

## INFORMATION PAPER

AHRC-DZB

11 April 2007

SUBJECT: Overview of the Army Physical Disability Evaluation System

1. Purpose. To provide an overview of the Army Physical Disability Evaluation System (PDES).

2. Facts.

a. **Organization:** The Army functional proponent for the PDES is the U.S. Army Physical Disability Agency (USAPDA), located at Walter Reed Army Medical Center (WRAMC), 6900 Georgia Ave, NW, Washington, D.C. 20307-5001. Subordinate Physical Evaluation Boards (PEBs) are located at WRAMC; Fort Sam Houston, Texas; and Fort Lewis, Washington. The USAPDA website is at <https://www.hrc.army.mil/site/active/TAGD/pda/pdapage.htm>

b. **Governing statute and implementing publications:** Title 10, USC chapter 61, provides the Secretaries of the Military Departments with authority to retire or separate members for physical disability. DoD Directive 1332.18, DoD Instruction 1332.38, DoD Instruction 1332.39, and AR 635-40<sup>1</sup> set forth the policies and procedures implementing the statute.

c. **Referral into PDES:** Soldiers are referred into the PDES five ways:

(1) Medical Evaluation Board (MEB): The medical treatment facility (MTF) initiates a MEB under the provisions of AR 40-400, chapter 7, when a Soldier has received maximum benefit of medical care for a medical impairment which may render the Soldier unfit for further military service. (Per DoDI 1332.38, Soldiers shall be referred for evaluation within one year of the diagnosis of their medical impairment when they are unable to return to military duty.) The MEB validates whether the Soldier meets the medical retention standards of AR 40-501, chapter 3. If the Soldier does not meet medical retention standards, the MTF refers the case to the applicable Physical Evaluation Board (PEB).

(2) MOS/Medical Retention Board (MMRB): The MMRB is an administrative screening board conducted under the provisions of AR 600-60. It determines whether Soldiers who meet medical retention standards but have a permanent 3 or 4 physical profile can physically perform their primary military occupational specialty (branch/specialty code for officers) in a worldwide, field environment. For active duty Soldiers, referral to a MEB/PEB<sup>2</sup> is one of four actions the MMRB Convening Authority (MMRBCA) may direct. When the MMRBCA directs referral to a MEB/PEB, conduct of the PEB is normally mandatory regardless of the MEB findings. To return the Soldier to duty, the MEB must upgrade the profile to a permanent 2 or 1. If the MEB confirms the P3 is appropriate but upgrades the associated duty limitations, the MEB may refer the Soldier back to the MMRB for reconsideration.

---

<sup>1</sup> The DoD issuances have precedence since they post date the basic AR 635-40, which is under revision. The current Feb 06 date for AR 635-40 represents a limited change.

<sup>2</sup> See AR 600-60, para 4-20b, for specific finding applicable to Reserve Component soldiers not on active duty of more than 30 days.

(3) Fitness for duty medical examination: Commanders may refer Soldiers to the MTF for a medical examination under the provisions of AR 600-20, para 5-4, when they believe the Soldier has a medical impairment which impacts duty performance. If this examination indicates the Soldier falls below the medical retention standards of AR 40-501, chapter 3, the Soldier will generally be referred for MEB/PEB.

(4) HQDA action: The Commander, Human Resources Command, upon recommendation of The Surgeon General, may refer a Soldier to the responsible MTF for medical evaluation as described in (3) above. The Commander, HRC, may direct referral into the PDES upon disapproving an MMRBCA's recommendation to reclassify or branch transfer a Soldier.

(5) RC nonduty related process: DoD Directive 1332.18, as implemented by DoD Instruction 1332.38, affords RC members not on active duty and pending separation for medical disqualification for nonservice-connected impairments the right to a PEB fitness determination. Formerly, these Soldiers were separated based on not meeting medical retention standards. Referral to the PEB allows these Soldiers a fitness determination based on whether the medical impairment precludes reasonable performance of duty—the standard applied to Soldiers with a statutory right to referral into the PDES. The USAR Regional Readiness Command or the ARNG State Headquarters refers the case to the PEB—not the MTF. (The RC soldier may be referred to the MTF for conduct of a physical, but the MTF does not conduct a MEB.)

(6) Coverage of cadets of the US military academies: The National Defense Act for Fiscal Year 2005 (NDAA FY 05) amended 10 USC chapter 61 to provide disability coverage for cadets of the U.S. military academies for disabilities incurred after 28 October 2004.

d. **Counseling:** The MTF Physical Evaluation Board Liaison Officer (PEBLO) is responsible for counseling Soldiers referred into the PDES under the duty-related process. The PEBLO counsels the Soldier on MEB/PEB findings and related rights and benefits. If the MTF determines that the Soldier is mentally incompetent, the PEBLO counsels the designated next-of-kin. For USAR nonduty-related cases, the Soldier's commander or the commander's designee is the responsible individual. For ARNG nonduty-related cases, the State Military Personnel Office, Health Service Specialist, is normally the responsible individual.

e. **Fitness standard:** The standard for determining fitness is whether the medical impairment precludes the Soldier from reasonably performing the duties of his or her office, grade, rank, or rating.

(1) Worldwide deployability: Under the current DoD Instruction 1332.38, inability to perform the duties of office, grade, rank or rating in every geographic location and under every conceivable circumstance will not be the sole basis for a finding of unfitness. Deployability, however, may be used as a consideration.

(2) Performance-based: The PDES relies heavily on the performance data provided by the Soldier's immediate commander. The provision of complete and accurate data regarding Soldier performance enables the PEB to make better fitness determinations.

f. **Presumption of fitness**: When Soldiers are referred into the PDES after their request for length of service retirement has been approved, or an officer is within twelve months of mandatory retirement, or an enlisted Soldier is within 12 months of his or her retention control point (RCP) with retirement eligibility at RCP, the Soldier enters the disability system under the presumption that he or she is physically fit. This is known as the Presumption of Fitness Rule. (This rule is not applied to RC cases referred under the nonduty related process described at paragraph 2c(5) above.)

(1) Philosophy: The Soldier is presumed fit because he or she has continued to perform military duty up to the point of retirement for reasons other than physical disability. Disability retired pay is to compensate a Soldier whose career is terminated solely for reasons of disability.

(2) History: The presumption rule originated as DoD policy in 1973 as a result of Congressional dissatisfaction with general officers and medical officers retiring for physical disability in conjunction with processing for length of service retirement.

g. **Overcoming the presumption**: The Presumption of Fitness Rule is a rebuttable presumption that is overcome if the preponderance of evidence establishes the circumstances described below per DoD Instruction 1332.38.

(1) Acute, grave illness or injury: Within the presumptive period an acute, grave illness or injury occurs that would prevent the member from performing further duty if he or she were not retiring; or

(2) Deterioration of a chronic condition: Within the presumptive period a serious deterioration of a previously diagnosed condition, to include a chronic condition, occurs and the deterioration would preclude further duty if the member were not retiring; or

(3) Inadequate duty performance: The condition for which the member is referred is a chronic condition, and a preponderance of evidence establishes that the member was not performing duties befitting his or her experience in the office, grade, rank, or rating before entering the presumptive period.

h. **Rating Schedule**: Once a determination of physical unfitness and eligibility for disability compensation is made, the Soldier's disability is rated using the Department of Veterans Affairs Schedule for Rating Disabilities, DoD Instruction 1332.39, and AR 635-40, Appendix B. Ratings can range from 0 to 100 percent rising in increments of 10.

i. **Dispositions**: Four factors determine whether disposition is fit for duty, permanent retirement, temporary disability retirement, or separation: whether the Soldier can perform in his

MOS; the rating percentage (if soldier has fewer than 20 years of active service or 7200 points of combined active and inactive duty); the stability of the disabling condition; and years of active service (active duty) in the case of pre-existing conditions.

(1) Fit for Duty: The Soldier is found fit when they can reasonably perform the duties of their grade and military occupational specialty (or branch for officers).

(2) Permanent retirement: Permanent disability retirement (PDR) occurs if the Soldier is found unfit, the disability is determined permanent and stable and rated at a minimum of 30%, or the Soldier has 20 years of service as computed under 10 USC 1208. (For Reserve Component Soldiers, this means at least 7200 total points.)

(3) Temporary retirement: Placement on the Temporary Disability Retirement List (TDR) occurs if the Soldier is found unfit and entitled to permanent disability retirement except that the disability is not stable for rating purposes. "Stable for rating purposes" refers to whether the condition will change within the next five years so as to warrant a different disability rating. However, stability does not include latent impairment--what might happen in the future.

(4) Separation with severance pay: Separation with disability severance pay occurs if the Soldier is found unfit, has less than 20 years of service as computed under 10 USC 1208, and has a disability rating of less than 30%.

(5) Separation without benefits: Separation without disability benefits occurs if the unfitting disability existed prior to service, was not permanently aggravated by military service, and the member has less than 8 years of active service (active duty days); or the disability was incurred while the Soldier was absent without leave or while engaging in an act of misconduct or willful negligence. The National Defense Authorization Act for Fiscal Year 2000 (NDAA FY 00) added 10 USC 1207a to provide disability benefits for unfitness due to pre-existing disability when the member is on ordered active duty of more than 30 days, and the member will have a total of 8 years of active service at time of separation. The NDAA FY 05 added 10 USC 1206a to preclude such coverage if the member is released within 30 days of being ordered to active duty due to identification of a pre-existing condition not aggravated during the call to duty.

j. **Periodic medical reexamination and tenure**: The law requires Soldiers placed on the TDRL to undergo a periodic medical reexamination within 18 months followed by PEB evaluation. The Soldier may be retained on the TDRL or a final determination may be made. While the law provides for a maximum tenure of 5 years on the TDRL, there is no entitlement to be retained for the entire period. The final determination may be fit, separation with severance pay, separation without entitlement to disability benefits, or permanent disability retirement.

k. **Factors affecting compensation**: Military disability compensation is based on disposition, rank, years of service, and the definition of "retired pay base" applicable to the soldier.

(1) Retired pay: For permanent retirement or placement on the TDRL, compensation is based on the higher of two computations: Disability rating times retired pay base; or 2.5% x years of service x retired pay base. Soldiers on the TDRL receive no less than 50% of their retired pay base. The computation of retired pay base depends upon when the Soldier entered the service. For those Soldiers who entered prior to 8 September 1980, retired pay base is the final basic pay received. For those who entered after 7 September 1980, it is the average of the high 36 months of basic pay.

(2) Severance pay: Disability severance pay equals 2 months basic pay for each year of service not to exceed 12 years (a maximum of 24 months basic pay).

(3) Disability retirement grade: Under 10 USC 1372, the grade at which a Soldier is permanently retired for disability or placed on the TDRL is the highest of the following options: current grade; highest grade satisfactorily held; or the grade to which the Soldier would have been promoted had it not been for the disability retirement. The latter option includes those on a promotion list who have met any required cut-off score and those who have met the time requirements for an automatic promotion. For Soldiers who entered the military after 7 September 1980, retirement at promotion-list grade will have no impact on retired pay. This is because they fall under the high-36 month average of basic pay instead of final basic pay. Actual promotion is not required to be retired at promotion-list grade. However, Army enlisted promotion policy allows promotion on the last day for those whose promotion eligibility date is after the disability retirement/separation date. Officers are retired at promotion list grade without actual promotion because officer promotion law is interpreted to preclude promotion ahead of promotion eligibility date.

(4) Grade for disability severance pay: Under 10 USC 1212, the same options as described above pertain to the grade at which disability severance pay is computed. Unlike disability retirement, severance pay at promotion list grade does increase the amount of disability severance pay. Actual promotion reference promotion-list grade is the same as described for disability retirement.

#### **1. PEB Adjudication process:**

(1) Board composition: Adjudication is normally conducted by a three-member board composed of a mixture of military and civilian personnel. The President (or Presiding Officer) is normally a colonel, and the Personnel Management Officer is normally a field grade officer. A GS-13 Civilian Adjudication Officer may serve in either position. The physician may be civilian or military. When military members are used as the President or PMO, they may be of any branch except Medical Corps. When an RC Soldier appears before the board, one member must be of the Reserve Components.

(2) Informal: The initial findings and recommendations are based on a records review without the Soldier's presence.

(3) Formal: Soldiers who disagree with the informal findings and who are found unfit are entitled by law to a formal hearing. Soldiers who are determined fit may request the PEB President to grant them a formal hearing. Soldiers may elect to appear or not appear and to be represented by appointed counsel or by counsel of choice at no expense to the government. Soldiers may request essential witnesses to testify on their behalf. The PEB President determines whether witnesses are essential.

(4) Appellate and quality review: USAPDA serves as the appellate authority in those cases where the Soldier disagrees with the findings of the PEB and submits a rebuttal. Additionally, USAPDA designates certain cases for mandatory review and conducts a sample review of others. If USAPDA changes the findings of the PEB and the Soldier nonconcur and submits a rebuttal, the case is forwarded to the Army Physical Disability Appeal Board (APDAB) for final decision.

m. **Differences between PDES and DVA**: While both the Army and the Department of Veterans Affairs (DVA) use the Department of Veterans Affairs Schedule for Rating Disabilities, not all the general policy provisions set forth in the Rating Schedule apply to the military. Consequently, disability ratings may vary between the two. The Army rates only conditions terminating the Soldier's career. The DVA may rate all service-connected impairments. Another difference is the term of the rating. The Army's ratings are permanent upon final disposition. DVA ratings may fluctuate with time, depending upon the progress of the condition. Further, the Army's disability compensation is affected by years of service and basic pay; while VA compensation is a flat amount based upon the percentage rating received.

Prepared by: Ms. Frances Dennis  
Policy Officer  
(202) 782-3064

//Original Signed//

Approved by: \_\_\_\_\_  
COL Carlton A. Buchanan  
Deputy Commander  
(202) 782-1479