**VRE-NCT-03 Entitlement Script**

**Slide 1:**

Welcome to VR&E Entitlement Training. This training outlines the criteria for making entitlement determinations and how to document the decision.

**Slide 2:**

**Upon completion of this training, you will be able to:**

* Understand the criteria and elements of making an entitlement determination
* Distinguish between an employment handicap (EH) and a serious employment handicap (SEH)
* Recognize vocational impairments
* Identify the contribution of the service-connected disability (SCD) on the vocational impairments
* Determine if a claimant has overcome their vocational impairments
* Document decisions on VA Form 28-1902b, Counseling Record – Narrative Report

**Slide 3:** Claimants must meet certain criteria to be determined entitled. It is important to note that claimants with a Service-Connected Disability (SCD) rating of 10% must have a Serious Employment Handicap (SEH) to be entitled and receive VR&E services. In contrast, claimants with a disability rating of 20% or higher only need to establish an Employment Handicap (EH) to receive VR&E services. The requirements for EH and SEH will be discussed in detail shortly. It is important to understand that these criteria help determine a claimant's entitlement for VR&E services, which may include vocational counseling, training for employment and employment assistance.

**Slide 4**: VRCs utilize multiple tools and records to gather pertinent information and ensure a comprehensive initial evaluation is completed. The goal is to gather as much data as possible to paint a complete picture of the claimant’s history so that the VRC can accurately assess and determine entitlement to benefits. Some of these records and tools include but are not limited to the following:

1. Previous evaluation of abilities, aptitudes and interests
2. Results of vocational and/or psychological assessments
3. Results of evaluations and reevaluations by a medical consultant
4. Recommendations obtained from the Vocational Rehabilitation Panel (VRP)
5. Information obtained from VA Health Administration (VHA) and/or the claimant’s private medical records
6. Information obtained from State vocational rehabilitation counselors
7. Current and previous [**VAF 28-1902w**](https://www.va.gov/find-forms/)

**Slide 5:** Now, we will discuss the criteria for an Employment Handicap (EH).

**Slide 6:** It is the responsibility and duty of the VRC to evaluate whether the claimant meets the conditions required to establish an Employment Handicap. The Employment Handicap is determined based on the following three factors:

1. Presence of a vocational impairment,
2. The SCD contributes in substantial part to the vocational impairment, and
3. The effects of the impairment have not been overcome.

**Slide 7:** Vocational impairments cause limitations and restrictions in one’s ability to prepare for, obtain, and/or maintain employment. Often, vocational impairments affect a person’s ability to function. These can arise from both service-connected and non-service-connected origins. It could affect the individual physically, psychologically, or cognitively. For instance, if a claimant has a physical impairment, he or she may be unable to lift or carry heavy objects. Or maybe he or she has a sensory impairment due to hearing loss or limited hearing. Although not all impairments are listed on this slide, there are some additional examples to consider.

**Slide 8:** Insights into vocational impairments are gathered by the VRC from various sources. Each one of these sources provides different insights. These sources may include the following but are not limited to:

* VAF 28-1902w forms,
* Medical records,
* Rating decisions,
* Academic records
* Previous VR&E case documentation
* VRC's observation
* Resume or self-reported history of employment
* Labor market information, and more.

Each resource provides invaluable facets to evaluating the claimant’s vocational impairments and helps counselors better understand the unique needs of each claimant.

**Slide 9:** The SCD must contribute to the vocational impairment. This means that the effects of the vocational impairment caused by the SCD must be identifiable, measurable, and/or observable. When evaluating evidence that the vocational impairment results in substantial part from the SCD(s), the VRC must clearly show how the SCD impacts the claimant’s ability to prepare for, obtain, or maintain employment consistent with his or her abilities, aptitudes and interests. It's vital to remember that while non-service-connected disabilities might compound the effects of vocational impairments, they cannot be the primary reason for entitlement. The SCD may not be the sole cause of the vocational impairment but must contribute to the vocational impairment in more than a trivial or technical manner.

**Slide 10:** Overcoming the effects of the vocational impairment means the claimant’s impairments no longer prevent him or her from obtaining and maintaining employment. The claimant may still have impairments but, he or she is adequately prepared for employment and possesses the necessary skills and abilities to be employed in a suitable occupation. VRCs examine transferrable skills from past employment, military, or education/training. Counselors also consider the claimant’s interests, aptitudes and abilities. A claimant could be unemployed but capable of obtaining and maintaining employment. In this case, the VRC would say the claimant has overcome his or her vocational impairments.

A claimant has not overcome his or her impairments if the vocational impairments are preventing the claimant from preparing or qualifying for, obtaining, or maintaining employment consistent with his or her interests, aptitudes and abilities. If the claimant is not prepared for employment and lacks the necessary skills or credentials to obtain employment because of their specific impairments, the claimant has not overcome the effects of the impairments. There are situations when a claimant may be employed but the employment is not suitable, in other words, it aggravates the claimant’s disabilities or the employment is unstable due to the vocational impairments.

**Slide 11:** An entitlement determination is necessary for a claimant to receive VR&E services. In order for a claimant to be determined entitled to VR&E services an Employment Handicap must be established for claimants who are within their eligibility determination date (ETD) and have at least a 20% SCD. If all criteria are met, the VRC sends the VR-64 letter. If not, the VR-58 letter is sent. It is important to notify the claimant promptly of the entitlement decision. Counselors will need to justify their decisions and the claimant always has the right to appeal all entitlement determinations.

**Slide 12:** The next section of this training will focus on the criteria needed to find a serious employment handicap.

**Slide 13:** It is important to understand the distinction between an EH and an SEH. A Serious Employment Handicap is defined as a significant impairment, primarily rooted in a service-connected disability, that affects a claimant's employability. Claimants with a 10% service connection rating or claimants with an expired ETD, must demonstrate an SEH to receive VR&E benefits.

**Slide 14:** For all claimants found to have an EH, the VRC must make a separate determination for an SEH. An SEH exists when all the following conditions have been met:

1. A significant vocational impairment is established
2. The SCD condition(s) contribute to the overall significant vocational impairment
3. The claimant has not overcome the significant vocational impairment

Several factors may help a VRC determine the existence of a Serious Employment Handicap.

**Slide 15:** From the severity of the condition to societal attitudes and long-term unemployment, factors such as these can impact the significance of a vocational impairment. One or more of the factors listed here may affect the claimant’s ability to prepare for, obtain and maintain employment and contribute to the finding of an SEH. The VRC must explain how each factor identified contributes significantly to the vocational impairment and its impact on employability. The VRC must also document how the claimant’s SCD contributes in substantial part to the overall significant impairment. Here are some examples of factors that may contribute to the significance of a vocational impairment:

1. Number of disabling conditions
2. Severity of disabling conditions
3. Existence of a neuropsychiatric condition
4. Deficiencies in education and training for suitable employment
5. Negative attitudes toward the disabled
6. Long or substantial period of unemployment or unstable work history
7. A pattern of reliance on government support programs, such as welfare, SCD compensation, SCD pension, Workers’ Compensation, Social Security Disability Insurance, etc.
8. Withdrawal from society
9. Difficulties with communicating
10. Criminal record
11. Extent and complexity of needed rehabilitation services and other evidence of significant restrictions on employability, e.g., high unemployment; age, race, sexual orientation and gender discrimination issues; etc.
12. Other factors that relate to preparing for, obtaining, or maintaining employment consistent with the claimant’s abilities, aptitudes and interests

**Slide 16:** Determining the existence of a SEH can be made both during the initial evaluation or after the initial evaluation, especially when a claimant’s situation has changed and re-evaluation becomes crucial. Such determinations must be justified and documented diligently.

When making an SEH determination during the initial evaluation, here are a few things to remember:

In accordance with 38 CFR 21.52(a), a separate SEH determination must be conducted for a claimant who has been determined with an EH during the initial evaluation.

A determination of an SEH is required for entitlement to Chapter 31 benefits when one of the following conditions exist:

1. The claimant’s compensable SCD is rated at a combined 10 percent.
2. The claimant’s eligibility termination date (ETD) is expired, if applicable.
3. The claimant's Chapter 31 entitlement has been exhausted.

When the claimant’s entitlement is exhausted or his or her eligibility period is expired and cannot be extended as outlined per 38 CFR 21.44 and 38 CFR 21.78, the VRC must consider the provision of limited employment services if the claimant meets the criteria outlined in 38 U.S.C. 3117.

When re-evaluating an SEH determination after initial evaluation, it’s important to note that:

If a claimant was determined with an EH only during the initial evaluation, the VRC must evaluate SEH if the claimant’s circumstances have significantly changed during the course of his or her rehabilitation program.

The determination for the SEH must be justified and documented in an electronic case note.

Note: Once a claimant has been determined with an SEH, the SEH decision cannot be changed unless there is a finding of a clear and unmistakable error.

**Slide 17:** Claimants with an SEH have additional benefits. From extended eligibility periods to potential inclusion in specialized programs. Additional benefits include:

1. Extension of the 12-year period of eligibility (Does not apply to claimants discharged or released from active military service on or after 01/01/2013)

2. Extension of the duration of a rehabilitation program beyond 48 months, if required to complete the program

3. Extended Evaluation services

4. Independent Living (IL) services

**Slide 18:** A VRC must document Serious Employment Handicap decisions.

For example, if the VRC determines an SEH exists, they will document the decision on the 1902b, promptly notify the claimant verbally and in writing using VR-64 and place a copy of the documentation and letter in the claimant’s electronic record.

If the VRC determines the claimant does not have an SEH, they will document the decision on the 1902b, promptly notify the claimant verbally and in writing using VR-58, file a copy of the documentation and letter in the claimant’s electronic records and consider the claimant’s potential eligibility for limited employment services under U.S.C 3117.

**Slide 19:** Moving onto the steps required to document the entitlement determination on VA Form 28-1902b, Counseling Record-Narrative Report.

**Slide 20:** There are six sections on the VA form 28-1902b. This training will focus on three sections, Sections III, IV, and V of the 28-1902b because this is where the EH and SEH determinations are documented.

**Slide 21:** VA Form 28-1902b is used to document the determination for a claimant's entitlement to Chapter 31 benefits. The information and evidence for the legal determination is collected during the initial evaluation. This form must also be completed to document all entitlement determinations to include an automatic entitlement decision under the National Defense Authorization Act (NDAA).

The form must provide a basis for counseling and assistance throughout the entire rehabilitation process. It should also contain detailed information that allows the VRC to revisit and review the information to clarify the justification for providing services. The reasoning provided should be clear and understandable to both professionals and non-professionals alike. Additionally, the form should logically support legal determinations such as prior closures, Employment Handicap (EH) and Serious Employment Handicap (SEH); entitlement determinations; and determination for limited employment services. It is important to keep these points in mind while filling out the form to ensure that the determination is complete and accurate.

**Slide 22:** The following training example illustrates the process of documenting an entitlement decision. This training example can be helpful in understanding the steps involved in making an evidence-based decision:

Emily graduated from high school in 2013. She completed 16 credits in General Studies in community college, earning a 3.0 GPA. Then, she enlisted in the Navy on 01/07/2015. She was Honorably discharged on 01/07/2018.

* **Emily has a combined service-connected disability rating of 70% for:**
	+ 40% - Lumbosacral or Cervical Strain – cannot sit or stand for longer than 20 minutes without the need to change positions and cannot lift more than 15 pounds.
	+ 30% - Post Traumatic Stress Disorder – easily agitated and startled, intrusive thoughts with temporary impairment to cognitive functioning.
	+ 20% - Limitation of flexion, knee – cannot crawl, bend, stoop, or provide any weight-bearing activities on the left knee and cannot do work requiring extensive walking.
	+ NSCD for alcohol and opioid use as a means of pain management.
* **Emily is currently unemployed. Her work history includes:**
	+ Dec 2019-Jan 2020; UPS Truck Driver; Seasonal. Loading/Unloading and lifting was difficult to perform due to her back and knee pain.
	+ Jan 2019 to Dec 2019; Cashier; Walgreens, Standing and walking difficulties due to back/knee impairment; difficulty interacting with customers resulting in performance issues.
	+ Oct 2018 to Jan 2019; Telemarketer; AT&T Global. Sitting hurt back; customer service issues due to agitation with some interpersonal communications.

Emily’s interest and aptitude testing show high interest in Business Detail, Humanitarian, and Protective areas.

**Slide 23:** The VRC will indicate whether the claimant has a vocational impairment(s) by selecting yes or no in Section III, box 4A of VAF 28-1902b. VRCs are also required to explain their decision by documenting the claimant’s specific vocational impairment(s).

The vocational impairment determination should include a clear explanation of the claimant's impairments, restrictions to the claimant's employability that may be caused by the claimant's SCD conditions, and non-service connected disability (NSCD) conditions, and the impact of the claimant's vocational impairments on his or her ability to prepare for, obtain and maintain suitable employment, deficiencies in education and training, potential impact of employers' negative perceptions about the claimant's disability(ies), and/or other pertinent factors that result in restrictions on employability such as a lack of stable, continuing, and suitable employment. It should also describe the vocational and functional impairments resulting from these conditions and cite all relevant evidence. Here is an example of a well-written explanation below:

Emily is currently rated at 70% for the following SCDs:

* Lumbosacral or Cervical Strain – unable to sit or stand for longer than 20 minutes without the need to change positions and she cannot lift more than 15 pounds.
* Post-Traumatic Stress Disorder – easily agitated and startled, and experiences intrusive thoughts with temporary impairment to cognitive functioning.
* Limitation of flexion, knee – cannot crawl, bend, stoop or provide any weight-bearing activities on her left knee and suffers from chronic pain.  She cannot do work requiring extensive walking.

Her NSCDs include alcohol use/abuse and opioid use for pain.

* She reports issues with dry mouth, nausea and sedation from opioids.
* Her alcohol use/abuse causes poor judgment, trouble concentrating, and mood swings.

Emily is a high school graduate and has completed 16 credits in General Studies at a local community college. She has been unable to obtain and maintain steady employment since her discharge from the Navy. Her previous positions include Telemarketer, Cashier and UPS Truck driver. She indicated she struggled to complete the essential job functions due to restrictions due to the physical limitations listed above as well as agitation when providing customer service and issues with absenteeism/tardiness. She states her previous employers often gave her a rough time for being absent or late. Her financial situation is poor since she lacks a steady income. Based on the information above, it is determined Emily has a vocational impairment.

***Note: This is only an example. You should use your own language and assessment for each claimant.***

**Slide 24:** Next the VRC will determine the contribution of the SCD to the vocational impairment by annotating yes or no in Section III, box 4B on VAF 28-1902b and explain their decision.

The VRC must clearly explain how the effects of the service-connected disability(ies) impairs, or does not impair, a claimant's ability to prepare for, obtain, or retain employment. The decision should be explained clearly, with a robust justification that is backed up by the claimant's records and all relevant evidence. This will ensure that the decision-making process is transparent and fair, and that the claimant's needs and challenges are fully considered.

Here's an example of a well-written determination that the SCD conditions contribute in substantial part to the vocational impairment :

Emily’s service-connected disabilities significantly impair her ability to prepare for, obtain and retain employment. Because of these conditions, she is unable to work in physically demanding occupations and stressful environments that present significant stress, pressure, demanding timeframes and dealing with difficult and demanding people.

She reported she has lost jobs, quit jobs or had to take time off due to issues resulting from her service-connected disabilities. She stated she often struggled to complete all of the required tasks due to restrictions from bending/lifting and issues dealing with demanding people. She reported she was let go from her last position due to a medication change for her PTSD, which resulted in her struggling to get up in the morning and being late for her shift.

Emily cannot obtain and maintain suitable stable employment that is compatible with her interests, aptitudes, and abilities due to SCDs that are orthopedic in nature, she will need education and training to allow her to work in sedentary positions and due to her limitations caused by PTSD in positions where she does not work in crowds.

***Note: This is only an example. You should use your own language and assessment for each claimant.***

**Slide 25:** Subsequently, the VRC must then determine if the claimant has overcome the effects of the vocational impairment(s). They will document their decision in box 4C in Section III on the VAF 28-1902b. Likewise, the VRC is required to explain their decision in narrative form. The statement should address the claimant's lack of qualifications for suitable employment, as well as their efforts to seek employment. If the claimant is employed, the VRC must specifically describe how the employment impacts the claimant's overcoming or not overcoming his or her impairment to employability. If the claimant is unemployed, the VRC must describe the claimant's qualifications for suitable employment, efforts to seek employment, and determine if unemployment is outside the claimant's control. If the claimant is unemployed but has overcome his or her impairment to employability, the VRC must provide significant justification and explain clearly and in detail how the impairment to employability has been overcome. To support the decision, all appropriate evidence from the claimant's record should be cited. This will ensure that the statement accurately reflects the claimant's situation and justifies any decisions made.

Here's an example of a well-written determination of how the effects of the vocational impairment have not been overcome:

Emily has not overcome the effects of the vocational impairment because she has demonstrated she lacks education and training and the ability to obtain and maintain suitable stable employment that is compatible with her interests, aptitudes, and abilities while considering her limitations and restrictions caused by her SCD and NSCD conditions as outlined in 4A. She is currently unemployed despite her efforts to seek suitable stable employment.

Furthermore, her previous jobs were not compatible with her limitations and restrictions caused by her SCD and NSCD conditions since the essential job functions were labor-intensive and customer service-driven. She lacks transferrable skills, work experience, and education and training that would qualify her for suitable employment that would be compatible with her current limitations and restrictions and allow her to obtain and maintain suitable stable employment. Therefore, her unemployment is outside of her control.

***Note: This is only an example. You should use your own language and assessment for each claimant.***

**Slide 26:**  On the VAF 28-1902b, Section III, box 4D is where the VRC indicates whether the claimant has an employment handicap or not. If the claimant has a vocational impairment(s) resulting in substantial part from the SCD conditions and the claimant has not overcome the effects of their vocational impairments, the VRC will check “Yes” in box 4D. If the claimant does not have a vocational impairment(s), the VRC will check “No” in box 4D. Or, if the claimant’s SCD does not contribute to the vocational impairments, the VRC will check “No” in box 4D. Or, if the claimant has overcome the effects of their vocational impairment(s), the VRC will check “No” in box 4D.

**Slide 27:**  In Section IV, the VRC will address the criteria for a Serious Employment Handicap. First, the VRC will indicate whether the claimant has a significant vocational impairment(s) by selecting either yes or no in box 5A of VAF 28-1902b and will also provide a narrative that justifies their decision. The narrative should address the significant vocational impairments impacting the claimant's employability and explain how each identified factor contributes significantly to the impairment of employability. Factors to consider in determining the significance of a vocational impairment, singly, or in combination, include, but are not limited to: the number of disabling conditions, severity of disabling condition(s), existence of a neuropsychiatric condition, deficiencies in education and training for suitable employment, negative attitudes toward the disabled, long or substantial period of unemployment or unstable work history, a pattern of reliance on government support programs, such as welfare, SCD compensation, SCD pension, Workers' Compensation, Social Security Disability Insurance, etc., withdrawal from society, difficulties with communicating, criminal record, extent and complexity of needed rehabilitation services and other evidence of significant restrictions on employability, e.g., high unemployment; age, race, sexual orientation and gender discrimination issues; etc., and other factors that relate to preparing for, obtaining, or maintaining employment consistent with the claimant's abilities, aptitudes, and interests, in accordance with 38 U.S.C. 3102 and 3106.

It should also provide specific examples from the claimant's background and current circumstances and cite all the appropriate evidence from the claimant's file to support the decision. By doing so, the VRC will ensure that the decision is fair and accurate.

Here’s an example of a well-written determination of significant vocational impairments:

Emily’s SCD and NSCD do significantly preclude her ability to prepare for, obtain and retain many types of employment that she is currently qualified for with her limited education (high school graduate with 16 college credits) and lack of transferrable skills. She has a significantly limited ability to work in positions that may further aggravate her SCD/NSCDs, as outlined in 4A.

She has an unstable work history as demonstrated by her inability to maintain employment longer than 1 year. Her back and knee caused her to suffer from chronic pain. She reports side effects from her medication for her PTSD to include fatigue and difficulty waking up. She self-reports using alcohol and opioids to manage her pain.

***Note: This is only an example. You should use your own language and assessment for each claimant.***

**Slide 28:** In box 5B of form VAF 28-1902b, the VRC determines the extent to which the SCD contributes to the overall significant vocational impairment of the claimant. The VRC will make an evidence-based decision by selecting either "yes" or "no" and providing an explanation to justify their decision. The service-connected disability(ies) must correlate to the factors listed under Box 5A, significant vocational impairment(s). Furthermore, the restrictions of the service-connected disability(ies) must contribute in substantial part to the overall significant impairment of employability and employment. The VRC must explain how each factor identified contributes significantly to the impairment of employability, as it relates to the claimant's SCD conditions. The explanation should include how each factor identified contributes significantly to the impairment of employability, specific examples from the claimant's background and current circumstances and appropriate evidence cited from the claimant's record to support the decision.

Here's an example of a well-written determination of the contribution of SCD to the significant vocational impairment(s):

Emily’s SCDs significantly contribute to the overall impairment of her ability to prepare for, obtain or retain employment. She has deficiencies in education and training for suitable employment with only a high school diploma and 16 college credits in General Studies.

She suffers from chronic pain, heightened agitation and intrusive thoughts from her PTSD. She self-reports using alcohol and opioids for pain management. Her work history has been unstable since she left the Navy. She attributes the termination from her last position due to high absenteeism and tardiness due to a change in her PTSD medications.

***Note: This is only an example. You should use your own language and assessment for each claimant.***

**Slide 29:** In box 5C of Section IV of the VAF 28-1902b, the VRC indicates whether the claimant has a serious employment handicap or not. If both boxes, 5A and 5B, are marked “Yes,” the VRC will indicate “Yes, the claimant meets the criteria for a serious employment handicap.” If either 5A or 5B is marked “No,” the VRC will check the box next to “No, the claimant does not meet the criteria for a serious employment handicap.” This is the final section of IV.

**Slide 30:** Section V is the final entitlement determination. The VRC will select the entitlement decision based on the justifications and evidence provided in Sections III and IV. The VRC will check the box that is most appropriate based on the claimant’s history and the VRC’s previous determinations made on the VAF 28-1902b. There is no need for additional narrative in this section.

**Slide 31:**

To recap documenting the entitlement decision, the VRC must fill out all appropriate sections of VA Form 28-1920b and be as thorough as possible in their narrative. They should consider the entire history of the claimant and provide justifications for their decision. It is also important to notify the claimant promptly of the decision once it has been made.

**Slide 32:**

During this training on VR&E Entitlement Determination and Documenting the Entitlement decision, we completed the following:

1. Examined the entitlement criteria.
2. Clarified the difference between an Employment Handicap and a Serious Employment Handicap.
3. Discussed vocational impairments.
4. Identified how to determine if the SCD contributes in substantial part to the vocational impairments.
5. Outlined how VRCs determine if a claimant has overcome their vocational impairments.
6. Demonstrated how to document the entitlement decision on VAF 28-1902b.

**Slide 33:**

Thank you for your dedication and commitment to the VR&E mission. This concludes the training.