \$100,000 and beyond for a solid business plan. Generally veterans struggle getting approval for even \$25,000. This means, if you really want this goal, you will need to work hard to gain approval from your counselor. Here are some research options below.

Franchises: i.e. McDonald, Kinkos, etc.

These are a great choice for veterans given their background, training, and available funding opportunities. Here are a few options I found online who market directly to the veteran community. There are others as well. Definitely do not be afraid to use Google or Bing to find an appropriate opportunity.

[VeteranFranchises.com](#): What is this? It lists resources for veterans, military families and military spouses to open a franchise. Opportunities include UPS, Sport Clips, Trova Home Care.

- Find it: <http://www.veteranfranchises.com>.



MilitaryFranchising.com: What is this? This finder is through the company GI Jobs, which is a great source and rater of employers. The service finds the most military friendly opportunities and relays the information back to users.

- Find it: <http://www.militaryfranchising.com/>.

Small Businesses

Entrepreneur.com What is this? This online magazine has a great body of resources for anyone looking to quit working a regular job and start their own business.

- Find it: <http://www.entrepreneur.com/article/217508>.

Entrepreneurship Bootcamp for Veterans with Disabilities: What is this? This is a national program for veterans at major universities ranging from Syracuse University and Cornell University to UCLA and LSU. Eight universities provide management and entrepreneurship training for post-9/11 veterans with disabilities. The program is free to all who are accepted.

- Find it: <http://whitman.syr.edu/ebv/>.

Resources from Dept of Veterans Affairs

VetBiz.gov: What is this? This is the VA's website that covers the majority of issues veterans have in gaining certifications and finding opportunities for government contracting.

- Find it: <http://www.vetbiz.gov/>.

Moving forward: take notes on different topics and career choices that peek your curiosity. There is no need to pick one now. In the next section, you will begin to look at ways to gain the training you need in order to successfully land a job in a career page you just researched.

Essential 4 is next: Know the rules. You will learn what the regulations are and how to use them to your advantage. This is the key to making the system work for you.



Resources to Turn Purpose into a Career

STEP ONE: Orient your passions and purpose with a career using online resources and meetings. Maybe a few of you lawyers would like to a change up as well.

[My Next Move - For Veterans](#): What is it? Hands down this is the quickest down and dirty soup to nuts resource on the web to find a career, that is also free. It will help you select a career that matches your interests. It will then connect that with potential avenues, like apprenticeships and other options in your state. Take the 60 question quiz. It only takes 2 minutes. The information you get afterwards is yours and can be helpful. It is like a mini personality examination.

- Find it: <http://www.mynextmove.org/vets/>.

[Military.com Skills Translator](#): What is this? This is a pretty cool online resource. You type in your MOS or AFSC and the system will translate your military job into civilian jobs and terminology. This can help you not only find work, but it can also help you write your resume using civilian terms. Military.com made the tool and then marketed it to a lot of different public and private sector organizations. They sold licenses to the Department of Veterans Affairs, Boeing and others for a whole lot of money.

- Find it: <http://www.military.com/veteran-jobs/skills-translator/>.
- **My suggestion.** With this tool, pick a career either like the one you had in the military or of a colleague or supervisor that you admired, and put it into the search engine. This will help you figure out what it translates into in the civilian sector. Once you identify that career, you can reverse engineer the process to determine how to get there using other tools like O*NET or My Next Move.

[Vault](#): What is this? This resource has a ton of information for jobs like investment banking, commercial insurance, consulting, and various other jobs that are highly skilled and well paid. It's a great resource used by colleges throughout the US. Most public libraries have Vault books on hand. I like them because they also give you tips on the career type and how to not only land interviews but how to successfully navigate one.

- Find it: <http://www.vault.com/wps/portal/usa>.

STEP TWO: Justify your career ideas by finding data on jobs in that industry, salary amounts, and training. This is important because many Voc Rehab counselors will make you do this to prove that you can research and write a cohesive presentation. It may



seem odd, but some counselors will use situations like this to see how you handle a little pressure and then apply problem solving skills to a situation.

- Try to make this information as locale specific as possible, such as region, state or city specific information.

O*NET Online: What is this? It's a web resource from the Department of Labor. This program is the primary source for the nation regarding occupational information. It will include all the data you need to support your claim that the job market in your state is solid. Voc Rehab will want the data to "prove" that there will be job prospects when you graduate.

- Find it: <http://www.onetcenter.org/overview.html>.

Career One Stop: What is this? This online tool is sponsored by the Department of Labor and contains similar information as O*Net. You will want job growth for that industry nationally and in your state.

- Find it: <http://www.careeronestop.org/>.

Occupational Outlook Handbook: What is this? This is a database of jobs from Bureau of Labor Statistics. This will provide similar information as above. A combination from at least two resources on labor forecasts will insulate your career request if the outlook is positive or at least reasonable.

- Find it: <http://www.bls.gov/ooh/about/career-guide-to-industries.htm>.

Dictionary of Occupational Titles Fourth Edition, Revised 1991: I know, you may wonder why I would add something so old to this list. In fact, I have literally hyperlinked a source to this list that existed before the internet. Well, the Dept of Veterans Affairs still uses this old thing to define your career goals.

- Your DOT Code will be used to define the limits of your rehabilitation plan. It is vital that you know and understand how to use the DOT.

Otherwise, the VA may give you a bad DOT that constricts your training. You may think you are going to be a pilot; meanwhile, your counselor only approved you for "aviation" type jobs. That will not result in you obtaining training as a pilot. Trust me. So yes, a code book that was last updated could be used to define your career in computers.

- Find it: <http://www.oaj.dol.gov/libdot.htm>.



STEP THREE: Great! You have found some careers that you like. The final thing your counselor may ask for are copies of job listings within your area for that career. The next four online resources will serve to help you find local jobs. Sometimes, Voc Rehab counselors will claim that a particular career is not possible in your area without doing their own research. This means you will need to do the research for them.

[Monster.com](http://www.monster.com/): What is this? This is one of the best resources for finding current job listings. The jobs do not need to be a specific fit but try to get as close as you can. Also, try to find jobs that include the degree type you are wanting. For example, a finance analyst may require just an undergrad for one company. For another, it could require an MBA. Only print out the job that has the requirement that fits your goals.

- Find it: <http://www.monster.com/>.

[CareerBuilder.com](http://www.careerbuilder.com/default.aspx?cbRecursionCnt=1): What is this? This is an online job board, just like Monster.com. It is another great resource for finding jobs. Apply the above logic on job printing.

- Find it: <http://www.careerbuilder.com/default.aspx?cbRecursionCnt=1>.

[Craigslist](http://www.craigslist.org): What is this? This is a free web resource to sell items and list jobs. Yes, the freebie makes an appearance. Depending on the job type, especially freelance work, Craigslist is a good resource for smaller outfits.

- Find it: <http://www.craigslist.org>.

[Indeed](http://www.indeed.com/): What is this? This is Google's job search engine. It does a great job of combining all job listing resources and lists from everywhere, including the job boards previously listed on this page. I have used it numerous times with success.

- Find it: <http://www.indeed.com/>.



Essential 4: Read the Statutes & Regs

LEARN HOW TO FIND AND UNDERSTAND THE VA REGULATIONS

4

You have four lessons left in your preparation for your first Voc Rehab meeting. Here are the four remaining Essentials:

Essential 4: Know the Rules. Read the regulations guiding Voc Rehab counselors: 38

CFR Part 21 - Vocational Rehabilitation and Employment.

Essential 5: Know the Rulings. Read Voc Rehab decisions from the Board of Veterans' Appeals: Decisions Search.

Practically every counselor I have met in Voc Rehab has told me they are only required to give veterans the minimum to meet their training goals. Minimum tools, minimum school quality, minimum expense. Now, read what Congress and the VA actually say counselors are supposed to provide in the boxes below.

38 USC §3100

The purposes of this chapter are to provide for all services and assistance necessary to enable veterans with service-connected disabilities to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment.

Essential 6: Make Your Plan. Formulate your plan on how you will achieve your desired occupation through education or self-employment.

Essential 7: Refine your presentation. Develop your presentation to the Voc Rehab Counselor using Word or PowerPoint.

This week you will focus on **Essential 4:** Know the basic rules.

Social Science lesson. Here's the broad overview and purpose of Voc Rehab. Sometimes, I wish the counselors in the program would think back to its stated purpose.

38 CFR Part 21.1(a)

(a) Purposes. The purposes of this program are to provide to eligible veterans with compensable service-connected disabilities all services and assistance necessary to enable them to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment.

Remember: Maximum Independence & Maximum Extent Feasible for Employment



HOW TO FIND THE LAWS AND REGULATIONS THAT ARE IMPORTANT

I repeated these next couple pages from the beginning of the guide for one purpose. Ease of research. This way, you can pull up the hyperlinks or URL's here without going back to the earlier section. I also included the old explanations in case you forget which one does what.

Statutes and regulations. These are obviously important and understanding how to use them to your advantage can be the difference between getting approved for medical school or being pushed into the Rapid Re-Employment track.

There are three things you can use to your advantage. The first are the statutes, [38 USC §§ 3100 - 3122](#). These are binding on the VA and interpreted by the Secretary of the VA. The interpretation of the statutes is found within regulations, [38 CFR Part 21.1 - 430](#). Then, the CFR is interpreted into guideline book called the [M28](#) by the VA. We will dive into the what the M28 is on the following pages.

- Find it: M28: <http://www.benefits.va.gov/warms/M28.asp>

Remember, statutes are the shortest but carry the most weight in making decisions. CFR's are almost as heavily weighted, but they can be wrong. These contain the VA's interpretation of what Congress meant when they passed the statutes. Finally, the guidelines carry the least weight within M28 compared to the other two and are the interpretation of the CFR's by the internal department of that Agency.



STATUTES



CODE OF FEDERAL REGULATIONS



M28 CHAPTER 31 CASE MANAGEMENT





REPEATED: HOW TO FIND THE LAWS AND REGULATIONS THAT ARE IMPORTANT

Important CFR's

For the purpose of Essential 4, you will need to read and understand 38 CFR Part 21.50-53.

38 CFR Part 21.50-53: Sets up the standards for your initial meeting with Voc Rehab.

38 CFR Part 3.105: This tells your counselor when they can change or cancel your training plan.

38 CFR Part 21.94-98: These regulations tell you how to request a change to your own plan.

38 CFR Part 21.283: When you are almost done with training read over how they are supposed to process your final rehabilitation decision prior to employment.

38 CFR Part 21.284: If you have ever used Voc Rehab, you can get back into the program. This regulation sets out the standard, and it's a tough one.

Find them: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title38/38cfr21_main_02.tpl

Pamphlets and Guides from the VA

M28 - Vocational Rehabilitation & Employment Manual

This is the overall manual that Voc Rehab will use when making decisions about a veterans claim. It is essentially their bible for conduct and how to decide claims and appeals. In all, it is around 300 pages and you will need to download each subchapter separately into a word document. This makes it somewhat difficult to read. However, reading it is well worth your time. The following links are to sub components of the M28.

- Find it: <http://www.benefits.va.gov/warms/M28.asp>.

The following are sections within the M28.

- [**M28-1 Vocational Rehabilitation and Counseling Procedures Under 38 USC Chapter 31**](#)
- [**M28-2 Adjudication Division Procedures Under 38 USC Chapter 31**](#)
- [**M28-3 Internal Control in Vocational Rehabilitation and Counseling**](#)



Back to Essential 4

For this Essential, you need to read 38 USC 3100. Then read 38 CFR Part 21.1(a) to get a reasonable understanding of what Voc Rehab is supposed to do. Counselors must do what the statute and regs state. They do not have a choice, but they may try.

I'd like you to think about what the statute and regulation mean regarding your training before you proceed.

- Does maximum mean Voc Rehab must put you in a public school over a better private school?
- Does maximum mean a cheap computer over a better designed and more durable equivalent?
- Does maximum mean minimum?

Think about what this means in light of what you think you want to do, whether you need Independent Living help, whether you want to get new training in college or vocational school, whether you want to start a business. What does it mean?

Back to Bill. Bill's service connection was Sleep Apnea, rated at 50 percent. People with sleeping disorders require regular sleeping schedules to help manage their condition. His job had something to do with computer systems administration and required him to work different shifts during the week. The irregular shifts affected his sleeping, which was already impacted from sleep apnea. Thus, his service-connected disability prevented him from performing this job well.

After he was laid off, he wanted to find out if Voc Rehab would retrain him into a career field that fit with his "aptitudes, abilities and interests."

Aptitudes, Abilities, and Interests. These three words are key to your situation. The training you agree on must fit in all three.

For example, Bill had some technical training. He hoped Voc Rehab would allow him to complete a degree program that would give him the ability to work within a management or programming capacity. This would be in line with Bill's aptitudes and abilities.

However, Bill's real passion was to help other veterans, which made him interested in becoming a social worker. As a social worker, Bill would be able to work in a field that is in line with all three areas: aptitudes, abilities and interests.

Employment Handicap. During your first meeting, the Counseling Psychologist will determine whether or not your disabilities and employment limitations prevent you from the career you wish to have. This is referred to as an "employment handicap" or "serious employment handicap." NOTE: Serious Employment Handicap can allow you to receive addition months of training beyond the 48-month cap.

At the least, you must first have a "vocational impairment." Second, the effects of this impairment must currently be impacting your ability to keep or obtain employment in an occupation that is in line with your "aptitudes, abilities and interests." Third, your service-connected



disability must interfere in part or in whole to your impairment and be considered either an employment handicap or serious employment handicap. This is outlined in [38 CFR Part 21:50-53](#). Read the language very carefully.

Bill's case could be summarized like this:

1. Vocational impairment: a need to work a regular schedule because of sleep apnea.
2. His condition prevented him from working as a systems administrator because of the shift irregularities.
3. His sleep apnea was service connected.

Important: Keep the key terms in mind during your first meeting. If you do not know what a word means relating to this process, look it up or ask a veteran's advocate. If it comes up during your Voc Rehab meeting, just ask the counselor.

Ben's claim. I worked in construction after separating from the military despite having a service-connected lower back vocational impairment. In the military, I worked on avionics systems. No airport was nearby, and I could not reasonably perform the required lifting in construction long-term. This impairment prevented me from working in construction to the fullest extent possible.

While I was employable, the likelihood of keeping myself gainfully employed in that field was low because the condition was worsening. Plus, I hated construction and as such, it was not an interest. In summary, my service-connected disability prevented me from continued work in construction (abilities) and did not fit my interests.

A basic template. Here is a basic template you can use to summarize your own situation.

In your case, the circumstances may not appear as cut and dry at first. I suggest you list the circumstances; then decide which of them are clear and which seem confusing. Try to make sense of what's confusing, and if you can't, eliminate them or seek help in making them clear. Two sources of help could be an employment counselor or a veterans advocate.

Once you've done this, fill in the details of either template below. While you may not want to show this to your counselor, it basically turns your case into an elevator speech you can explain to anyone.

In summary, knowing the regulations will help you understand the system better and how to structure your proposal in a way that fits. Look at this process as a puzzle: 1 plus 2 plus 3 equals 6. It is the most important puzzle you will ever solve, so don't give up on it.

Next **Essential 5:** Know the rulings. You will learn how to use VA Court of Appeals Voc Rehab decisions to your advantage in developing your case.

**Template**

My disability affects me at work; - OR - My disability keeps me from working in [insert field wherein you have military training or wherein you are currently working]. It affects me by [insert justification with impact on service-connected disability].

I have done some research into retraining for [insert your ideal job here]. I have done research using [insert research points from Essentials 3 & 4 such as O*NET and Bureau of Labor]. My research concluded that employment as [insert job] is in line with my aptitudes, abilities and interests.

My [insert service-connected injury] prevents me from working within the field I am currently qualified to work within. I require training to become employed to the maximum extent feasible in this job.

Ben's Example

My disability affects me at work as a carpenter. It affects me because pain in my lower back makes it difficult to lift and climb ladders. This impacts my performance at work and is gradually getting worse.

I have done some research into retraining to gain entry level employment as a lawyer. I have done research using the Department of Labor websites O*NET and My Next Move. Employment within this career is forecasted to see steady increases. My research concluded that employment as a lawyer is in line with my aptitudes, abilities and interests.

My lower back prevents me from working within the field I am currently qualified to work within. Working as a lawyer would not impact my disabilities. I require training to become employed to the maximum extent feasible in this job.



Essential 5: Read VA Appeals

LEARN IT, LIVE IT, LOVE IT

5

You have three lessons left in your preparation for your first Voc Rehab meeting. Here are the three remaining Essentials:

Essential 5: Know the Rulings. Read Voc Rehab decisions from the Board of Veterans' Appeals:

Decisions Search.

Essential 6: Make Your Plan. Formulate your plan on how you will achieve your desired occupation through education or self-employment.

Essential 7: Refine your presentation. Develop your presentation to the Voc Rehab Counselor using Word or PowerPoint.

This week you will focus on **Essential 5:** Know the rulings.

Expert tracker. Follow in the paths of others. The appeals cases of disabled veterans who struggled with Voc Rehab in the past can help you succeed in yours. These could prove invaluable because you will not only learn what has worked, but you will also develop an awareness of how the presentation of your case would look in front of a judge.

Board of Appeals case are helpful because they can show you how the VA interprets the law. They also show how the VA defines certain terms and key principals. I will select some interesting decisions and put them on the last page of this Essential.

These decisions ARE NOT binding. They do illuminate and can be instructive. They can also be used as persuasive authority.

US Court of Appeals for Veterans Claims decisions are binding on Voc Rehab.

However, there are very few Voc Rehab claims at that level. The main reason is because it is hard to find lawyers to represent veterans to that extent since there is no money in it for the lawyer. They need to eat, too.

Showing an understanding in your first meeting of how the law works in relation to Voc Rehab can help the counselor understand your depth of knowledge of their system. Just be sure you don't over do it so as to appear cocky.

Step 1: Research Appeals Decisions related to your disability and desired vocational goal. Pay attention to cases where veterans lost and won. This will provide you with invaluable examples of the blocking and tackling used by Voc Rehab and the problems other veterans have encountered and/or overcome. Here is one example:



A veteran in Voc Rehab wanted to complete a [Master's Degree in Theology](#) sometime after the completion of her bachelor's. The Theology degree was in line with her interests, but her undergraduate degree provided training for employment in a field inline with her "limitations," aptitudes and abilities. The VRC denied her request.

In the appeal, the judge found the denial was not based on the appropriate criteria and sent the claim back to VR&E for review. The following is a partial list of reasons:

1. The counselor did not follow their internal rules for approval or denial - here it was a denial
2. Counselor tried to claim veteran had enough training to be an administrative worker, and did not take "interests" into consideration
3. Teaching religion with Theology degree fits the veterans interests must be considered
4. Career interest cannot be overridden by feasibility of another career path for which the veteran has some experience
5. When veteran fails to find employment even through VA with current skills, VA claim that veteran is employable holds little weight

This example shows that it is important to understand limitations. These may not be based on just your disability.

During a meeting, the VRC told me he considers marital status, parental status, financial debt and other issues in

determining whether a veteran could likely complete the program. While I believe this may be illegal to do, VR&E will probably do it anyway. Prove it, right?

This example may be helpful to anyone running into resistance from a counselor who does not want them to go on for additional schooling beyond a bachelor's degree.

It could also be used for veterans wanting to pursue an unorthodox area of study. Again, notice that the counselor wanted her to get a job in the area for which she had training, but that she had no interest in working in admin. She wanted to teach religion.

You are not limited to VA Appeals, either. Supporting documentation can come from civilian cases. See [Westlaw](#). [Google Scholar](#) is also a great source for supporting data that will be considered "academic."

The VRC will likely appreciate your use of data from these sources. A fair amount of veterans can be denied career paths if the VRC deems their disability to interfere with successful completion of training or performing on the job after schooling. Research and information from the resources I mentioned above can be used to better support your claim in this instance.

Back to Bill. Bill, who we've met in prior Essentials, read over numerous Appeals decisions and found some that directly gave opinions on veterans' cases who had the same service-connected disability as Bill.

He closely studied these to learn how to craft the wording of his case to fit the



required criteria. Veterans who get tongue-tied should pay special attention to this form of preparation. Many times, especially when under pressure, finding the right words to explain your situation can be difficult. Studying case law can give you enough preparation to say the right thing when it matters most.

In summary, use these sources to better understand how rules do and do not work. It's important to learn from the successes and mistakes of other veterans and VRC's to better understand how to get it right the first time.

In every way, preparation is a must.

Next Essential: Make your plan. You will learn how to formulate your plan for what could turn out to be the most important meeting of your life.

Research Appeals Decisions

Step 1: Check [VA Board of Appeals](http://www.bva.va.gov/) for decisions. <http://www.bva.va.gov/>

- First, either click on the link above or perform a web search by typing in "VA Appeals." Select the right page. On its main page, select "Search Decision" on the left side. in Select Year, click on "All Years."
- Second, come up with key terms you think the court may use.
 1. Vocational Rehabilitation: search finds 16,673 results
 2. Vocational Rehabilitation "Law School": search returns 4,405 results
 3. Vocational Rehabilitation "medical school": search returns 46 results
 4. Vocational Rehabilitation "sleep apnea": search returns 190 results.
 5. Search for anything you feel is relevant, such as your disabilities along with Vocational Rehabilitation.

Step 2: Check [US Court of Appeals for Veterans Claims](http://www.uscourts.cavc.gov/) for decisions. <http://www.uscourts.cavc.gov/>

First, select the hyperlink above. On the home page, then select tab on left called "Case Information." Select "Decisions and Opinions." Select hyperlink in center so Search ISYS. Click "Advanced Search" on right hand side. NOTE: Select USCAVC Opinions prior to searching. Now you're ready.

1. Type Vocational Rehabilitation into the "with all words" box.
2. Type any other word or word combination into "with the exact phrase" box.
3. Search for your disabilities.

When you find a case that fits, be sure to download the PDF because this court's search service is very confusing to read.

Step 3: [Read Alex O. Williams](http://tinyurl.com/cl6l85w) 7 year appeal case. He waited 7 years for an appeal only to have the Court of Veterans Appeals remand it. <http://tinyurl.com/cl6l85w>



Where to Find Legal Decisions

- ◆ **Public Library System**: What is this? This is a library finder website. Public libraries can be the best resource for veterans when it comes to research. Veterans located in major metropolitan areas will generally have the greatest access to resources. Once you sign up for membership, many libraries will allow members to access research databases from home. For veterans wishing to thumb through resources, many libraries have resources available in print form. Ask the research librarian at your local library for help. These people are highly trained and a great resource.
 - ➡ Find it: <http://www.publiclibraries.com/>.
- ◆ **University Library Finder**: What is this? This is a website from the Institute of Education Sciences. The site allows users to search for a college or university anywhere in the US. Users can search for a respective college in their area. Once they get the name and contact information, users should call to see if the facility allows public users. If it does, veterans should make a point to use the facility, especially if it is connected to a law library. Law libraries will contain many reference books that can help research their claim. This is only useful for veterans wishing to hold the text in their hand. Otherwise, all the information is generally available online.
 - ➡ Find it: <http://nces.ed.gov/globalslocator/>.
- ◆ **Google Scholar**: What is this? This is Google's search engine for research papers and legal decisions. Veterans and lawyers can find this useful when needing specialty information about health conditions. It could also come in handy when searching for US Court of Veterans Appeals cases; however, going to the court's website may be easier.
 - ➡ Find it: <http://scholar.google.com/>
- ◆ **Government Printing Officer**: What is this? This is the site where users can search for government documents. You can find the regulations and statutes that govern the actions of the VA. We will explain the difference between regulations and statutes more in depth in a few pages.
 - ➡ Find it: <http://www.gpo.gov/>.
- ◆ **Federal Register**: What is this? For the veteran's claim, the Federal Register is where you look to see if there have been any updates to regulations that may impact your claim. Voc Rehab counselors tend not to update their own manuals. So, if a regulation changes, the counselor may not be current. This can impact your claim.
 - ➡ Find it: <https://www.federalregister.gov/>.



- ◆ **THOMAS**: What is this? THOMAS is the database for the Library of Congress. This is where you look when you want to read the legislative history of a Bill. Information like this is helpful when you want to know the background of how a Bill became a Law. This information can be used when a veteran is negotiating their rehabilitation plan if the counselor's position is contrary to what Congress meant.
 - ➡ Find it: <http://thomas.loc.gov/home/thomas.php>.
- ◆ **VA Regulations**. What is this? This is the web page where the VA publishes all of its regulations. This is a great page for veterans and lawyers who want to see the differences between the different regulatory changes dating back to 2004.
 - ➡ Find it: <http://www.va.gov/orpm/>.
- ◆ **VA Board of Appeals**. What is this? This is the web page for the VA's Board of Appeals. Here, you can find all the decisions of the Board dating back to 1992. Just click on "Board Decisions" to search through everything on the site. The next step after a denial at the Board is a hearing at the US Court of Appeals for Veterans Claims.
 - ➡ Find it: <http://www.bva.va.gov/>.
- ◆ **US Court of Appeals for Veterans Claims**. What is this? This court has jurisdiction over the Board and Regional Offices that render decisions on veterans' claims. Claims take a very long time to filter to this court, sometimes over 5 years. The decisions of this court are binding on the VA and the Board.
 - ➡ Find it: <http://www.uscourts.cavc.gov/>.
- ◆ **Legal Information Institute**. What is it? This is a database of all the statutes and regulations impacting the government, including the VA. It is maintained by Cornell University. The site is easy to search and will give readers the information they need, similar to the Government Printing office.
 - ➡ Find it: <http://www.law.cornell.edu/>.
- ◆ **Justia**. What is it? This is a database of all the statutes and regulations impacting the government, including the VA. The site is easy to search and will give readers the information they need, similar to the Government Printing office.
 - ➡ Find it: <http://www.justia.com/>.
- ◆ **vlex**. What is it? This is a database of all the statutes and regulations impacting the government, including the VA. Just click on United States for location. The site is easy to search and will give readers the information they need, similar to the Government Printing office.
 - ➡ Find it: <http://vlex.com/>.



- ◆ [LexisNexis Veterans Benefits Manual and Materials](#). What is it? This is a publication with CD-ROM that contains all relevant statutes and regulations pertaining to veterans benefits. The manuals contain all the necessary information and cost around \$250. Some libraries may contain this material. Purchasing the Benefits Manual is much cheaper overall since neither USCA nor USCS contain additional information that is of use in filing a disability compensation claim for benefits.
 - ➡ Find it: <http://www.lexisnexis.com/en-us/home.page>.
- ◆ [United States Code Service](#). What is this? This resource is like an encyclopedia of statutes with around 100 volumes printed by LexisNexis. The information can also be found online with a subscription. Most libraries will not have these because they are very expensive. For the veteran's claim, these are of limited use since the information within them can be gleaned from the previously mention resources for free. All law school libraries will have these. So too will most federal depositories.
 - ➡ Find it: all law school libraries will have these, as will some large metropolitan libraries.
- ◆ [United States Code Annotated](#). What is this? This resource is like an encyclopedia of statutes with around 100 volumes printed by Westlaw. The information can also be found online with a subscription. Most libraries will not have these because they are very expensive. For the veteran's claim, these are of limited use since the information within them can be gleaned from the previously mention resources for free. All law school libraries will have these. So too will most federal depositories.
 - ➡ Find it: all law school libraries will have these, as will some large metropolitan libraries.



Essential 6: Make your plan

A GREAT PLAN CAN MAKE YOUR CASE A WINNER

6

You have two lessons left in your preparation for your first Voc Rehab meeting. Here are the two remaining Essentials:

Essential 6: Make Your Plan. Formulate your plan on how you will achieve your desired occupation through

education or self-employment.

Essential 7: Refine your presentation. Develop your presentation to the Voc Rehab Counselor using Word or PowerPoint.

Here we go. Essential 6: Make your plan.

You're goal during this Essential is to select the best route to achieve your goal, whether college or self-employment

Plan basics. To put your educational or self-employment plan together, you will need to have settled on your ideal and provable career goal or goals. You will state it in clear and simple terms.

Now that you have your goal, work backwards. Working backwards, you then select colleges or universities that offer an educational track that will support that goal. If you want to start your own business, select specific training and support you need to be successful.

This best practice for this part is to already be accepted into the program, college or university in which you hope to attend. It will keep the counselor from doubting your aptitudes and abilities straight away.

However, if you have not had a chance to do this, don't sweat it. You will at some point need to cross that bridge.

Select training institution. Most Voc Rehab programs will only allow you to attend a college in the state or region you live.

Let's say you want to study management and you are in the Duluth, MN area. In that region there are three major universities: University of Wisconsin – Superior, University of Minnesota – Duluth, and The College of St. Scholastica.

Of the three, St. Scholastica, a private Catholic college, has the best regional reputation; however, you can only attend there on Voc Rehab if none of the other area public colleges offer the program of study you wished to follow.

Trusty work-around. If any of the state schools offer a Management bachelor's degree, you must attend there. If you want to study Business Communications (this would give the same outcome), instead, the only school offering that degree plan would be St. Scholastica.



Remember: Voc Rehab is only required to provide you with the minimum requirements necessary for any employment plan. But, if none of the other schools offer the degree you wish to study, they will likely approve that track, especially if you are already accepted at the institution and none of the others by enrollment time.

Recall Essential 4 and the language “maximum extent feasible?” This is where the rubber hits the road. Practically every counselor I have spoken with admits to steering veterans to lesser quality public educations instead of private schools.

Private versus Public.

Credit difference. Most private colleges use 4 credit systems instead of the 3 credit systems of most public schools. This means, at private schools, you will only need to take 4 classes to have a 16 credit course load. Whereas, at public schools, 5 classes would only land you typically 15 credits.

Public schools have 4 credit classes, too. However, most of their curriculum consists of 3 credit courses. I find the 3 credit course load to amount to more busy work, but that could just be my own experience. The VA considers 13 credits to be the cutoff for full-time school attendance.

Student attitude. Most professors say they like teaching at private colleges more. According to them, the students tend to be more focused and professional.

Quality of education. Most higher rated schools are also private. Don’t be fooled. Always attend at the best rated school you can get into. Not only will the professors be better overall, but the students you network with will also help you gain employment at better firms. The better your job prospects, the better chance you will have for getting into higher rated professional programs such as law school and business school.

Back to Bill. For our friend Bill, he wanted to study sociology and social work. The only master’s degree in the area is offered at an area private college, so Bill is approved to attend there once he is accepted into the undergraduate program. The benefits of attending the private college are smaller classes, the ability to develop closer friendships with students and professors, and more flexibility in obtaining a degree.

Self-Employment. Many veterans contact me about starting their own business. Here are some general rules of thumb.

- VA used to only approve the most disabled veterans for self-employment. For that reason, most counselors do not even think they can approve the requests.
- Rules changed two years ago. Now there are two tracks. 1) Veterans for which a goal of self-employment is feasible. 2) Veterans where finding work is impossible and for that reason, self-employment is the only employment option.



- Group #1 veterans do not get as much funding and support.
- Group #2 gets the whole kitchen sink

Beyond this, the rules vary depending on your office. I have found the rule change from the Federal Register: click here <http://tinyurl.com/8mau6hc>. Read over this if you really want to understand the program and how the counselor will approach your request. It's generally really difficult for veterans to gain approval.

Many counselors tell veterans they can only be approved for up to \$25,000. That is not accurate. A veteran can be approved for up to and beyond \$100,000 according to

Director Ruth Fanning - yes, I asked her personally just to be sure.

Veterans have been approved for the following:

- Urn metal making company: \$100,000
- Tractor landscaping company: \$75,000
- Film / photography company: \$30,000
- Music company: \$50,000

Ruth said she would consider approving franchises as well, but I have not heard of any stories to this point.

Last Essential: Refine your presentation. You will put your plan into a presentation format.

Research Entrepreneurial Options Again

Franchises

- These are a great choice for veterans given their background, training, and available funding opportunities. Here are a few options found online who market directly to the veteran community. There are others as well. Definitely do not be afraid to use Google or Bing to find an appropriate opportunity.
- VeteranFranchises.com: resources for veterans, military families and military spouses. Opportunities include UPS, Sport Clips, Trova Home Care.
- MilitaryFranchising.com: this finder is through GI Jobs, which is a great source and rater of employers. The service finds the most military friendly opportunities and relays the information back to users.

Small Businesses

- Entrepreneur.com has a great body of resources for anyone looking to quit the W-2 world.
- [Entrepreneurship Bootcamp for Veterans with Disabilities](http://whitman.syr.edu/ebv/): this is a national program for veterans at major universities ranging from Syracuse University and Cornell University to UCLA and LSU. Eight universities provide management and entrepreneurship training for post-9/11 veterans with disabilities. The program is free to all who are accepted. <http://whitman.syr.edu/ebv/>

Resources from Dept of Veterans Affairs

- VetBiz.gov: VA's website that covers the majority of issues veterans have in gaining



certifications and finding opportunities for government contracting.

Research College Options and Entrance Exams

How to use: this section sets out college types for retraining. Read over each section to get a quick overview of the various options people have available to them, veteran or not. Most accredited schools will be approved to provide veterans with most forms of training. The links at the end will help you select the best quality school in your area or in the nation.

[US College Search](#): What is it? This is an online database of all colleges and universities in the United States. It will provide data on all schools by state, zip code, degree type, name, and delivery method (eg. online versus on campus). This also includes vocational schools and community colleges.

- Find it: <http://www.uscollegesearch.org/>.

[College Bound Networks](#): What is it? This is another online resource, only this resource discusses the differences between different college choices. Some of the information from here can be found in the discussion below. Readers wishing to research the same topic from different sources can simply search “private college versus public college.” This will give a list of different opinions and facts.

- Find it: <http://www.collegebound.net/content/cat/types%20of%20colleges/816/>

College Types

- [Vocational School](#): this is for veterans wishing to gain a trade or skill set. Voc Rehab is generally very good about approving these programs so long as the veteran’s disability does not conflict with the career choice.
- [Community College](#): considered starter colleges. Students sometimes start here and then transfer to a 4-year school. I strongly discourage doing, generally. I will spend a little time on this one because many veterans do not understand the difference between a community college and a 4-year school. Here are some pro’s and con’s from my perspective:

► PROS

- Veterans who have been out of school for a very long time can gain confidence from succeeding in classes at community college prior to attending a big university.
- Classes tend to be less competitive so it allows a veteran to score a higher GPA. The higher GPA can allow you to transfer into a 4-year school and get a scholarship if you do well.



- Professors tend to be more approachable and are more familiar with nontraditional students.

► CONS

- It cuts down on networking time with college professors. These relationships are vital if you hope to attend law school or medical school because you need letters of recommendation.
 - Students from where you will graduate will be your alumni network. The better and bigger your school, the broader your network will be to find employment.
 - Professional schools know most classes at community college are easier and assume there is a degree of grade inflation when deciding which applicant to admit.
- 4-Year Public University/College: these schools will usually provide a solid education. If attending public schools, I always encourage veterans to attend the “flagship” state school versus smaller regional public schools. Some examples of “flagships” are the University of Michigan, University of Georgia, University of Texas, University of California - Berkeley.
 - 4-Year Private Colleges: these will give you a solid education. Usually, the student body is smaller, so you get to know everyone quickly. The alumni networks are strong and depending on whether the school is ranked regionally or nationally. Nationally tends to be better, but that is never always the case.
 - 4-Year Public/Private Research Universities: these schools provide great resources and hire many of the best professors on the market. However, they are huge and a person can get lost in the shuffle. They include the state school flagships above. Top private research universities are Harvard, Yale, Stanford, and Princeton. You have heard of these at some point if you live anywhere in the Western Hemisphere. For that reason, having a familiar and highly ranked school on your resume will only help.
 - My take: attend a private 4-year university that is also a research university. If you can handle large crowds, the benefit is that, no matter where you live after graduation, everyone will know where you studied. Branding is worth its weight in gold these days. Given the current job market, any boost to your resume cannot hurt.

College Rankings

US News & World Report: Great place to start. Purchase their guide to see where your area colleges line up.

- Find it: <http://colleges.usnews.rankingsandreviews.com/best-colleges>



[College Confidential](#): Free resource that provides both a ranking and comments from students about how to get in.

- Find it: http://www.collegeconfidential.com/college_rankings/

[Forbes-America's Top Colleges](#): Comprehensive list that combines smaller colleges with larger research universities.

- Find it: <http://www.forbes.com/top-colleges/list/>

Getting Accepted

- [Transfer magic](#). Some schools will waive entrance exams if you are older than 26 with some college under your belt (grades must be stellar for top schools to consider you as a transfer).
- [ACT/SAT, etc.](#): These exams tend to be difficult for nontraditional students, especially with learning disabilities or head injuries.

Moving forward: now that you have assessed the career types and colleges that provide suitable training, you are well on your way to developing a comprehensive training plan. Start putting lists together that will help you write a letter to your counselor for your first meeting. The letter should be short, possibly one page. It should explain what your goal is and which colleges or training program will get you there.

In the following pages, we dive more into primary sources and reference material to solidify your claim. This is important because it will be your ammunition. The ammo will help you communicate your desired goal in the same language the counselor will understand. Using the same language allows a counselor to more easily approve your claim because it will fit more closely within the parameters the VA requires. Counselors love this.



Essential 7: Presentation

THE NITTY GRITTY OF FINDING A CAREER GOAL: PATHFINDER APPROACH

7

You have one lesson left in your preparation for your first Voc Rehab meeting. This is the final Essential to complete before that meeting.

Essential 7: Refine your presentation. This is where the rubber meets the road.

After completing your research and other preparations, you should have enough information to create a complete presentation. Your goal should be well in mind.

Now, it's time to put it together in an attractive format as if you are applying for a bank loan.

Timing and purpose. You will make your presentation to the Voc Rehab Counselor at some point during your first meeting. A well-crafted plan can get you past many typical hang-ups. There is a sequence to the process. And remember the honey-vinegar principle - honey attracts flies, vinegar does not. These professionals will expect you to be courteous regardless of how they may treat you.

The sequence. First, you must be approved for the first meeting. If you're still reading this, you've likely been approved or at least

the VA has determined you are eligible. Second, during the first meeting, the counselor must determine if you have an employment handicap which is like them saying you are entitled. So, the veteran must be two things: eligible and entitled.

Refer back to the definition of employment handicap within 38 CFR Part 21.

The Good. Beyond this, the counselor will ask you for some ideas pertaining to what you might like to do. Very simply present and explain the reasoning and research you have done. Avoid pounding your counselor with information, because the counselor is likely following a flow chart for gathering data from you. Make a copy of your information for them to follow while you explain the case you have developed. This is if the meeting goes well.

The Bad. Here is the other alternative. The VA does not like that I prepare veterans for a possible conflict, but I think it's better than going into the meeting with rose colored glasses. For that reason, you need to be aware that some counselors are not veteran friendly, even if they are ex-military.

The Ugly. I spoke with Director Ruth Fanning about the intake process of the first meeting. It is known but not advertised to veterans that the intake is a forensic exam. Ever hear of it? Probably not. And aside



from me telling you about it, no counselor will probably inform you of what's going on, either.

A forensic exam is an exam that can have legal implications. But unlike cops reading you your Miranda Rights, the counselor will likely not inform you of what they are doing.

The examination is their way of assessing the applicant in a one hour meeting, or possibly with a couple follow up meetings. Seem ridiculous? I thought so too. However, given work loads and such, that's just what these counselors have to do.

You can expect that some counselors will be antagonistic and push your buttons. They do this to assess how quick you are to anger and general mental acuity. Just remember, the meeting really is not about you, so do not take it personally. It is the counselor's job to provide a thorough assessment like this.

The reason?. Regional Offices get dinged for every veteran who fails to complete his or her rehabilitation program. You can be the counselor will be darn sure to avoid putting someone into the program who is a bad fit.

However, in the real world, will a trained psychologist ethically be allowed to trigger someone's PTSD just to see how bad it is? Or to further use other forms of psychological tools that can be confusing without at least informing the veteran of what they are doing first?

I have a theory, and the theory is that these professionals are possibly violating their Code of Ethics by conducting sessions this way, especially without informing the veteran first that any and all responses can be used against them.

Framework. Here is a basic format you can use for your presentation. It is a culmination of your efforts in the 7 Essentials:

Part 1. My Situation.

Employment story.

Employment handicap.

Part 2. My Plan.

My aptitudes, abilities and interests.

My three career choices.

My preferred career choice.

My educational requirements.



My college/training choice.

Type these out and edit as necessary. Print out all necessary documentation to have it on hand for the first meeting. This could include specific job researches, letters from a counselor or doctor pertaining to a condition that may limit you such as PTSD or a bad back. Put these into a three ring binder or something similar. I will include an example at the end of this Essential.

Back to Bill. Bill followed this type of model and had his plan in hand during the first meeting, which is something that rarely happens. This is "Bill's" actual letter to me that you read in Essential 1:

Ben,

I just wanted to let you know that I was accepted into the program. The caseworker said that I was one of the most prepared and organized applicants that she has seen. (All thanks to you for that) She proposed that I work on researching a degree in Social work since I listed that as an interest. The VA form 28-8606 she gave me states MSW as the proposed program. I was in shock of the whole situation and did not think to ask her about how long my entitlement was. I have researched MSW before and know that it could take six years to complete.

Well, I just wanted to let you know how it went and say thank you again.

V/R

Bill

With a great deal of work and a little luck, hopefully the first part of your case will end like Bill's.

For me, I've been working with VR&E for 6 years to sort my case out. Had I known the facts the first time around, I would have appealed the initial decision that pushed me into a path of Management instead of Law. But, there's a reason for everything and paying attention to that reason has allowed me to grow and help others. For that, I am thankful.

I wish you well. Let me know how it goes!

Email me with questions:

benkrause@disabledveterans.org



Take another look at the Essential 4 template to see how it morphs into a full presentation supporting your claim for benefits on the next pages.

Template from Essential 4

My disability affects me at work as a carpenter. It affects me because pain in my lower back makes it difficult to lift and climb ladders. This impacts my performance at work and is gradually getting worse.

I have done some research into retraining to gain entry level employment as a lawyer. I have done research using the Department of Labor websites O*NET and My Next Move. Employment within this career is forecasted to see steady increases. My research concluded that employment as a lawyer is in line with my aptitudes, abilities and interests.

My lower back prevents me from working within the field I am currently qualified to work within. Working as a lawyer would not impact my disabilities. I require training to become employed to the maximum extent feasible in this job.

See how these are applied in the letter below.

Part 1. My Situation

1. Employment story.
2. Employment handicap.

Part 2. My Plan

1. My aptitudes, abilities and interests.
2. My three career choices.
3. My preferred career choice.
4. My educational requirements.
5. My college/training choice.

January 1, 2020

Re: Application for Chapter 31 Benefits

To Whom It May Concern:

This letter is written to express my interest in retraining to gain entry level employment as a lawyer.

My service-connected disability (limited range of motion in lower back) affects me at work as a carpenter. It affects me because pain in my lower back makes it difficult to lift and climb ladders. This impacts my ability to work as a carpenter.

In the military, I received training as an avionics mechanic on planes. There are no airports within a 3 hour radius where I can find employment. Even if I could find employment, my lower back injury prevents me from lifting heavy objects, and I would inevitably have the same problems as I currently am as a carpenter.

Introduction sentence

Part 1: My Story

• **Employment Story**

• **My Employment Handicap**

• **Education and why it's hard to find work**

**Part 2: My Plan**

- Three career choices

- Preferred career choice

- Research on employment as lawyer

- Interests assessed

- Aptitude & Abilities

- Testing taken

- College prospects

- Educational requirements

- Conclusion

- Summary of request

- Restate information

- Polite salutation

From 2003 to 2007, I attended college at Northwestern University and graduated with a 3.5 GPA in Economics. Finding a job as an Economist or in a similarly suited Social Science field is impossible because it requires getting either a Masters Degree, PhD, or related professional degree. For that reason, I will need additional training, regardless of the field I choose.

In addition to a career as a lawyer, I have also looked into gaining entry level employment in Public Administration and as an Investigator. While these other two options are interesting, I do believe employment as a lawyer is my top preference.

I would like a career goal of "lawyer" within my IWRP. I have done some research into retraining to gain entry level employment as a lawyer using the Department of Labor websites O*NET and My Next Move. Employment within this career is forecasted to see steady increases. I shadowed lawyers in the community to see if I liked the work they do. I enjoyed the experience. I also took an interests inventor which concluded that the career of lawyer rated at the top of the respective career choices. Market information is included with this letter.

Not only am I interested in the career, but I have the requisite aptitude and abilities to succeed in the field. I have scored well on the LSAT and been able to gain acceptance into an ABA accredited law school.

Educational requirements to become a lawyer is for successful completion of a Juris Doctorate degree, which will take three years. I have been accepted at the University of Minnesota Law School. This law school rated in the Top 20 of all law schools in the U.S. Tuition is \$30,000.

In conclusion, my lower back prevents me from working within the field I am currently qualified to work within. My education requires additional training in order to be employable in an area of employment that fits within my aptitudes, abilities and interests. Working as a lawyer would not impact my disabilities and would allow me to gain employment to the maximum extent feasible.

Thank you for your consideration.

Sincerely,

Signature
Name



Additional Resources and Ideas

How to use: this last section covers topics like writing and formatting. Your goal is to develop a concise rehabilitation plan presentation that you can explain in 3 minutes or less on 3 pages of paper or less. The first meeting is all about high level conversation coupled with a psychological assessment. Keeping things short and to the point will help you score well with the counselor. Scoring well may help you get approval for a more advanced training track than you may otherwise have been approved for.

Write like a Lawyer

The Little Book on Legal Writing: great text we had to read for our first year legal writing course. It is written to encourage plain language writing versus the convoluted “lawyer speak” or boring academic writing. People who write in confusing ways to sound important are only fooling themselves. This text will tell you what to do and what to avoid.

- Find it: <http://www.amazon.com/The-Little-Book-Legal-Writing/dp/0837705606>

Speak like a Public Speaker

A Geek’s Guide to Presenting to Business People: I realize the titles seem a little incongruent here. This free guide will walk you through steps on speaking and presenting for maximum effect. You do not need to apply the whole thing. Your goal is to read this to understand some of the nuances of speaking. I think the most helpful would be 4 tips for connecting with your audience and 5 tips to making information easy to understand and remember.

- Find it: <http://leadinggeeks.com/publications/free-downloads/a-geeks-guide-to-presenting-to-business-people>

Present like an Investment Banker

Dartmouth PowerPoint Guide: Dartmouth Biomedical Libraries was thoughtful enough to come up with a brief PowerPoint presentation that can help you design your rehab plan in an esthetically pleasing manner using bullets and other tools that will help any counselor read through it clearly.

- Find it: <http://www.dartmouth.edu/~library/biomed/guides/powerpoint.html>

For veterans without PowerPoint or related programs, you can download a free trial version of the program and use it for one month. Be sure to save and print the presentation out before the trial period is over, otherwise you may not be able to open it later. Here is the [Microsoft website](#).

Find it: <http://office.microsoft.com/en-us/powerpoint/>



Worksheet

How to use: the more succinct you are, the more likely the counselor will be able to see that you are competent. The more competent you seem to the counselor, the more likely they will conclude that you can successfully complete the program you are asking for. Below is a recap of the information you read and researched.

1. Define your career goals - Find your career

You should at least have 2-3 career goals in mind at this point. Jot these down and give it a day or two to ruminate. Come back to this list and see if your thoughts or impressions have changed.

1. _____
2. _____
3. _____

2. Colleges and Vocational Training

For each career, you should have researched an appropriate college or vocational school in your area that provides the training you would need.

1. _____
2. _____
3. _____

3. Laws, Regulations and Appeals

There are many, many appeals, laws and rules that could apply to any veterans particular situation. Write down the most prominent that stuck out in your mind.

1. _____
2. _____
3. _____



4. Presentation skills

Now take those ideas from the previous three steps and put them in order. Here is an idea for how to develop your claim presentation.

First, set you your situation. This will include your employment history. It will include your disability. It will also include any other relevant information he counselor should know about you.

Second, take that information and incorporate the details you learned about yourself from the previous steps. Create a compelling story about how your disability impacts your job or your ability to find a job. Talk about how you would love to get training in a career that suits your skills and personality. Finally, incorporate those job ideas into your ideal course of training to meet those goals.

Third, reread your story and incorporate the language you learned from the appeals cases and relevant laws and regulations. This way, you are molding your story into a dialogue with the counselor on paper that your counselor will understand. This should look like the following: 1) a cover letter that is one page explaining your entire situation; 2) a two page printed out PowerPoint that succinctly explains the details of your plan right down to job placement after college.

Last, once you have this written down, read the letter and PowerPoint out loud. Reading out loud does two things. First, it helps you catch typos. Typos are a killer when it comes to presenting to a counselor. They will doubt your attention to detail. Second, it will help you realized how your presentation “sounds” to someone sitting across from you. Rehearse this with a spouse or friend, like a job interview, until you are comfortable.

In conclusion, this guide has walked you through many of the resources veterans use to help with their claim for Vocational Rehabilitation benefits. There are many more resources out there we did not have time to cover. Nonetheless, you will be prepared and confident once you go through this process, soup to nuts.

Good luck!



Part III: Appeals

Learn how to appeal: When you don't agree, don't give up. Appeal.

HOW TO USE PART III: APPEALS

Basics. Appeals are the meat and potatoes of any good claim when you need to push for what you want. I have written a bunch of examples within the following page.

Do this. Look these over only to illustrate how another veteran handled the situation. Learn for the use of the regulations and cases. Try to adapt it to your own situation.

Goal. You want to create a context that encapsulates your situation. It must contain all the facts necessary for an outsider to render a decision, like the Board of Appeals in a worse case scenario. Here's the hard part. Keep it as brief as possible it simple.

Do not copy. These templates are generic on purpose. These are only to illustrate communication strategies and nothing more. They are not legal advice or anything of the sort. Write your own winning appeal.

About the templates

From experiences of real veterans over the years plus a little tweaking to make them fit more situations.

Since 2009, I have been pondering different ideas and issues related to Chapter 31 that can cause roadblocks for veterans. My now friend Greg first contacted me on that Christmas Eve. The VA counselor in his Regional Office was a bigot and told Greg that if he didn't like the counselor's denial, that he should go talk to Oprah.

That did not fly with me. I consider all veterans to be my brothers and sisters, and when any one of us gets the shaft, I do what I can to fix it. For almost 12 years, Greg had been fighting to get the VA to cover flight school. Part of the way into the program, the VA counselor just canceled it based on a technicality. Instead, they wanted Greg to merely work in the aviation industry, and to forgo his dream of being an aviator, and to let the VA out of its training contract with him. As far as I'm concerned, when there is a contract, the other party better honor it.

We fixed his counselor's wagon right quick. I helped him craft solid appeal that exposed flaws in the IWRP paperwork. CBS Evening news ran his story and others while exposing problems within the Voc Rehab program. All was right with the world for a while.

As a result of that Christmas Eve, I created this guide for all veterans.



What you will read before the advanced templates.

Template 1: The Basic Voc Rehab Appeal Pg 67

We all need to walk before we run. The process starts here.

1. Types of Denials Pg 68

This may seem silly, but it's not. Many veterans think they are denied when they actually are not denied at all. Instead, the VA asked them to provide further information. If you try to appeal this, the Board of Appeals will likely reject your claim back to the Regional Office.

2. Freedom of Information Act Request (FOIA) Pg 69

FOIA will be the crux of your claim because it will allow you access to a copy of your Voc Rehab file. You need this file in order to fully know what you are disagreeing with when you appeal.

3. Types of Appeals Pg 72

There are three kinds of appeals and all have different rules about how the Voc Rehab counselor will proceed. Knowing the types and the impacts of all three on your claim is vital.

4. Know Why You are Appealing Pg 74

Seems obvious, right? Don't be so sure. Many veterans appeal the wrong things or don't know why they need to appeal what. This section helps you sort that out.

5. How to use the Templates Pg 76

Yes, the reason you are here. Templates. DO NOT COPY THESE. They are for illustration only, and we run you through how to adapt what you read to your situation. Remember, illustration only.



Now What?

You may be the recipient of a recent denial for benefits from Vocational Rehabilitation. If not, maybe you're reading this section hoping to learn how to avoid denials. Either way, there are a few different ways in which counselors deny veterans. Sometimes it's through letters. Sometimes orally. Sometimes it's via email. Anyway you skin it, it's a denial and you need to advocate for your position.

Moving forward, always remember one thing. No one will care more about this than you.

Time for Sumo Polka



Yeah, I raised a few eyebrows when I suggested this to my peers. “Sumo Polka? What the hell is that?”

I still don’t fully understand the metaphor, but I kept finding these weird pictures of sumo wrestlers online throwing around this really small guy and it occurred to me, “that’s how many of us feel at the VA. Totally powerless.”

When I think about my experiences with the VA, and the experiences of others, I get a mental image something like a sumo wrestling match, and us veterans are the little guy.

And for Polka. The reason I use the idea of polka is simple, but maybe not obvious. Not only does the image of two sumo wrestlers polka dancing make me laugh, but it describes the relationship you need to develop with the VA and your counselor.

While in “hard core sumo,” the objective is to throw your opponent out of the wrestling circle, you’re goal is different. It needs to be your objective to stay in that damn ring, no matter what. Regardless of what happens, you need to be the cool one. The one always showing up for appointments on time. The one going well above and beyond the requests of the counselor.

Meanwhile, the VA also needs to stay in the ring because they claim they want to help veterans. The only way they can save face is by trying to make you leave that circle. To give up on your own.

I get countless emails from veterans telling me stories about how they did just that. Somehow or another, the counselor called them into the office, and after explaining that the veteran should sign the withdrawal paperwork, the veteran just signs it and walks out.

It’s your job to stay in that ring. Ask the counselor what you need to do in order to fix the situation.



"I understand that it doesn't work this way; what can we do to make it work from where we're at now?"

Use reverse engineering. This question has helped me, not just in Voc Rehab, but in D.C., in relationships, in any situation where the other party is used to people not pushing back.

These templates will help you understand how to structure your situation to help you stay within that circle and "polka" with your counselor.

It doesn't need to be pretty. It just needs to work. Always ask yourself what else you can do to make the situation work. Just don't forget to curtsey before you do-se-do.

Template 1: Basic Appeal

If you bought this guide, you're possibly confused about how to get your counselor to agree with your desired goals.

Why these are important.

Possible Letter: Stage 1 letter to your counselor

Dear Such and Such,

I request an Administrative Review of the decision made by counselor X. His decision was (fill in the blank), on Month XX, 20XX. I disagree with this decision because (fill in the blank). My goal is to (fill in the blank). I believe this is feasible because (fill in the blank). In summary, (summarize your issue and claim).

Sincerely,

John Q. Veteran

Seem too simple? If you think the process is more complicated than a 5 or 6 sentence letter, you may be right. Depending on your situation and the attitude of your counselor, the process can get quite squirrely. Documentation and regulations can help solidify your position with an unruly counselor. Keep reading.

We are going to take you through the soup to nuts appeal process. The next page will set out the next pages preparing you for the templates.



Types of Denials

THE SUMO - VETERAN DANCE BEGINS. GRAB YOUR PARTNER.

A denial is a basic decision that tells the veteran he or she is not eligible for the benefit requested. Just remember, sometimes no does not mean no.



1. Oral Denial

- Via phone
- In person

2. Written Denial

- Official letter
- Email

3. Ignoring You

- Not a denial



1. When you receive an oral denial with no follow-up denial letter from a Voc Rehab counselor, it is possible the counselor was trying to put off your issue rather than resolve it. Here's the hitch...

2. In order to appeal, you need an actual denial from the VA. Follow-up any oral denial with a written letter mailed to your counselor's attention via certified mail with return receipt. In the letter, summarize what the counselor told you. Document it.



Get your file, FOIA.

Use a Freedom of Information Act (FOIA) request. It's a must do.

Why do you get your file?

Documentation: *the Cover Your Ass approach.* The first part of any solid appeal is the immediate request for a copy of your Vocational Rehabilitation and Employment file through the Freedom of Information Act.

The Freedom of Information Act is a law that requires the government to provide the public with most documents they request. It's a transparency thing. When it comes to a person, the government in most situations must provide a copy of all records a person requests about themselves. Here, the VA will provide you with a copy of the file they have on you once your request your file in writing under the authority of FOIA. Many people call this file your C-File (short for claims file).

Once your file arrives

You need to develop a documentation system that will keep your file organized. Usually, VR&E will provide your files in a classification folder. I transferred copies of documents sensitive to my claim over to a classification folder with 2 dividers. These can be purchased in bulk for around \$25 at most office supply stores.

FOIA for Files

Prior to submitting an appeal, you need to know what information is contained within your file. Many times, you will find mistakes that will make the substantiation of your claim for benefits easier.

For example, the vocational rehabilitation counselor is required to input your correct training objective within your Individualized Written Training Plan (IWRP) at the onset of your training. This goal can be difficult to change if you decide to alter the direction of your training after you sign the document. Sometimes, the counselor may input a goal that is incorrect. When this happens, a prudent researcher could discover that the IWRP stated within the file is so contrary to what the veteran thought it was, that the veteran may be able to appeal based on the goal running in conflict with the veteran's disabilities.

Unless you possess a full copy of your file, you will not know exactly what information counselor said about you and your training. While you could attempt an appeal without this in your possession, it could open the door to an otherwise avoidable request denial.

Armed with the facts of your case, you will stand a pretty good chance of succeeding. The process starts here, with your FOIA request for your Voc Rehab files.

How to deliver FOIA request

Hand delivery. This is the preferred method. Request a timestamped copy of the request when you drop it off. It usually will take 60-90 days to get the file, making it important to make the FOIA request immediately. If you're unable to get to the VR&E office in person, sending the request via certified mail with a return receipt is sufficient. Further information can be found at VA.Gov.



Name
(Insert Address)
(Claim Number)

(Date)

(Counselor Name)
Department of Veterans Affairs
(Address)

Re: Freedom of Information Act (FOIA) request

Dear (Insert Counselor Name):

I am writing to request a copy of my Vocational Rehabilitation and Employment file through FOIA. Please furnish a copy of my file to the above mailing address.

My file can be found under: (Claim Number)

I further request a full waiver of fees associated with this request. The information I am requesting is material to my claim for benefits from the VA through Chapter 31.

If you deny this request, please cite the reason you feel justified for the denial, and provide me with information I will need to make an appeal.

Please contact me with any questions about this appeal via phone or email at (insert phone number and email address).

Sincerely,

(Signature)
(Typed Name)



Some FOIA Resources

I just realized how to use FOIA for advocacy, which is very exciting. In that capacity, I can do a FOIA request on general policy from the VA that can force issues to be resolved.

For example, Voc Rehab has forced veterans to waive mandatory insurance from colleges & universities when it is required. Not only can the veteran not opt for civilian care, but then they must forgo other forms of related coverage, such as dental. In response, I went to D.C. and filed a subsequent FOIA to resolve the matter by asking Central Office if waiver is proper.

<http://www.foia.va.gov/>: FOIA resource directly from the VA. In my opinion, there is nothing better than getting the information. However, when you request your Voc Rehab file, it has been my experience that getting it directly from Voc Rehab is quicker.

The FOIA Blog: This is an interesting source of information on all things FOIA. While not directly related to VA, you may be able to learn a thing or two about the overall value of FOIA.
http://thefoialblog.typepad.com/the_foia_blog/

National Archives: this is a main place where you can get general personnel files and other things related to military service. <http://tinyurl.com/mabed>

VA OIG: The VA Office of Inspector General can help if you believe someone you are working with within the VA is breaking the law or wrongly denying benefits. While not always useful, they do on occasion investigate related issues. <http://www.va.gov/oig/>



Types of Appeals Veterans Can Use

You have a few options when you disagree with a VA decision. You can file a Request for Reconsideration. This is very basic and has no real statutes written about it. Then there are two formal options: Administrative Review and Notice of Disagreement (NOD) do require the counselor to file a lot more paperwork.

Request for Reconsideration Who does it?	A veteran can request reconsideration which in many ways is an informal appeal. Many counselors will allow this.
If...	Then...
the decision made was based on faulty information or made hastily.	talk with your counselor and submit a letter stating that you "request reconsideration."

Administrative Review: Who does it?	Table below indicates different people conduct admin reviews. Note: The veteran will be informed of decision within 90 days .
If...	Then...
the request for an administrative review involves eligibility and entitlement decisions	the administrative review will be conducted by the Director, VR&E Service.
the request for an administrative review involves a decision related to the development of a rehabilitation plan and the VR&E Officer is the case manager	the administrative review will be conducted by the Director, VR&E Service.
the request for an administrative review involves a decision related to the development of a rehabilitation plan	the administrative review will be conducted by the VR&E Officer.
the request for an administrative review involves any other adverse action	the administrative review will be conducted by the VR&E Officer.

For more on the subject, look up VA M28 Part 3 Chapter 3, <http://tinyurl.com/bsfv3o>



Notice of Disagreement: Who does it?	A Notice of Disagreement is a written statement from a veteran advising the VA that he/she disagrees with a decision to deny benefits. It must be filed within 1 year of adverse decision.
	Note: VR&E should not consider an inquiry or general complaint following an adverse action to be a NOD. However, if a verbal complaint appears to be a NOD the VR&E staff member taking the complaint will solicit a written, signed statement of the disagreement with the adverse decision.
Statement of the Case	After a timely NOD has been received and the issue in question is not resolved by granting the benefits sought, or if the appeal is not withdrawn, then a SOC will be prepared to continue the appeal process. The purpose of a SOC is to provide the individual and designated representative, if any, with a summary of the evidence and applicable laws and regulations used in deciding the case, as well as the specific reasons why the claim was disapproved or denied.
For more on the subject, look up <u>VA M28 Part 3 Chapter 3, http://tinyurl.com/bsfvp3o</u>	



Decide what you are appealing.

You're probably asking, "how does this make sense with my own case?" Great question. Templates will never be an exact match to your reality. They are designed to provide guidance for how regulations and case law can be incorporated into an appeal.

This section will be broken down into two parts: orientation and letter writing. First, orient yourself to what is going on. Ask these questions:

1. Why am I upset about the denial?
2. What did the denial letter actually say?
3. Are they correct or incorrect?
4. What do I hope to gain by proceeding?
5. Is it worth the effort?

Breaking these down. The first question will let you know if you should proceed or not. If you do not care or are not upset about the denial then stop where you are at. There is no reason to proceed. If the answer is "yes," then identifying why you are upset will allow you a chance to evaluate your situation.

Second, reread the denial letter. Sometimes, in the heat of the moment, we misunderstand what is written. Ultimately, what is on the page could be your ally if you understand what it says. Let's say it reads, "Mr. Smith, after reviewing your claim, I have decided you are not qualified for further training and would be better served

by using our Rapid Reemployment Services. This is based on your current training level and previous experience. According to 38 CFR Part 21.50, the veteran must show his service connection prevents him from working..." Ok, this is a good start. You know what the decision says and you know the regulation.

Third, is this true or not? This can be a tricky question for a few reasons. According to the denial letter, the counselor says you have enough training to find work. This is either true or untrue. The only way to prove this statement to be untrue is to apply for jobs within the area you have training. Let's say you have a psychology undergraduate degree and you want to be a counselor. If you apply for counseling type jobs you will likely not be selected without an MA or PhD. In this hypothetical, you have actually applied for 60 jobs with no job offers. This means the claim by the counselor that you have enough training to find employment is untrue. However, if you have not applied for any jobs, you do not know if you have an employment handicap (ie cannot find work due to your disability and training level). Thus, you cannot prove the counselor's claim is untrue. The next logical step is to apply to every job within the field you want to find employment, even if you don't qualify. The big issue is to ensure the job title falls within the area you want your training.

Fourth, it is your job to identify what your end game is. Do you want an undergraduate degree, technical training,



graduate level training? How are you planning on obtaining this goal? There are many ways to skin a cat. Perhaps you can get the schooling you need through another agency or with scholarships. Once you settle on your end goal, whatever it is, you'll be able to ascertain the value of the next question.

Fifth, do you think the end result is worth the effort? Well, let's see what the pros say about increases in lifetime earning potential by degree type. From [MSN Money, 2007](#). Pick what works for you. <http://tinyurl.com/5gyoh4>

Associate degree	
Good payouts	
Average	\$116,550
Liberal arts	\$63,667
Business	\$92,908
Social science	\$79,013
Computers	\$148,695
Science	\$104,521
Engineering	\$192,660

Bachelor's degree	
Lifetime gain can be huge	
Average	\$308,588
Liberal arts	\$243,883
Business	\$349,028
Social science	\$210,080
Computers	\$443,180
Science	\$283,286
Engineering	\$497,930
Education	\$108,461

Master's degree	
Bachelor's + Master's	
Average	\$180,010
Social science	Less than 0
Business	\$375,780
Science	\$136,873
Engineering	\$362,092
Education	\$106,388
Liberal arts	Less than 0

Professional degree	
Big-time payoff	
Average	\$716,927
Law	\$748,865
Medicine	\$977,601



Make your claim fit the template

Let's talk about your case and how to make it make sense to your counselor. Remember, writing is simple. Your goal is to write your elevator pitch of why you think your claim should have been approved. Be persuasive, research a lot, and breath.

Try to break your letter into five sections:

1. **What you want.** State the issue and what you want in one or two sentences. "On December 5, 2009, I received a denial for benefits. I request an Administrative Review of the pertinent issues in my case."
2. **History.** In the next paragraph, write a simple explanation of what happened and when. "I requested benefits on September 30, 2009. My request was denied based on 38 CFR Part 21.50. The counselor told me I did not have further benefits because I used Chapter 31 to get a bachelors degree."
3. **Illustrative facts.** Point out the specifics at issue. "I have arthritis in my knees and have received a 60 percent service-connected disability rating. This prevents me from working as an avionics technician, for which I received military training. I attended college and received a degree in psychology. Since graduating, I have looked for work but have been unable to find and maintain substantive employment. For that reason, I am requesting further benefits."
4. **Analyze the facts.** This is where you tie the facts in with the regulations. "I believe I qualify for benefits because I have a serious employment handicap. This handicap has not been overcome. I have not been able to find employment as a psychologist or in that field because I do not have an advanced degree. I have applied to 60 jobs over the past 6 months and have received no offers. For that reason, I do not believe I have been "rehabilitated." Despite this, I feel I qualify for benefits based on 38 CFR Part 21.284 and 21.52."
5. **Conclude.** Summarize the issues and what you are requesting. "I came to request benefits on September 30, 2009. I received a denial for those benefits. I am requested an Administrative Review based on the above facts and discussion. Please see my attached job search records and statements from area professionals pointing out my need for additional educational benefits."

That's it. Have a friend proofread it. Mail it certified with return receipt. DO NOT EMAIL. They may not pay attention to the email and there's no way to really prove they received it.



Everyone from collections agencies to the VA will respond to a certified letter. Once the letter leaves the post office, it is totally out of your hands. They should contact you.

Change your mindset

Writing is not rocket science, but it intimidates a lot of people. Take a deep breath and plunge in. If it's not great the first time around, that's ok. The majority of good writing comes with revision, not with the first draft. Get your situation on paper and realize that it's your job to convince the counselor that they should want to help you, not that you are entitled to their assistance.



Different Appeals Ideas

Template 2: Appeal Initial Denial

Pg. 79

The Voc Rehab guide for a disabled veteran's Initial Denial. Don't stop with the first roadblock your Voc Rehab Counselor may throw in your way.

Template 3: Get more than an A.A.

Degree

Pg. 85

I have received numerous emails from veterans after they realize they were duped into an associates degree or tech training when they wanted a 4 year degree or master's level training. Disabled veterans, don't be fooled by Voc Rehab. Fight back.

Template 4: Change your training goal

Pg. 91

This guide instructs disabled veterans on how to negotiate with their Voc Rehab Counselor for a training program that better fits their new interests despite having used most or all of their benefits.

Template 5: Get more school

Pg. 97

You have 1 year from the date the Voc Rehab Counselor declared you to be rehabilitated to appeal that decision. This holds if you did not find work or only found work in an unrelated field to your IWRP.

Template 6: Get advanced degree

Pg. 103

Applying for further benefits could be the answer to getting the training disabled veterans need to achieve the career of their dreams. Voc Rehab could approve airline pilot training, law school, medical school, MBA, teaching degree and more.

Template 7: If they terminate your training

Pg. 109

Voc Rehab Counselors generally claim they do not have to approve a program that was already approved in another state. Learn the truth about this Voc Rehab claim and how to protect yourself if you need to move or change schools after signing the IWRP.



Template Two: Appeal Initial Denial

The fundamental player in the following template is 38 CFR Part 21.50-52. These regulations stipulate the conditions a veteran's claim must fall within in order to qualify for benefits from Chapter 31 Vocational Rehabilitation and Employment.

Summary: What to Expect on the next few pages

This template set is all about getting denied after or during your first meeting. It includes the following:

- A relevant Board of Appeals case that discusses 38 CFR Part 21.50-52
- An excerpt of the regulation 38 CFR Part 21.50-52
- Veteran background for the template - tells you what happened
- Template with instructions

The following page includes a legal finding from the Board of Appeals concerning an initial request for benefits for a veteran who already possessed a bachelors degree. The Board ultimately denied his request for benefits because he did not prove to the court that he had an employment handicap.

I realize this may seem strange to look at for some. After all, the Board's decision is in no way binding on other decision makers, only the US Court of Veterans Appeals is. Second, why would you look at an unsuccessful claim?

Rest assured, there is a method to my madness. First, while Board decisions are not binding, there are many more of them and they can still be persuasive to your counselor. Second, you will learn how to avoid the land mines that could blow up your claim by learning from the mistakes of others. In fact, I find it more useful. Last, the Board will tell you how it interprets grey areas within the regulations and statutes. This is very important.

Here, the Board states that while the veteran did have a service connected disability, the veteran did not have an employment handicap. He had an undergraduate degree and immediately enrolled in law school. Since Chapter 31 is a "go to work" program rather than



a “go to school” program, this act essentially disqualified the veteran.

The veteran must show he cannot obtain employment for reasons outside of his control. Here, the veteran chose to enroll into law school rather than to find a job. He should have applied to a ton of jobs proving he needed additional training prior to enrolling in law school.

Next pages:

- Appeals case
- Regulations
- How to avoid same outcome
- Template



CITATION NR:
0109835

NOTE: BOARD OF APPEALS CASE EXCERPT.
LINK TO FULL CASE IS AT BOTTOM.

DECISION DATE: 04/04/01

DOCKET NO. 98-07 126A

THE ISSUE

BASIC ENTITLEMENT TO VOCATIONAL AND REHABILITATION SERVICES UNDER THE PROVISIONS OF CHAPTER 31, TITLE 38, UNITED STATES CODE.

FINDINGS OF FACT

The veteran does not have an employment handicap.

REASONS AND BASES FOR FINDING AND CONCLUSION.

A person shall be entitled to a rehabilitation program under the terms and conditions of Chapter 31 if he is a veteran who has a service-connected disability rated at 20 percent or more and is determined by VA to be in need of rehabilitation because of an employment handicap. 38 U.S.C.A. § 3102 (West 1991 & Supp. 2000); 38 C.F.R. § 20.40 (2000).

The term "employment handicap" means an impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with his abilities, aptitudes, and interests. 38 U.S.C.A. § 3101 (West 1991 & Supp. 2000); 38 C.F.R. § 21.35 (2000).

An employment handicap does not exist when the veteran's employability is not impaired; this includes veterans who are qualified for suitable employment but do not obtain or retain such employment for reasons within their control. 38 C.F.R. § 21.51(f)(2)(i) (2000).

In the veteran's case, the record reveals that he graduated from the University of Phoenix with a B.A. degree in Business Management and, in January 1998, enrolled in a law school in Oklahoma. In February 1998, he applied for a VA vocational rehabilitation program under Chapter 31. The RO determined that he had service-connected disabilities rated as 20 percent disabling (residuals of frozen feet, evaluated as 10 percent disabling, and residuals of a fracture of the right clavicle, evaluated as 10 disabling), but that he did not have an employment handicap, as a university graduate. In a supplemental statement of the case in August 1998, the RO pointed out to the veteran that VA vocational rehabilitation is not a "go to school" program but rather is a "go to work" program. From the veteran's communications to the RO, it is not clear if he is contending that he currently has an employment handicap.

The record reveals that, when the veteran received a college degree in Business Management, he did not seek employment but rather chose to pursue a professional degree. It thus appears that he did not obtain suitable employment as a matter of personal preference, a reason which was within his control. There is absolutely no evidence of record that, when he received a Bachelor's degree in Business Management, the veteran's foot condition and/or shoulder condition impaired his ability to obtain and retain employment consistent with his abilities, aptitudes, and interests. The Board, therefore, finds that the veteran does not have an employment handicap and is thus not entitled to a program of rehabilitation services under Chapter 31.

View whole case: <http://tinyurl.com/8wx8wl4>

Case Layout: Most cases are broken down into parts. Here, we have the issue and "findings of fact" at the beginning. While reading, the Board summarizes the law. Then, it summarizes the facts. Last, it applies the law to the facts.



Get a hand up, not a hand out

Use your understanding of 38 CFR Part 21.50-52 to advocate for yourself if your counselor wrongly denied you the training you believe you need to be properly employed.

Template Background

To understand the template fully, you'll need to know the background in that particular situation. Read closely and modify the template as needed.

In this template, the veteran had a 60 percent disability rating for knee problems. He was employed as a aircraft maintainer but knew his job would be terminated. When applying for benefits, the counselor requested he provide a multitude of documentation regarding what companies would require for him to gain employment.

While Vocational Counselors will sometimes request this, his counselor continued to change the requirements every time he successfully completed each task.

Over the course of one year, he contacted potential employers. Once this requirement was satisfied, he then was required to develop and research his own training plan. The counselor is supposed to help with this process, but she flat out refused and further claimed the veteran's inability to satisfy

the requirement was proof of him not cooperating.

The counselor denied college training and forced the veteran into Rapid Reemployment. This is a denial.

The following is a similar letter to what he used. Remember, the goal is to ensure all parties know the veteran has cooperated and done everything he can to gain employment.

Flies are attracted to Honey

Here's one trick I learned a long time ago when it comes to the VA and getting your benefits. If you act cool and cooperative, no matter what, you can generally work out any disagreement. It's the "flies are attracted to honey, not vinegar," approach to life.

For your claim, I suggest you try it out.

Flies + Honey = Benefits



DO NOT COPY THIS. These templates are merely to give you an idea of what an appeal could look like. Do not copy and paste it into your own document. No two sets of details will be the same.

Enumeration Works

Re-list what your counselor may have orally told you within the next correspondence. This not only documents the statement but it will help you create solid, well organized responses to the counselor's concerns and reasons for the denial.

Using enumeration while speaking during your meeting will also help keep you and the counselor on track when face to face.

Be Proactive

Always think two steps ahead of what you believe your counselor is expecting. This will help you differentiate yourself from other veterans. You want to be the most prepared veteran they have ever seen. Not once have I heard that and in turn had the veteran denied in all the time I've been helping vets with this benefit.

Name
(Insert Address)

(Date)

(Counselor Name)
Department of Veterans Affairs
(Address)

Template 2

Re: Denial of Chapter 31 Benefits

Dear (Insert Counselor Name):

Please consider this a Request for Reconsideration of my claim. You denied my request for retraining and instead concluded that Rapid Re-employment as an avionics was appropriate.

I have worked as an avionics technician for the majority of my career, which requires heavy lifting and agility. I recently had numerous back injuries that have prevented me from fulfilling the duties of this job. In 2008, I received a 60 percent disability rating for lower back and knee injuries.

According to 38 CFR Part 21.50-52, I believe I qualify as person with a "serious employment handicap." I have been unable to maintain and obtain substantive employment (e.g. full time employment) since we first met due to my service-connected disabilities. Since my disabilities have not been overcome, I believe I meet these criteria and require Vocational Rehabilitation to become employable.

We have met numerous times over the past year; however, I do not know where I am at in the claims process. For that reason, I have proceeded with the instructions you gave me this past summer.

I have complied with your request to contact local businesses to find employment. I was unable to find employment with any of the 30 firms I contacted despite my current skill set.

Beyond this, you stated for me to complete the following in order for you to develop my IWRP, as stated in 38 CFR 21.84:



1. Gather information for the career I interested in pursuing
2. Look at the job market of the career, both locally and nationally
3. Look at the salary, environment, how the career may affect the disability
4. Determine what entry level training is needed (what is the level of education required to enter this field)

First, I have performed the research required. Second, I identified three career fields that are in line with my aptitudes, abilities and interests. Finally, I proceeded to obtain the specific data you requested I find.

The careers I selected are predominantly sedentary and for that reason would have a limited impact on my disabilities. The career goals are:

- Corporate Lawyer
 - i. Education Requirement: Bachelors and Juris Doctorate
- Management Analyst
 - i. Education Requirement: Bachelors or MBA depending on job market at the time of graduation
- Auditor
 - i. Education Requirement: Bachelors

All of these career fields are projected to have substantial growth over the next 10 years, both locally and nationally. Their salaries are in line with my needs. At the present, I do not possess the skills or training necessary for these jobs. I have been accepted at 3 local colleges and intend to begin classes this January to avoid further delays.

In closing, I believe I have complied with all of your requests in good faith. Let's work together to determine what is and is not feasible out of these three options.

Sincerely,

(Name & Signature)

.....
Summary: remember, this is all about showing that the veteran has done everything he can to gain employment. The letter does three things well. First, it lets the counselor know that the veteran is aware of what the rules are. Second, it clearly shows that the veteran has gone above and beyond what the counselor has requested. Third, it summarizes oral stipulations that the counselor made, which will keep her from backtracking or adding additional stipulations.

.....

Back to Honey

Here, the counselor was rather antagonistic with the veteran, but the veteran remained cool, at least during the meeting and in writing the letter. In order to make sure your situation is on the right side of the rules, I suggest reviewing the resources below.

Sources for Research

1. [38 CFR Part 21](#): These are the federal regulations that are expounded in the M28. Vital to your arguments.
2. [Department of Veterans Affairs M28](#): This is the primary "bible" for the average Voc Rehab Counselor. Get to know this for each step.



Template Three: Go from 2 to 4 year degree or change the goal

The fundamental player in the template below is 38 CFR Part 21.92-98. These regulations stipulate the conditions a veteran's claim must fall within in order to be successful when requesting to change their Long Term Goal of the IWRP.



Summary: What to Expect on the next few pages.

This template set provides you first with a situation where the veteran requested a “review” of his claim but was denied. He wanted the review so that he would be able to change his degree from Associates into a Bachelors. The set will include the following:

- A relevant Board of Appeals case that discusses 38 CFR Part 21.92-98
- An excerpt of the regulation 38 CFR Part 21.94-96
- Veteran background for the template - tells you what happened
- Template with instructions

In this Board decision, the veteran struggled with school at first but eventually improved. At that point, the veteran wanted to obtain a full undergraduate degree and request a “review” to change his training track.

The counselor denied this request and concluded that the veteran lacked the aptitude to attain a 4-year degree. The Board concluded the counselor was wrong. It further went on that,

since a 4-year degree was the “market essential” for the veteran to find employment, that the veteran was at least entitled to a Bachelors education.

Of additional interest was the statement that a veteran could be entitled to additional training beyond the 48-month limit if the region requires additional schooling beyond what is generally considered necessary throughout the country. Normally, you can be entitled to more than 48 months if you have a severe employment handicap. Here is an example where that is not necessary.

In summary, the veteran not only went against the counselor’s decision, but the Board awarded retroactive pay for all out of pocket expenses the veteran incurred from finishing his degree.

Next pages:

- Appeals case
- Regulations
- Template



NOTE: BOARD OF APPEALS CASE EXCERPT.
LINK TO FULL CASE IS AT BOTTOM.

CITATION NR: 0024645

DECISION DATE: 09/15/00 ARCHIVE
DATE: 09/21/00

DOCKET NO. 99-07 418

THE ISSUE

ATTEMPTED REQUEST FOR IWRP
REVIEW.

LAW AND ANALYSIS EXCERPT

Applying the provisions listed in the preceding paragraph to the pertinent facts, based on the veteran's sworn testimony, and the undisputed fact that a Bachelor's degree is generally recognized as a prerequisite for a professional career in the veteran's chosen field, business, the Board concludes that it is at least as likely as not that a Bachelor's degree was necessary for entry into the veteran's chosen occupation. Moreover, the veteran has testified that he was essentially told that a Bachelor's degree was necessary to attain the desired management position at the company of his choice located relatively close to his home in Florida. Thus, the Board also concludes that it is at least as likely as not that while a Bachelor's degree may not be required for a comparable position in areas other than Florida, the Bachelor's degree appears to have been required for the veteran to obtain the type of position desired by him with a company relatively close to his home in Florida.

Finally, while it is conceded that not all of the prerequisites for amendment of an IWRP, such as

obtaining the reevaluation of the veteran's rehabilitation program by the counseling psychologist prior to making such an amendment, a change in the veteran's "circumstances" and the development of "new information" could reasonably be construed as warranting entitlement to the required amendment. In this regard, while the veteran initially had difficulty adjusting to the academic world following his far different life as an infantryman in the Army, the record reflects consistent academic progress after the veteran became acclimated to his new environment. Given this progress by the veteran, as reflected by the fact that his grade point average approached 3.0 upon completion of his college career, it is reasonable to conclude that a different long range goal than originally planned for the veteran should have been established. Certainly, this academic achievement is consistent with a "long-range goal" of obtaining the responsible management position ultimately obtained by the veteran. Thus, as a Bachelor's degree could reasonably be viewed as a prerequisite for this position, the Board finds that the veteran's complete rehabilitation was best served by his attaining a Bachelor's degree.

Based on the forgoing, and construing all reasonable doubt in favor of the veteran, the Board concludes that the veteran's IWRP should be amended to include the goal of attaining a Bachelor's degree.

View whole case: <http://tinyurl.com/cnk8hoy>

Case Layout: Most cases are broken down into parts. Here, because of length, I just included the analysis. Please be sure to review the regulations on the next page. Pay attention to what is highlighted and underlined.

On the following page, I will address how a change in your circumstances could require requesting a review. The counselor should provide such a review. If they do not, you may have grounds for an appeal.



Regulation Excerpt from [e-CFR on GPO Access](#)

38 CFR Part 21.96 Review of the Plan.

(a) General. The veteran's progress in reaching the goals of the plan will be reviewed and evaluated as scheduled in the plan by the case manager and the veteran.

(b) Comprehensive review required. The case manager and the veteran will review all of the terms of the plan and the veteran's progress at least every twelve months. On the basis of such review the veteran and the case manager will agree whether the plan should be:

- (1) Retained in its current form;
- (2) Amended; or
- (3) Redeveloped.

38 CFR Part 21.98 Appeal of disagreement regarding development of, or change in, the plan.

(a) General. The veteran may request a review of a proposed, original, or amended plan when Department of Veterans Affairs staff and the veteran do not reach agreement on the terms and conditions of the plan. A veteran who requests a

review of the plan must submit a written statement to the case manager which:

- (1) Requests a review of the proposed, original, or amended plan; and
 - (2) Details his or her objections to the terms and conditions of the proposed, original, or amended plan.
- (b) Review by Vocational Rehabilitation and Employment Officer. Upon receipt of the veteran's request for review of the plan, the counseling psychologist or the case manager will forward the request together with relevant comment to the VR&E Officer who will:
- (1) Review relevant information; and
 - (2) Inform the veteran of his or her decision within 90 days.
- (c) Review by Director, Vocational Rehabilitation and Employment Service. The veteran's request shall be reviewed by the Director, VR&E in any case in which the VR&E Officer is the case manager. The veteran will be informed of the decision within 90 days.
- (d) Appeal to the Board of Veterans Appeals. The veteran may appeal an adverse decision of the VR&E Officer, or the Director, VR&E to the Board of Veterans Appeals.

that that point, the veteran is still unhappy with the decision, the veteran can appeal to the Board.

The Board's Decision. In this decision, the counselor not only failed to follow the protocol, but he placed the veterans training into "interrupted" status which prevented the veteran from receiving the tuition scholarship and stipend. Essentially, the counselor punished the veteran for disagreeing and forced the veteran to take out loans to finish his education.

The Board recognized this failure and awarded that the veteran be reimbursed for the money he paid out of pocket.

Regulations Above: only part of the regulations relating to this section are listed above. Please click here review [38 CFR Part 21.94-98](#).

Plan review is required. The regulations allow within Part 21.96 for a veteran's plan to not only be reviewed but also changed. It further states that a review is required at least once per year and changed as needed. The Board basically stated on the previous page that the counselor erred in not amending the veterans plan and goal.

Disagreement allowed. The veteran is allowed to disagree with the counselor and request a Review from the counselor's boss, the VR&E Officer. If,



Get a hand up, not a hand out

Learn strategies and techniques for using 38 CFR Part 21.92-98.

Template Background

To understand the template fully, you'll need to know the background in that particular situation. Read closely and modify the template as needed.

In this situation, the veteran was being denied the final part of his training. In this situation that we created the template for, the veteran was training to become an airline pilot.

The Vocational Rehabilitation Counselor (VRC) retired and turned the case over to someone else. Six months before graduation, the new VRC looked at the DOT Code and told the veteran he was not going to be allowed the \$140,000 of flight training to become an airline pilot. The veteran looked at his own DOT Code but did not understand what it meant at the time of signing the IWRP contract.

After review, we realized the DOT Code was not only wrong, but the tasks required to perform any job function under that DOT Code would injure the veteran due to his disabilities.

This runs contrary to the guidelines of Chapter 31 within the VA's M28 pertaining to the development of a training goal. An employment goal cannot be detrimental to the veteran's health and disabilities.

In order to correct this issue, the veteran needed to request a Review of his IWRP in accordance with 38 CFR Part 21.92-98.

He was successful.

**DO NOT COPY THIS.**

These templates are merely to give you an idea of what an appeal could look like. Do not copy and paste it into your own document. No two sets of details will be the same.

Name
(Insert Address)

(Date)

(Counselor Name)
Department of Veterans Affairs
(Address)

Template 3

Re: IWRP Yearly Review Request

Dear (Insert Counselor Name):

I request a review of my IWRP based on 38 CFR 21.96. I have not had a review in X years. The regulation states this must happen yearly, if not more often.

Remember

Always summarize what your counselor says to you orally within a letter or email. It is imperative to create a paper trail about every little detail. Otherwise, on appeal, you may not have a leg to stand on if you rely only on the counselor's good word.

In looking over my IWRP, I realize there was an error in the DOT Code selected at the onset of my training. When I first contacted Congressman (Insert Name), it was to gain access to the benefit Chapter 31 Vocational Rehabilitation and Employment with the goal of becoming (Insert Goal). During my intake and plan development, it was not explained to me that DOT Code 912 type jobs do not include "Pilot." The correct DOT Code is DOT 196.263-014 for Pilot.

Upon further research, I learned that DOT Code 912 job group include occupations concerned with fueling, cooling, heating, and ventilating aircraft; repacking parachutes; and related minor repair and maintenance activities, according to the Dictionary of Occupational Titles. DOT was last updated in 1991.

I had to look up corresponding jobs on the Dept of Labor's O*Net to find modern equivalents. Many of these jobs I cannot perform because of my disabilities. These jobs include: In-flight Refueler, Aircraft Launch and Recovery Technician, and Line Service Attendant. Further, Dispatcher, Ticket Agent and others have no growth potential, which is a training track requirement for IWRP's.

Regardless, not one of the jobs listed under DOT 912 require a degree for employment. For that reason, the skills and knowledge I am learning would not be utilized for these jobs, which is a requirement of 38 CFR Part 21.283. Many of them do not even require a high school diploma. To



compound the matter, not one of these jobs is in line with my aptitudes, abilities and interests.

Thus, it appears that this DOT Code was selected in error. If there is a significant delay in reaching a satisfactory conclusion to this matter, and I need to pay for the initial portion of flight training out of pocket, please include in your correspondence guidance for me to file for Equitable Relief under 38 USC Section 501 (a)&(b), as outlined in M28 Part III, Chapter 3.

A change to DOT Code 196.263-014, which is in line with my aptitudes, abilities and interests, and the subsequent training requirements, which are not prohibited by 38 CFR Part 21.134 nor 38 USC 3680 A(b), seems appropriate at this time.

Your urgent attention to this matter is appreciated. Please contact me with any questions or concerns.

Sincerely,

(Name & Signature)



Template Four: Change training goal

The fundamental player in the template below is 38 CFR Part 21.94-98. Whenever a veteran wishes to extend their training beyond 48 months, there are regulations the VA must follow to allow the change. Be sure to bone up on the information to avoid losing the additional benefits.

This page will serve as a synthesis between the template presented above with the Board of Appeals case and regulations on the following page.

The previous template explains to a counselor why the veteran believes their claim should be considered for additional benefits. To compound the matter, the Vocational Rehabilitation Counselor ignored the veteran's first request for a review and declared the veteran to be "rehabilitated" based on a serious stretching of what the regulations deem appropriate. Always be on the watch for that in your own case.

The following page contains a case where the veteran applied for additional benefits following the completion of their bachelors degree in Sociology. The veteran claimed to look for work after completion of the degree but could find none. For that reason, the VRC approved her for additional schooling up to a Master's Degree. The veteran in turn completed the training.



It's important to note the progression. Many veterans believe that just stating the obvious, that certain degrees require graduate level schooling to find employment, will allow them to push the VA for approval for additional benefits. This is not true. You must show that you cannot be employed in the field you studied in order to qualify for additional benefits.

A better example of this would be getting a bachelors degree in Business. Trying to claim you cannot find work within the field of business with a business degree will be very difficult, though not impossible. Now, if you studied an area with the Social Sciences, there is a much higher likelihood said veteran will gain approval for graduate level study. These fields would include Sociology, Psychology and Economics. The reason for this is there is no direct job function for a Sociologist with undergraduate degree. You need an MA or PhD to usually find work in that field.



NOTE: BOARD OF APPEALS CASE EXCERPT.
LINK TO FULL CASE IS AT BOTTOM.

CITATION NR: 0534345

DECISION DATE: 12 / 20 / 05 ARCHIVE
DATE: 12 / 30 / 05

DOCKET NO. 04-07 290A

THE ISSUE

ENTITLEMENT TO ADDITIONAL VOCATIONAL AND REHABILITATION SERVICES UNDER THE PROVISIONS OF CHAPTER 31, TITLE 38, UNITED STATES CODE.

CASE EXCERPTS

1. *The veteran has a serious employment handicap.*
2. *The veteran has used over 48 months of Chapter 31 vocational rehabilitation training.*
4. *The veteran agreed to and substantially completed a Vocational Rehabilitation Program as established in her Individualized Written Rehabilitation Plan, which was extended beyond 48 months to allow for completion of both a Bachelor's Degree and a Master's Degree in Sociology, a vocational goal which was determined to be feasible for the veteran to attain.*

In this case, the Vocational and Rehabilitation Counseling Office determined that the veteran was eligible for Chapter 31 benefits, determined that she ultimately manifested a serious employment

handicap, and provided her with well over 48 months of vocational rehabilitation and training in order to obtain the agreed upon vocational goal of counselor. Specifically, the record reflects that the veteran initially received a Bachelor's Degree from the University of Southern Colorado in September 1998 under Chapter 31 benefits. Subsequent to the veteran receiving training and career counseling with her first vocational goal, VA conducted extended evaluation in order to provide her with a change in her rehabilitation plan which would result in a feasible vocational goal.

The veteran agreed to and signed an amendment to her Individualized Written Rehabilitation Plan (IWRP) providing additional months of rehabilitation benefits beyond the usual 48 month entitlement to assist her in obtaining a Master's degree in Sociology. As part of that agreement, the veteran acknowledged responsibilities such as maintaining attendance and good grades, not allowing outside activities to interfere with his training program, keeping scheduled appointments, and the like. The veteran ultimately earned a Master's Degree in Sociology at the University of Colorado in Colorado Springs in September 2002, also under Chapter 31 benefits.

Click here to view whole case: <http://tinyurl.com/9ms6tsf>

Case Layout: This Board case is merely to illustrate that Voc Rehab will approve veterans for training beyond the general 48-month limit. The veteran in this case tried to milk the system for a Chiropractic degree in addition to her undergrad and masters in Sociology. Use the program but try to be reasonable in what you expect it to do.

When your counselor tells you they only do basic college, cases like this will help you.

Words to Search for:

Go to [Board of Veterans Appeals](#) and search under "all years."

- "law school"
- "psychology"
- "medical school"
- "masters degree"

**Regulation Excerpt from [e-CFR on GPO Access](#)****38 CFR Part 21.96 Review of the Plan.**

(a) General. The veteran's progress in reaching the goals of the plan will be reviewed and evaluated as scheduled in the plan by the case manager and the veteran.

(b) Comprehensive review required. The case manager and the veteran will review all of the terms of the plan and the veteran's progress at least every twelve months. On the basis of such review the veteran and the case manager will agree whether the plan should be:

- (1) Retained in its current form;
- (2) Amended; or
- (3) Redeveloped.

38 CFR Part 21.98 Appeal of disagreement regarding development of, or change in, the plan.

(a) General. The veteran may request a review of a proposed, original, or amended plan when Department of Veterans Affairs staff and the veteran do not reach agreement on the terms and conditions of the plan. A veteran who requests a review of the plan must submit a written statement to the case manager which:

(1) Requests a review of the proposed, original, or amended plan; and

(2) Details his or her objections to the terms and conditions of the proposed, original, or amended plan.

(b) Review by Vocational Rehabilitation and Employment Officer. Upon receipt of the veteran's request for review of the plan, the counseling psychologist or the case manager will forward the request together with relevant comment to the VR&E Officer who will:

- (1) Review relevant information; and
- (2) Inform the veteran of his or her decision within 90 days.

(c) Review by Director, Vocational Rehabilitation and Employment Service. The veteran's request shall be reviewed by the Director, VR&E in any case in which the VR&E Officer is the case manager. The veteran will be informed of the decision within 90 days.

(d) Appeal to the Board of Veterans Appeals. The veteran may appeal an adverse decision of the VR&E Officer, or the Director, VR&E to the Board of Veterans Appeals.

Regulations Above: only part of the regulations relating to this section are listed above. Please click here review [38 CFR Part 21.94-98](#).

Plan review is required. As listed above, the regulations allow within Part 21.96 for a veteran's plan to not only be reviewed but also changed. It further states that a review is required at least once per year and changed as needed.

Disagreement allowed. The veteran is allowed to disagree with the counselor and request a Review from the counselor's boss, the VR&E Officer. If, at that point, the veteran is still unhappy with the decision, the veteran can appeal to the Board.

The Board's Decision. In this decision, the Board concluded the counselor was justified in amending the veteran's goal in allowing additional studies beyond 48 months to include getting a masters degree. However, the process is not a bottomless pit.



Get a hand up, not a hand out

Different approach with same regulations, Part 21.92-98 to get approval for additional months beyond 48.

Template Background

To understand the template fully, you'll need to know the background in that particular situation. Read closely and modify the template as needed.

In this situation, the veteran was attending college in a field of study that would not be directly marketable without attaining an advanced degree. There are numerous fields of study like that within academia such as Sociology, History and Psychology. This veteran wished to have a goal of Psychotherapist from the onset, but he did not understand that his DOT Code did not allow this to happen.

In fact, after review, we realized the DOT Code was not only wrong, but the tasks required to perform any job function under that DOT Code would injure the veteran due to his disabilities. This runs contrary to the guidelines of Chapter 31 within the VA's M28 pertaining to the development of a training goal. It cannot be a goal that will be detrimental to the veteran's health and disabilities.

In order to correct this issue, the veteran needed to request a Review of his IWRP in accordance with 38 CFR Part 21.92-98. His request was ignored and the counselor declared him to be rehabilitated erroneously. In instances like this, reading the corresponding legalize is vital to getting the benefits you deserve.

While the veteran is fighting an uphill battle, it's not impossible.

**DO NOT COPY THIS.**

These templates are merely to give you an idea of what an appeal could look like. Do not copy and paste it into your own document. No two sets of details will be the same.

Name
(Insert Address)

(Date)

(Counselor Name)
Department of Veterans Affairs
(Address)

Re: IWRP Review Request

Dear (Insert Counselor Name):

I am writing to file a request for an Administrative review of your decision to find me "Rehabilitated" and ultimate denial of my request for a review.

I request a Review and Change of my IWRP goal prior to your decision to find me "rehabilitated" for DOT Code 241 type jobs because these are inappropriate for my disability and goals. After my request, I was supposed to receive a review from the Vocational Rehabilitation & Employment Officer within 90 days. This did not happen. Instead, I was pushed out the door following my request.

According to the relevant statutes, I am entitled to request a change to my IWRP at anytime (38 U.S.C.A. § 3107(2) (West 1991 & Supp. 2000). Once requested, a change can be made:

- 1) achievement of the current goal is no longer reasonably feasible; or
- 2) the veteran's circumstances have changed or new information has been developed which makes rehabilitation more likely if a different long-range goal is established; and
- 3) the veteran fully participates and concurs in the change. (38 C.F.R. § 21.94)

First, after researching DOT 241 type jobs, I realized that none of these require a college degree or diploma. According to 38 CFR Part 21.283, it is required that my training be incorporated into the occupational objective we set. When I signed my IWRP, I was under the impression it was for a goal of "counselor." Instead, DOT 241 includes jobs like Tire Adjuster.

Second, after further research, I realized the DOT Code should have been 045 and feel like I was tricked into signing a contract without you explaining the fine print. We probably would have realized this had a yearly review been conducted of my training, but we never completed one over the four years. Not once.

Template 4

Remember

Always summarize what your counselor says to you orally within a letter or email. It is imperative to create a paper trail about every little detail. Otherwise, on appeal, you may not have a leg to stand on if you rely only on the counselor's good word.



Third, I have attempted to cooperate with you in good faith. I attempted to look for work in the area with my degree in social work and found only 8 related jobs. None of these would accept an applicant within anything less than a Masters in Social Work. I did approach you with this information, but 45 days after my request you concluded I was "rehabilitated" because I chose to take additional schooling rather than look for work. This is not true.

Fourth, I would like to state that my wish is to gain entry-level employment as a Psychotherapist or Psychologist through at least a Masters degree course of training. There are numerous Board of Appeals cases that have approved veterans for similar goals. Specifically, "The Board acknowledges the veteran's assertions that having a doctorate in psychology may make the veteran more employable. However, the Board does not find that the veteran would be unable to obtain an entry-level job in counseling with only a master's degree. The record shows that a master's degree in clinical psychology is suitable for entry into employment in the counseling field (Citation Nr: 0306126, 2003)."

Fifth, even if I had decided to merely skip over looking for work and to take additional classes, there are still two criteria that need to be satisfied:

- 1) The additional education or training is not approvable as part of the veteran's rehabilitation program under this chapter; and
- 2) Achievement of employment consistent with the veteran's aptitudes, interests, and abilities will be enhanced by the completion of the additional education or training.

On this note, I have a serious employment handicap that allows me to attend college for longer than 48 months and beyond the 12-year benefit cap. Veterans are approved for advanced degrees in psychology and other areas despite having received one degree already from Voc Rehab(see Citation Nr: 0004103 and 0707290).

Should you grant my request for a Review and Change, but deny my requested Change, I will cooperate with employment placement.

Last, I have not been provided with my VCAA explanation of how I can substantiate my claim. This is a due process requirement of any denial.

In closing, I am willing to cooperate with your direction and have requested a Review prior to your determination that I was "rehabilitated." This effectively serves as a denial of my request. As such, I disagree with your denial. Please reconsider my situation.

Sincerely,

(Your name)



Template Five: Appeal Rehab Status

The fundamental player in the template below is 38 CFR Part 21.283. Many veterans are pushed out of Voc Rehab without being properly employed or without finding work at all. This template will help you understand the rules so that you will be to understand your next step.

Moving between the template and the example Appeal below will help you more fully understand how to incorporate your own situation into the form developed above.

In the template, you read about a veteran appealing the declaration of “Rehabilitated” status. Below, you will read an excerpt from the Board of Appeals on the subject and the actual primary regulations the controls the conditions around which someone can and cannot be declared rehabilitated.

This is vitally important because it could be the difference between you getting an advanced or professional degree funded or merely walking away feeling short changed by the program.

You have 1 year from the date of the declaration to appeal that decision. Once that year has lapsed, if you want additional benefits, your case will need to fit within the parameters of Part 21.284. These can be difficult to prove, even if you have an increase in your disability rating. That is why it's important to understand where your claim is at at all times.

Below is a veteran who accepted a training track of Substitute Teacher. I am unclear as to why he did this, but he did. Rather than requesting a review of his training track, or appealing the declaration of rehabilitation, the veteran let his case lapse outside of the 1 year appeal window. Despite never being employed

on a full-time basis, the veteran’s employment was consistent with what would be expected for a Substitute Teacher.

In his appeal, he did state that his intention was to go through Vocational Rehabilitation to gain employment as a full-time teacher. At that point, raising that issue is moot. What mattered to the Board was whether or not the veteran was employed for longer than 60 days in his desired IWRP Goal, which he was. Beyond that, he did not qualify for additional benefits because he did not meet the criteria in Part 21.284. Pay special attention to the language of the CFR and how it works with the Board’s decision.





CITATION NR:
0942401

NOTE: BOARD OF APPEALS CASE EXCERPT.
LINK TO FULL CASE IS AT BOTTOM.

DECISION DATE: 11/06/09
DOCKET NO. 06-37 397A

THE ISSUE

WHETHER VETERAN
REHABILITATED TO POINT OF
EMPLOYABILITY.

FINDINGS OF FACT

In this case, the VA form 28-8872 signed by the Veteran and his vocational rehabilitation counselor in September 2003 indicates that the occupational objective for which vocational rehabilitation services were provided was to become a substitute teacher. The evidence of record shows that the Veteran is currently employed by the Leon County School Board as a substitute teacher. Thus, the Veteran is employed in the occupational objective for which his program of services was provided. The evidence further shows that the Veteran began his employment as a substitute teacher for the Leon County School Board in April 2004, and he has continued that employment through the present.

Thus, he has been employed for at least 60 continuous days. Therefore, the criteria for a declaration that the Veteran has been rehabilitated for the purposes of his vocational rehabilitation and employment program have been met.

The Board observes that the Veteran is not called upon to perform the duties of a substitute teacher every day. However, the potential remains for him to be called upon to teach frequently. He maintains his status on the active substitute teacher list. No evidence indicates that he has been fired or has resigned his position. Thus, although he does not actually go in to work every day, his employment by the school board has been continuous since April 2004.

The Board has also carefully considered the Veteran's statements that his goal has been to become a full-time, permanent high school or middle school teacher. However, obtaining employment as a full-time, permanent teacher is not the program goal listed on the Veteran's VA form 28-8872.

View whole case here: <http://tinyurl.com/9vmtqj>

Regulations Above: only part of the regulations relating to this section are listed above. Please click here review [38 CFR Part 21.283](#).

Plan review is required. As listed above, the regulation 38 CFR Part 21.283 governs the determination of "Rehabilitated" and when it is reached.

Disagreement allowed. You can disagree with this determination based on your degree type and goal. Many veterans falsely understand

their IWRP training goal to be specific. However, many counselors will list a generic industry type rather than a specific job. Once you are done with training, this makes changing your goal through a "review" almost impossible.

You will only have 1 year to appeal a determination of "rehabilitated." If it is successful, you will possibly be allowed to re-enter the program and get more.

If you wait more than 1 year, you will not be able to appeal and must meet requirements under 38 CFR Part 21.284, which is harder.

**Regulation Excerpt from [e-CFR on GPO Access](#)****38 CFR Part 21.283 Rehabilitated.**

(a) General. For purposes of chapter 31 a veteran shall be declared rehabilitated when he or she has overcome the employment handicap to the maximum extent feasible as described in paragraph (c), (d) or (e) of this section.

(b) Definition. The term "suitably employed" includes employment in the competitive labor market, sheltered situations, or on a nonpay basis which is consistent with the veteran's abilities, aptitudes and interests if the criteria contained in paragraph (c) (1) or (2) of this section are otherwise met.

(c) Rehabilitation to the point of employability has been achieved. The veteran who has been found rehabilitated to the point of employability shall be declared rehabilitated if he or she:

(1) Is employed in the occupational objective for which a program of services was provided or in a closely related occupation for at least 60 continuous days;

(2) Is employed in an occupation unrelated to the occupational objective of the veteran's rehabilitation plan for at least 60 continuous days if the veteran concurs in the change and such employment:

(i) Follows intensive, yet unsuccessful, efforts to secure employment for the veteran in the occupation objective of a

rehabilitation plan for a closely related occupation contained in the veteran's rehabilitation plan;

(ii) Is consistent with the veterans's aptitudes, interests, and abilities; and

(iii) Utilizes some of the academic, technical or professional knowledge and skills obtained under the rehabilitation plan; or

(3) Pursues additional education or training, in lieu of obtaining employment, after completing his or her prescribed program of training and rehabilitation services if:

(i) The additional education or training is not approvable as part of the veteran's rehabilitation program under this chapter; and

(ii) Achievement of employment consistent with the veterans's aptitudes, interests, and abilities will be enhanced by the completion of the additional education or training.

(d) Rehabilitation to the point of employability has not been completed. A veteran under a rehabilitation plan who obtains employment without being declared rehabilitated to the point of employability as contemplated by the plan, including a veteran in a rehabilitation program consisting solely of employment services, is considered to be rehabilitated if the following conditions exist...[\(Click to read full regulation - http://tinyurl.com/d4x7w7a\)](#)

There are three primary reasons why you will be deemed "rehabilitated" based on this regulation, 38 CFR Part 21.283.

First, you have overcome your employment handicap if you are:

1. Employed in your goal or an unrelated occupation, if you like it, for more than 60 days

2. You choose to pursue additional education instead of finding work
3. If maximum services have been provided despite not finding work (maximum services is not defined)



Get a hand up, not a hand out

Have you been told you are “rehabilitated” by Voc Rehab but are subsequently unemployed? If your answer is “yes,” then you have found the right template for you. Read on.

Template Background

To understand the template fully, you’ll need to know the background in that particular situation. Read closely and modify the template as needed.

In this situation, the veteran lost his job after being deemed to have been rehabilitated by the Vocational Rehabilitation Counselor (VRC). The VRC failed to have a firm grasp on the type of employment the veteran had. In an effort to close the case, the VRC hastily made up a job title and fit with the DOT Code rather than what the actual job warranted.

In re-applying for Chapter 31 benefits, the intake counselor stated the veteran was not eligible for more benefits because the case did not meet the requirements of 38 CFR Part 21.284. This regulation pertains specifically to veterans who were successfully rehabilitated. Here, the veteran did not meet this criteria.

Instead of taking “no” for an answer, he appealed his initial “rehabilitated” status based on 38 CFR Part 21.283. According to this regulation, the veteran must be employed in an area that specifically requires the use of some of the skills learned while in retraining.

This veteran was working as a commercial insurance salesman. The only educational requirement is to at least have a Producer’s License, which does not require a high school diploma, much less a college degree. On this fact, the veteran was able to successfully appeal.

**DO NOT COPY THIS.**

These templates are merely to give you an idea of what an appeal could look like. Do not copy and paste it into your own document. No two sets of details will be the same.

Name
(Insert Address)

(Date)

(Counselor Name)
Department of Veterans Affairs
(Address)

Template 5

Re: Incorrectly Deemed Rehabilitated

Dear (Insert Counselor Name):

Please consider this letter to be a notice to you that I am in disagreement with the VA's determination that I was successfully "Rehabilitated." I request that you reconsider my case based on the following information.

Remember

Always summarize what your counselor says to you orally within a letter or email. It is imperative to create a paper trail about every little detail. Otherwise, on appeal, you may not have a leg to stand on if you rely only on the counselor's good word.

My old IWRP stated that my training goal was to obtain employment as a financial analyst. I was unable to find employment in that field after college and accepted a job as an Insurance Agent. I lost that job for reasons outside of my control. I have since applied for 60 positions looking for a financial analyst with no success over the past 6 months. All employers have stated that I do not have the requisite skills for employment with them as a financial analyst.

Those applications and rejection letters are included within the appendix. You will also find one letter from an employment expert in finance stating the specific programs and training I would require to find employment in this job market.

Additionally, the position I worked in was an Insurance Agent, which is DOT Code 250 within the Dictionary of Occupational Titles. Not only was my personality not well suited for that industry, but it did not utilize any of the skills I gained while in college. In fact, employment as an Insurance Agent does not even require a high school diploma. According to 38 CFR Part 21.283, I needed to be employed in a career that utilized my newly acquired skill sets.

To be specific, the following is a list of regulations and procedures that were not followed during my rehabilitation period found from within my file. The



oversights and lack of direction caused me to be unable to gain substantive employment in DOT Code 160, which was my goal:

- I was not informed of possible strategies relating to an IWRP goal of DOT 110 field (21.362).
- My IWRP was changed from 189 to 160 in 2005 without a counseling psychologist (21.94).
- I was employed, without proper counsel, in a field unrelated to my intended employment goal of DOT 160 (21.84).
- I did not receive an IEAP (21.88).
- I was not employed in a field that was inline with my aptitudes, abilities, and interests (21.283).
- I was not employed in a field that required the use of the skills I learned during my rehabilitation training (21.283).

For the preceding reasons, I do not believe my case met or currently meets the requirements stipulated in 38 CFR Part 21.283. Therefore, my case should not be in “Rehabilitated” status. Please reconsider my request for reentry into Voc Rehab in light of Board of Appeals decisions 0707290, 0305136, and when held in comparison to the findings of 0808188 regarding substantial employment.

Sincerely,

(Name & Signature)



Template Six: Get Advanced Degree

The fundamental player in the template below is 38 CFR Part 21.284. If you've already used Voc Rehab once, and are in need of further training, you have found the right template.

This template is all about getting an advanced degree through Voc Rehab, even after already receiving a previous degree through the program. The example we use here is based on an appeal from an Alaskan veteran who had some serious strikes against him from the onset. If this guy can sort it out, so can you.

For this, we will focus on 38 CFR Part 21.284 which the counselor will use to determine whether or not a veteran can re-enter the program. In order to be allowed back into Voc Rehab after being determined “rehabilitated” there are certain criteria the veteran must meet. The criteria are quite difficult to meet.

Veterans having trouble finding or holding work, who in turn finished Voc Rehab within 12 months may have some options. They can appeal the determination of “rehabilitated” and possibly bypass the 21.284 denial that seems to catch veterans on a regular basis.

In the case that follows, the judge explains the basics that a veteran must meet in order to be allowed back into the program. The judge also talks about what is required for the veteran to be provided additional schooling.

Generally speaking, there are two basic allowances whereby the veteran will be allowed back into the program:

- The disability must have gotten worse and be impacting your new occupation
- When considering both your employment handicap and training, your new occupation must be unsuitable.

The “Findings of Fact” explains the relationship between the regulation and the benefits sought by the veteran. Be sure to consider this when you are looking to appeal.





NOTE: BOARD OF APPEALS CASE EXCERPT.
LINK TO FULL CASE IS AT BOTTOM.

CITATION NR: 0707290

DECISION DATE: 03 / 12 / 07

DOCKET NO. 05-21 667

THE ISSUE

ENTITLEMENT TO ADDITIONAL VOCATIONAL AND REHABILITATION SERVICES UNDER THE PROVISIONS OF CHAPTER 31, TITLE 38, UNITED STATES CODE.

FINDINGS OF FACT

1. *The veteran has a service-connected low back disability which is rated as 60 percent disabling.*
2. *The veteran has a serious employment handicap.*
3. *Through participation in the vocational rehabilitation program, the veteran received a Bachelor of Science and Technology degree, with an emphasis in Business.*
4. *Following his vocational rehabilitation training, the veteran pursued additional education or training, in lieu of obtaining employment, which, in its entirety, was not approved as part of the veteran's rehabilitation program, and achievement of employment consistent with the veteran's aptitudes, interests, and abilities will be enhanced by the completion of the additional education or training.*

5. *The veteran was rehabilitated via his training in the vocational rehabilitation program.*
6. *The veteran's 12-year period of basic eligibility expired on October 14, 2004.*
7. *With regard to the field in which the veteran was trained, the occupational requirements have changed and additional vocational rehabilitation services are needed to help the veteran continue in the occupation in which he or she was trained or in a related field.*
8. *The skills which the veteran developed in vocational rehabilitation training are no longer adequate to maintain employment in that field and a period of retraining is needed.*

CONCLUSION OF LAW

The requirements for an extension of eligibility for additional vocational rehabilitation services under Chapter 31, Title 38 of the United States Code, have been met. 38 U.S.C.A. § 3100, 3101, 3102, 3103, 3695 (West 2002); 38 C.F.R. §§ 21.44, 21.283, 21.78 (2006).

View whole case here: <http://tinyurl.com/bs8d8od>

Case Above: in numbers 7 and 8 within the Findings of Fact, the Board explains how the veteran was able to rise above the general prohibition from re-entering the program. First, the occupational training the veteran received was inadequate for future employment in the field or related fields. Second, the skills specifically received via training within Voc Rehab were no longer useful in the field.

Typical Problem Areas: Veterans usually disqualify themselves from additional training because they pursue more school after graduating. Many veterans believe that by just continuing on, that they will get Voc Rehab to approve the program. In reality, the veteran usually winds up with a denial because they chose to continue with school rather than trying to find work AND their skills from education were such that finding work within their training goal was feasible.am and get more.

**38 CFR Part 21.284 Reentrance into a rehabilitation program.**

(a) Reentrance into rehabilitation to the point of employability following a determination of rehabilitation. A veteran who has been found rehabilitated under provisions of §21.283 may be provided an additional period of training or services only if the following conditions are met:

- (1) The veteran has a compensable service-connected disability and either;
- (2) Current facts, including any relevant medical findings, establish that the veteran's service-connected disability has worsened to the extent that the effects of the service-connected disability considered in relation to other facts precludes him or her from performing the duties of the occupation for which the veteran previously was found rehabilitated; or
- (3) The occupation for which the veteran previously was found rehabilitated under Chapter 31 is found to be unsuitable on the basis of the veteran's specific employment handicap and capabilities.

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

(b) STIPULATIONS FOR INDEPENDENT LIVING
DELETED FOR THE PURPOSE OF THIS APPEALS
TEMPLATE

(c) Reentrance into rehabilitation to the point of employability during a period of employment

services. A finding of rehabilitation to the point of employability by VA may be set aside during a period of employment services and an additional period of training and related services provided, if any of the following conditions are met:

- (1) The conditions for setting aside a finding of rehabilitation under paragraph (a) of this section are found;
- (2) The rehabilitation services originally given to the veteran are now inadequate to make the veteran employable in the occupation for which he or she pursued rehabilitation;
- (3) Experience during the period of employment services has demonstrated that employment in the objective or field for which the veteran was rehabilitated to the point of employability should not reasonably have been expected at the time the program was originally developed; or
- (4) The veteran, because of technological change which occurred subsequent to the declaration of rehabilitation to the point of employability, is no longer able:
 - (i) To perform the duties of the occupation for which he or she trained, or in a related occupation; or
 - (ii) To secure employment in the occupation for which he or she trained, or in a related occupation.

Regulations Above: Please click here review [38 CFR Part 21.284](#) in case there have been updates to the regulation since writing this guide.

This regulation can be very difficult to get around when it comes to veterans who are unemployed but have been deemed "rehabilitated" in the past. Even if you are unemployed, if your skills are still adequate for the occupational goal you were trained within, you may not have success getting back into Voc Rehab.

Now, if your disability did get worse and you can document how it impacts you at the workplace, you may be able to get back into the program for more training.

What to do: Focus a lot of your effort onto how your job skills are impacted by your disability. Or, focus on how your career field has changed such that more training is necessary. This may be easier in technology related fields than any others.



Get a hand up, not a hand out

Already used Voc Rehab once? Here is a strategy to get back in .

Template Background

To understand the template fully, you'll need to know the background in that particular situation. Read closely and modify the template as needed.

This template is very similar to Template 4 but with a minor deviation.

In this particular situation, the veteran received an undergraduate degree and was deemed "rehabilitated." After being employed in the field for less than one year, the veteran's employment was terminated. The veteran was not employed in field for which he was trained through his Voc Rehab training. This is where the appeal took root.

When the veteran approached Voc Rehab for additional training to find employment, the counselor quickly denied his claim based on 21.284. The job was sedentary in nature and related jobs would not impact the veteran's disability. The counselor further looked to the training necessary in the career and decided it had not changed. But that applied to Insurance Agent, which was not the goal of the veterans IWRP.

This is a place where many veterans need to focus on their appeal. What does your IWRP say you were supposed to be trained within? What kind of work did you actually find a job within?

Here, the veteran was not properly trained in college to find employment within the occupation set forth in his IWRP, which was to gain employment as a Financial Analyst. Because technology had changed such that he was unable to find work within the field of his IWRP, he was allowed back into Voc Rehab.

**DO NOT COPY THIS.**

These templates are merely to give you an idea of what an appeal could look like. Do not copy and paste it into your own document. No two sets of details will be the same.

Name
(Insert Address)

(Date)

(Counselor Name)
Department of Veterans Affairs
(Address)

Template 6

Re: Incorrectly Deemed Rehabilitated

Dear (Insert Counselor Name):

I wish to file an internal Request for Reconsideration pertaining to your denial of my request for further benefits under 38 CFR Part 21.284.

Remember

Always summarize what your counselor says to you orally within a letter or email. It is imperative to create a paper trail about every little detail. Otherwise, on appeal, you may not have a leg to stand on if you rely only on the counselor's good word.

Disability Increase: I would like to note that my disability rating has increased recently, and may increase my Employment Handicap to Serious Employment Handicap given that my previous employment was as a carpenter. My disability relates to neuropathy of the legs and limited range of motion to my back.

Employment Problem: I worked for Blank Corporation, from July 2, 2007 to May 2, 2008, as an Insurance Sales Agent, DOT 250. My Voc Rehab file mistakenly states I was employed by Blank to manage Client Investment Accounts, under DOT 160. My employment with Blank was terminated by the local manager for reasons beyond my control.

My Voc Rehab goal in college was to obtain entry level employment as a Financial Analyst, but I was unable to find work in that field because I lack the technical skills in this job market. Since losing my last job, I have applied to 60 positions within the financial analyst arena and have only received one interview.

While I did pass the "fit" portion of the interview, I was denied the job because I lacked the technical expertise to gain employment with that



company. Specifically, I was not selected because I lacked the field experience and computer skills in ARGUS, Access, SQL, COGNON, Hyperion, Essbase and advanced Excel skills. Additionally, the firm was concerned about my age and whether or not I would enjoy employment in an entry level position.

Every financial analyst position I have read requires knowledge and experience with these types of software systems. I have included 30 of those rejection letters with this statement, at the end of the appendix.

Sincerely,

(Name & Signature)



Template Seven: Arbitrary Training Termination

The fundamental player in the template below is 38 CFR Part 3.104-5. If the VA has changed or terminated your training without providing you with Due Process, this is the place to read.

This template is designed for veterans having problems with the VA trying to cut their training short because of certain changes that have little to do with the quality of the persons academic endeavors.

We will address problems veterans are having with two things: 1) moving or changing their college or Regional Office due to changing residencies; 2) having their disability compensation increase and have Voc Rehab threaten to cut their training midway through.

Since I started writing on this subject, many counselor have touted themselves as the last line of "defense" between the budget and your benefits. This is a strange thing to me since I rarely ever hear of these same individuals complaining about how much we pay every day to be at war in at least three countries at any given time.

Here's my point, even if that counselor believes they are acting within the best interests of the taxpayer, they cannot deny any veteran their right to Due Process under the 6th Amendment.

One of the organizations I am involved with, Veterans for Common Sense, is currently suing the VA for these same kinds of Constitutional violations. The problem is literally all over the news these days.

But what's this mean for you? It means your counselor must follow due process within 38 CFR Part 21.420 in order to stop your program short of you completing your goal. Regardless of whether you changed schools, states or if your disability rating went up, the counselor cannot whimsically cut your program short. Though, many of them will try.





NOTE: BOARD OF APPEALS CASE EXCERPT.
LINK TO FULL CASE IS ON NEXT PAGE.

CITATION NR: 0004103

DECISION DATE: 02 / 16 / 00

DOCKET NO. 97-32 085

THE ISSUE

WHETHER THE JUNE 3, 1997
VOCATIONAL REHABILITATION PLAN
WAS VALID, AND ENTITLED TO
ENFORCEMENT.

FINDINGS OF FACT

1. The appellant completed a vocational rehabilitation and education course in nursing in 1994.
2. The appellant lost her job as a nurse in 1996; her service-connected psychiatric disorder was increased for 50 percent to 70 percent by rating action in October 1996.
3. The appellant applied for vocational rehabilitation to the Phoenix RO in November 1996; the Phoenix VR&C completed a Rehabilitation Plan for the appellant, dated June 3, 1997.
4. The Oregon RO refused to implement the Phoenix plan, and requested that the appellant undergo further counseling, which the appellant refused.
5. The Oregon RO did not submit any proposed revision to the Phoenix Plan to the VA Central Office based on difference of opinion.

CONCLUSION OF LAW

The June 3, 1997, Vocational Rehabilitation plan was valid and enforceable. 38 C.F.R. §§ 21.80-21.84, 21.414 (1999)...

{Section Omitted}

Revision of decision.

The revision of a decision on which an action is based is subject to the following regulations:

- (a) Clear and unmistakable error, Sec. 3.105(a);
- (b) Difference of opinion, Sec. 3.105(b);
- (c) Character of discharge, Sec. 3.105(c);
- (d) Severance of service-connection, Sec. 3.105(d);
- (e) Reduction to less than compensable evaluation, Sec. 3.105(e). 38 C.F.R. § 21.414 (1999).

A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in Sec. 3.105 of this part. 38 C.F.R. § 3.104(a) (1999).

Revision of decisions.

The provisions of this section apply except where an award was based on an act of commission or omission by the payee, or with his or her knowledge (Sec. 3.500(b)); there is a change in law or a Department of Veterans Affairs issue, or a change in interpretation of law or a Department of Veterans Affairs issue (Sec. 3.114); or the evidence establishes that service connection was clearly illegal. The provisions with respect to the date of discontinuance of benefits are applicable to running awards. Where the award has been suspended, and it is determined that no additional payments are in order, the award



will be discontinued effective date of last payment.

(a) Error. Previous determinations which are final and binding, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in paragraphs (d) and (e) of this section, where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of Sec. 3.500(b)(2) will apply.

(b) Difference of opinion. Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office. 38 C.F.R. § 3.105(a)(b) (1999).

View whole case here: <http://tinyurl.com/8kjra9>

So we ran out of room on the previous page to provide summary there. The big picture of what you're looking at has everything to do with a difference of opinion. The veteran in question in that case moved from Arizona to Oregon.

Due to disability compensation changes as well as some other issues, the Portland Regional Office decided to not honor that training program the veteran had started while living in Arizona. The program was an advanced nursing degree. In denying the veteran, the counselor making the decision violated the regulations and violated the veteran's constitutional right to due process.

Normally, when there is a disagreement of this nature, and there is no clear and unmistakable error in the earlier decision, the counselor must refer the claim to Central Office for a decision. Here, the Portland RO decide to ignore the rules.

Here is your take away. Always realize there is probably some kind of review in instances like this. If you have already been approved for some kind of training, it is very difficult for Voc Rehab to take your training track away if the only basis for doing this is a difference of opinion.

Now, this does not mean you can slack in your classes and get failing grades. Not at all. Doing that will get you either bounced out of the program or placed in some kind of remedial program.

Either way, talk with a Veteran Service Officer if you believe you were wrongly kicked out of the program.



Regulation Excerpt from [e-CFR on GPO Access](#)
2010

38 CFR Part 3.104 Finality of decisions.

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in §3.105 and §3.2600 of this part.

(b) Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions, and by application of the same criteria and based on the same facts, by either an Adjudication activity or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.

Here is a way to look at the problem for any veteran who moved to another state but the new counselor claims to not be bound by the previously agreed to training program:

- 1) Skim over these regulations. Check online to see if the GPO has a more current version.
- 2) Read the following VA Board of Appeals case to understand how the Board interprets the regulations when it applies to that veteran. While this is not “binding” it may persuade a counselor.
- 3) Develop an opinion about whether or not your situation fits.
- 4) Request a copy of your file using the FOIA request from your Voc Rehab office.
- 5) Write a letter citing the regulations and your file and point to the Board’s decision.
- 6) Finally, meet with your veteran service officer or lawyer for representation of your claim or for any specific advice.

§ 3.105 Revision of decisions.

The provisions of this section apply except where an award was based on an act of commission or omission by the payee, or with his or her knowledge (§3.500(b)); there is a change in law or a Department of Veterans Affairs issue, or a change in interpretation of law or a Department of Veterans Affairs issue (§3.114); or the evidence establishes that service connection was clearly illegal. The provisions with respect to the date of discontinuance of benefits are applicable to running awards. Where the award has been suspended, and it is determined that no additional payments are in order, the award will be discontinued effective date of last payment.

(a) Error. Previous determinations which are final and binding, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in paragraphs (d) and (e) of this section, where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of §3.500(b)(2) will apply.

(b) Difference of opinion. Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office. However, a decision may be revised under §3.2600 without being recommended to Central Office.



Get a hand up, not a hand out

When denied your access to due process, do not be afraid to contact a veteran service officer or lawyer for help.

Template Background

To understand the template fully, you'll need to know the background in that particular situation. Read closely and modify the template as needed.

This template is all about a veteran being denied the right to finish his training program because his disability rating went up from 90 percent to 100 percent Total Disability Individual Unemployability.

The VA likes to cut veterans off once they hit the 100 percent mark because veterans lose some incentive to find employment when such employment will cause them to lose their disability rating.

Irrespective of this reality, it does not mean the Voc Rehab counselor has the power to deny you or anyone else due process when it comes to denying your benefits.

In the template that follows, it outlines the steps the VA is supposed to follow when it cancels your training. First, the veteran must be given a written notice of an impending adverse action. Second, the VA Central Office in Washington, DC must be given authority over the matter. It will later render a decision based on your comments and on the Statement of the Claim that the counselor making the decision must provide.

If the veteran is at least as likely as not to reach the rehabilitation goal, the VA is required to resolve the issue in the veteran's favor.

Here, the veteran was told orally that his training was going to be cut. This would occur without due process, which is what led to the template below.

**DO NOT COPY THIS.**

These templates are merely to give you an idea of what an appeal could look like. Do not copy and paste it into your own document. No two sets of details will be the same.

Name
(Insert Address)

(Date)

(Counselor Name)
Department of Veterans Affairs
(Address)

Template 7

Re: Termination of Chapter 31 benefits

Dear (Insert Counselor Name):

On March 1, 2010, you stated to me during a meeting that you intended to terminate my training program. I am writing this letter to confirm your statement and state that I disagree with your determination. Please consider this letter to be a (you pick: Notice of Disagreement; Administrative Review; Request for Reconsideration).

Remember

Always summarize what your counselor says to you orally within a letter or email. It is imperative to create a paper trail about every little detail. Otherwise, on appeal, you may not have a leg to stand on if you rely only on the counselor's good word.

I believe your decision violates my due process rights to review, as outlined within the M28, and because you did not refer my case to the Central Office, per 38 CFR Part 3.105.

During our last meeting, you told me Voc Rehab is cracking down on veterans with high disability ratings like myself. You went on to state that no one with my disability rating ever finishes their program of training.

I would like to point out that the only thing that has changed since I entered Voc Rehab is that my administrative appeal for a higher disability rating was finally granted. Beyond that, I am the same person I was one year ago.

Despite this fact, I have not yet received a written notification from you about your adverse decision. According to 38 CFR Part 21.420, that letter should contain:

- the nature of the decision
- the effective date of the decision
- the reason(s) for the decision
- the evidence that was considered, and
- the right of the individual to present new evidence, request a personal meeting, and to have representation.



As you know, I have been found entitled to Chapter 31, to an IWRP, and have cooperated to complete that goal. Regardless, you have changed your mind regarding my entitlement. However, you have not referred my case to Central Office to resolve your disagreement with the person who approved my claim.

In reading an [Appeal Citation Nr: 0004103](#), I understand that the Board stated ““A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104.””

There are two instances where a revision can be made:

- (a) Clear and unmistakable error, Sec. 3.105(a);
- (b) Difference of opinion, Sec. 3.105(b)

As I understand it, the only one that applies here is (b). To that end, “Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office. 38 C.F.R. § 3.105(a)(b) (1999).” I have yet to be notified of any involvement from Central Office. As such, I am unclear as to what your intention is and what status I have within the program.

In conclusion, it is my intention to complete my training and gain substantive employment as outlined in 38 CFR Part 21.283 and within my IWRP.

I am awaiting your timely response and formal notification of adverse action.

Sincerely,

(Name & Signature)



Part 4: Independent Living Program

Two Perspectives on the Independent Living Program

The Independent Living Program offered by Chapter 31 is shrouded in mystery. I hate to say it this way, since it makes me feel like I'm writing a prologue to an Indian Jones movie, but it's true.

I am constantly getting emails from disgruntled veterans about ILP where counselors at regional offices throughout the US are flatly denying access to this benefit.

After speaking with Director Ruth Fanning about the matter, I learned about the process a bit. I also reached out to a Counseling Psychologist and VR&E Officer to get more information. This is all toward the end of 2011, so it's relatively current.

The only edits I made to these emails were grammatical. Notice the difference between the two responses of the Officer on the same subject.

June Email: VR&E Officer

"I've thought about our E Mails and have some comments:

1. The purpose of counseling and rehabilitation services is to help veterans to become as much as they can be and as much as they want to be. This is consistent with 38CFR21-- Subpart A_Vocational Rehabilitation Under 38 U.S.C. Chapter 31:

§ 21.1 Training and rehabilitation for veterans with service-connected disabilities.

(a) Purposes. The purposes of this program are to provide to eligible veterans with compensable service-connected disabilities all services and assistance necessary to enable them to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment.

Consistent with what I've told veterans for almost 30 years "be as much as you can be..."

Some thoughts:

1. There are many good and caring VA employees. They need a change of emphasis from paper to people.

2. The Va will never have enough resources, however, what better helper than "your battle comrade" I encouraged and trained disabled vets for peer counseling and mentoring while VR&C Officer aka Supervisory Counseling Psychologist in Oklahoma. It works.
3. My purpose in becoming bureaucratic and citing laws and regulations was to emphasize that independence in daily living is the first stated purpose of the program.

§ 21.35 Definitions: (b) Independence in daily living. This term means the ability of a veteran, without the service of others, or reduced level of the services of others, to live and function within such veteran's family and community.

- Case management services to provide or monitor contracts for residential modifications or specially built furniture, e.g. specially adapted desk for a severely impaired person.

-providing a specially equipped computer and computer training to turn on lights, open doors, answer phones, etc.

-any "reasonable" service to increase independence and reduce dependence."

**October Email: VR&E Counseling Psychologist**

"There is a lot of confusion with IL, partly because there are two IL programs within the VA - one is under CH31 and the other is within the hospital system (VHA). Each is completely separate from the other. Each has its own rules for eligibility and service provision. This pertains only to the Independent Living Program within VBA (CH31).

A program of Independent Living can be applied for, just like Vocational Rehabilitation. There is a separate box to check on the VA Form 1900. **HOWEVER**, to get a program of IL, a veteran must be first found eligible for, entitled to and Infeasible for, a program of vocational rehabilitation ([M28-1, Part II, ch8-03](#)). A NEED for IL must also be demonstrated. Basically, the veteran must WANT IL and be able to benefit from IL services. IL services will be provided to improve the veteran's independent functioning within his or her family and community without the assistance of others or with a reduced level of assistance from others. IL can also be provided with the goal of becoming feasible for an Extended Evaluation or a program of vocational rehabilitation. Services provided under IL can be anything designed to meet those goals, but not vocational in nature. For instance, I have written IL plans with service of a TV, computers, ramps and even redesigned a motorcycle from right-hand to left-hand throttle (I could show that his motorcycle had been a big part of his life before his SC hand injury). Educational programs can be provided but can not be vocational in nature (degree/certificate - granting). Classes would usually be provided under IL to show "improvement" and feasibility for a program of VR although they may also be provided to teach skills for "living more independently".

Now, as I mentioned, there is a VHA IL program and a section for blind services. If the veteran is eligible for those services, they can not be duplicated under CH31. Normally, the CP or VRS would make a referral to the VHA side; although

October Email: VR&E Officer

"I always suggest that the veteran have a service representative such as the American Legion, VFW or whatever. As VR&C Officer, I always worked closely with the service organizations to help the vet.

The first step is to apply for benefits by submitting a VAF 28-1900. Application can be made on-line. An appointment is arranged and, if necessary, vet can be seen in his home, in the hospital, or in prison. The preferable location is the VA office. The purpose of the appointment is to determine eligibility and entitlement and, to the extent possible, to begin planning rehabilitation services. My feelings were that the counselor assists the veteran in developing his/her rehabilitation plan. Agreed upon and approved services are provided, monitored, and, when necessary, modified, adjusted, or changed.

There is excellent information on the computer at www.vba.gov/bin/vre/ and definitions of services are available at www.vba.gov/bin/vre/def.htm#5t. There is a new on-line application process called VONAPP (I don't miss deciphering initials). Information on VONAPP is available on-line at vabenefits.vba.va.gov/about_vonapp.asp.

I have provided similar services under CH31 when I thought the referral would be detrimental to the veteran (in one case, I could get the house modifications and ramp much faster than VHA because of funding issues).

As you can see, the IL program is about clear as mud. That's why most offices avoid it as much as possible. I've seen the political winds change so fast that one day the VRC Officer was pushing for everybody found not feasible to have an IL plan written and the next nobody could get an IL plan approved. And the regulations never changed; just the interpretation of them."



In Appreciation

To the people who have helped to build this project from a twinkle in the eye to a useful tool that liberates and empowers veterans throughout the U.S. and the world.

A special thanks goes out to all the military and veterans who sacrificed everything to ensure we keep the freedom to be critical of our government when necessary. Your sacrifices have not been forgotten.



The DisabledVeterans.org Endeavor



What started from the prodding and goodwill of Veterans Advocate [Jim Strickland](#) & writer Jan Black has become a resource for thousands of disabled veterans trying to navigate the rules and regulations of the VA to get the benefits they deserve. The goal of DisabledVeterans.org is to empower all veterans with the knowledge and self-training necessary to advocate for themselves.

Owned by Armo Press, LLC, DisabledVeterans.org uses a two pronged approach to equipping veterans.

The first is using modern media and publishing outlets to inform and educate veterans as to their options and opportunities. The second, and yet forthcoming, is the development of Veterans Advocacy Centers throughout the U.S. at each and every law school, so that no veteran will go without. It is through this strategy that Armo Press hopes to drive itself out of business.

Armo Press and DisabledVeterans.org are currently self-funded by the founder, Ben Krause. While there are obvious limits to this approach, it has still provided the means to touch the lives of thousands.

Strategic Partners

Ben Krause
— Founder

[DisabledVeterans.org](#)

Jan Black
— Intellectual Property Developer

[Quiddity Studio](#)

Andreas Loeffler [Action Coaching](#)
— Finance Consultant

Jody White
— Operations

[All Systems Go Now](#)

Charlie Jackman [Military.com](#)
— Web Development