

Army Regulation 635–40

Personnel Separations

**Disability
Evaluation
for
Retention,
Retirement,
or
Separation**

**Headquarters
Department of the Army
Washington, DC
19 January 2017**

UNCLASSIFIED

SUMMARY of CHANGE

AR 635–40

Disability Evaluation for Retention, Retirement, or Separation

This major revision, dated 19 January 2017—

- o Changes the title of the regulation from Physical Evaluation for Retention, Retirement, or Separation to Disability Evaluation for Retention, Retirement, or Separation (cover).
- o Designates the Deputy Chief of Staff, G–1 as the lead for the Army Disability Evaluation System (para 2–1).
- o Adds policy and process for the Military Occupational Specialty Administrative Retention Review (chap 3).
- o Addresses the eligibility of Soldiers pending or undergoing Disability Evaluation System evaluation or disposition to opt for retirement under the Temporary Early Retirement Authority (para 4–4c).
- o Incorporates Army Directive 2012–22 as modified by DODI 1332.18 (paras 4–10 and 4–20).
- o Addresses final disposition of Soldiers having an unfit finding with 18 but less than 20 years active Service (para 4–29).
- o Establishes policy for the Reserve Component non-duty related process (para 4–34).
- o Establishes policy in support of the Department of Defense mandated Expedited Disability Evaluation System (para 4–35).
- o Revises policy for physical evaluation board fitness determinations to require a finding of unfit when the Soldier’s medical condition causes the Soldier to be unavailable for worldwide deployment (para 5–4e).
- o Designates the Deputy Chief of Staff, G–1 as the disapproval authority for continuation requests from Soldiers tracked by the Army Wounded Warrior Program (para 6–4).
- o Revises policy and process to implement DODI 1332.18; DODM 1332.18, Volumes 1 through 3; and Department of Defense Memorandum, Personnel and Readiness, dated 6 January 2009 (throughout).

Personnel Separations

Disability Evaluation for Retention, Retirement, or Separation

By Order of the Secretary of the Army:

MARK A. MILLEY
General, United States Army
Chief of Staff

Official:


GERALD B. O'KEEFE
Administrative Assistant to the
Secretary of the Army

and implements the revisions to the determination prescribed by Army Directive 2012–18.

Applicability. This regulation applies to the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. During mobilization, chapters and policies contained in this regulation may be modified by the proponent.

Proponent and exception authority. The proponent of this regulation is the Deputy Chief of Staff, G–1. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. (This includes delegation to the Commanding General, U.S. Army Physical Disability Agency). Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their

higher headquarters to the policy proponent. Refer to AR 25–30 for specific guidance.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix B).

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the Deputy Chief of Staff, G–1 (DAPE–MP), 300 Army Pentagon, Washington, DC 20310–0300.

Suggested improvements. Users are invited to send comments or suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Deputy Chief of Staff, G–1, (DAPE–MP), 300 Army Pentagon, Washington, DC 20310–0300.

Distribution. This publication is available in electronic media only and is intended for command level A for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

History. This publication is a major revision.

Summary. This regulation prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. As such, this regulation implements the requirements of Title 10, United States Code, Chapter 61; DODI 1332.18, DODM 1332.18 (Volumes 1 through 3), and DOD policy memorandums to these issuances; and Army Directive 2012–22 as modified by DODI 1332.18. This regulation incorporates the policy formerly prescribed by AR 600–60 for the administrative determination of a Soldier's medical deployability

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Glossary

Chapter 1 Introduction

1–1. Purpose

This regulation establishes the Army Disability Evaluation System (DES) according to the provisions of Title 10, United States Code, Chapter 61 (10 USC Chapter 61) and DODD 1332.18. It sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations. The objectives of this regulation are to—

- a.* Maintain an effective and fit military organization with maximum use of available manpower.
- b.* Provide benefits for eligible Soldiers whose military Service is terminated because of a service-connected disability.
- c.* Provide prompt disability processing while ensuring that the rights and interests of the Government and the Soldier are protected.
- d.* Establish the Military Occupational Specialty Administrative Retention Review (MAR2) as an Army pre-DES evaluation process for Soldiers who require a P3 or P4 profile for a medical condition that meets the medical retention standards of AR 40–501. Dispositions include retention in primary military occupational specialty (PMOS), reclassification, and referral to the DES.

1–2. References

See appendix A.

1–3. Explanation of abbreviations and terms

See the glossary.

1–4. Responsibilities

Responsibilities are listed in chapter 2.

Chapter 2 Responsibilities

2–1. Chief, National Guard Bureau

The Director, Army National Guard (DARNG), on behalf of the CNGB, will ensure that eligible Soldiers of the Army National Guard of the United States (ARNGUS) are referred for evaluation by the MAR2 and DES, as applicable, in a timely manner, and in accordance with this regulation. This includes ensuring that duty-related referrals for Army National Guard (ARNG) Soldiers not in an active status are regulated through the Medical Evaluation Board Tracking Office (MEBTO).

2–2. Deputy Chief of Staff, G–1

The DCS, G–1 will—

- a.* Serve as the lead for the DES.
- b.* Prescribe Army regulations to carry out the provisions of 10 USC Chapter 61, Department of Defense (DOD) policy for the DES, and Army policy for MAR2.
- c.* Establish a quality assurance process to—
 - (1) Ensure policies and procedures established by DOD and this regulation are fairly and consistently implemented.
 - (2) Establish procedures to ensure the accuracy and consistency of medical evaluation board (MEB) and physical evaluation board (PEB) determinations and decisions.
 - (3) Establish procedures to monitor and sustain proper performance of the duties of MEBs, PEBs, and physical evaluation board liaison officers (PEBLOs).
- d.* Staff and provide resources to meet DES performance goals, without reducing Soldier's access to due process consistent with DODM 1332.18, Volume 1.
- e.* The Commanding General (CG), U.S. Army Human Resources Command (HRC) on behalf of the DCS, G–1 will—
 - (1) Implement policy and establish procedures for the transition of Soldiers from active duty to separation or retirement for disability. The CG will ensure that eligible Soldiers of the United States Individual Ready Reserve (IRR) are referred

for evaluation by MAR2 and DES, as applicable, in a timely manner, and in accordance with the provisions of this regulation.

(2) Manage the adjudication process for Soldiers of the Active Army and U.S. Army Reserve (USAR) who are determined unfit and request to be continued on active duty (COAD) or to be continued on active Reserve (COAR).

(3) Manage the MAR2 process for Active Army and USAR Soldiers.

f. The CG, U.S. Army Physical Disability Agency (USAPDA) on behalf of the CG, HRC, or the DCS, G-1, as applicable at the time, will—

(1) Assist the DCS, G-1 in developing the policies, procedures, and programs of the DES.

(2) Develop training programs, guidelines, and curricular for the MEB, PEB, and appellate review phases of the DES.

(3) Manage and direct the PEBs.

(4) Serve as appellate authority for formal or informal PEB proceedings, except where such appeal is reserved to higher authority.

(5) Make the final decision for the Secretary of the Army (SECARMY) concerning a Soldier's fitness for duty for continued service (and associated adjudicative determinations related to unfit findings), except when such decisions are reserved to higher authority.

(6) Accomplish final administrative actions, to include authorizing to the installation transition center the Soldier's disability retirement or separation and publishing the disability orders on Soldiers of the Reserve Component (RC) who are not on active duty.

(7) Determine the disability percentage rating for cases adjudicated under the legacy process.

(8) Coordinate, control, and manage all members on the temporary disability retired list (TDRL).

(9) Publish and make available standard informational publications regarding the DES in hardcopy and electronic form to provide general and specific information on the MEB and PEB processes. These publications will include the rights and responsibilities of the Soldier while navigating through the DES. These publications will be made available at the servicing military treatment facilities (MTFs), Offices of Soldiers' Counsel, and PEB regions.

2-3. Chief, Army Reserve

The CAR will ensure eligible Soldiers of the USAR Ready Reserve are referred for evaluation by MAR2 and DES, as applicable, in a timely manner, and in accordance with this regulation.

2-4. The Surgeon General

TSG will—

a. Establish, in coordination with DCS, G-1 and USAPDA, policies governing the MEB process for MTFs worldwide.

b. Establish and interpret medical standards for Soldiers of all components.

c. Ensure that training and credentialing requirements are formalized and standardized for the Army Medical Department participants in the DES.

d. The U.S. Army Medical Command (MEDCOM) on behalf of the TSG will—

(1) Ensure all major MEDCOMs are responsible for the administration of patients receiving care in MTFs under their jurisdiction.

(2) Ensure that Army MTFs under their control fulfill their responsibilities in connection with the DES, as outlined in this regulation.

(3) Develop and execute agreements to support the disability process of members who receive medical care from another military department, including MTFs under the Defense Health Agency.

(4) Establish procedures to ensure Servicemembers who are hospitalized or receiving treatment at a U.S. Department of Veterans Affairs (VA) or a non-Government facility are referred, processed, and counseled in a manner similar to their peers.

(5) Establish monitoring procedures to ensure MTF personnel consistently use the approval authority signature date on the DA Form 3349 (Physical Profile) as the MEB referral date in the Veterans Tracking Application.

e. The MTF commanders on behalf of the TSG will—

(1) Provide thorough and prompt evaluations for Soldiers in the DES process.

(2) Ensure MEB proceedings referred to the PEB are complete, accurate, and fully documented as outlined in this regulation.

2-5. The Judge Advocate General

TJAG will—

a. Interpret laws and regulations governing the DES.

b. In coordination with the Staff Judge Advocate (SJA), MEDCOM and the Director of the Office of Soldiers' Counsel (OSC), MEDCOM, train and provide sufficient appointed legal personnel, specifically Soldiers' MEB Counsel (SMEBC), Soldiers' PEB counsel (SPEBC), and supporting paralegals to represent Soldiers in the DES who request appointed counsel.

c. Establish standardized certification training programs and curricula for OSC personnel, SJAs, and Department of the Army (DA) Civilian attorneys within the Judge Advocate Legal Services, representing Soldiers throughout the DES process.

d. Review requests by SJAs or DA Civilian attorneys who are not currently assigned to an OSC to represent Soldiers within the DES. Requests will be routed through the Director of the OSC, MEDCOM and the SJA, MEDCOM, and forwarded to TJAG, Legal Assistance Policy Division (DAJA-LA). Individual certification will be based upon the counsel's training, experience, current duty position and responsibilities, and on the particular circumstances of the Soldier's DES case. TJAG, or the designee, has authority to approve individual certification for non-OSC SJAs or DA Civilian attorneys.

2-6. Senior and unit commanders

a. The senior commander is responsible for the successful completion of all aspects of the MEB process at their installation. They are responsible for ensuring all subordinate commanders are in compliance with the requirements and responsibilities established by this regulation and all applicable DOD and Army directives on DES. In coordination with the MTF commander and DES leaders, the senior commander is responsible for issuing and enforcing local DES policy guidance, procedures, timelines, staffing, and resourcing. To meet these responsibilities, at a minimum, the senior commander will—

- (1) Be accountable for all Soldiers in the DES assigned to the installation.
- (2) Ensure that unit commanders and first sergeants receive training on all Integrated Disability Evaluation System (IDES) processes and systems, including Medical Protection System and DA Pam 220-1, electronic profile (e-Profile) (see AR 40-501), and electronic line of duty (LOD), and the Commander's IDES Dashboard.
- (3) Establish clear local guidance regarding all procedures and standards established by this regulation.
- (4) Emphasize the importance and purpose of DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement) and the completion of LOD investigations in accordance with AR 600-8-4.
- (5) Create a common location for DES offices, co-locating both DOD and VA assets when possible.
- (6) Provide borrowed military manpower via Soldiers Skill Set Utilization Program to support surge requirements on the installation.
- (7) Ensure Soldiers and their families have access to the Soldier and Family Assistance Centers, Transition Centers, and any other relevant services, where available.
- (8) Ensure commanders verify that Soldiers attend all exit briefs as required to ensure smooth handoff to VA.
- (9) Ensure permanent (P) and temporary (T) medical profiles containing a numerical designator of 3 or 4 (hereafter referred to as a P3/P4 or T3/T4 profile) in one of the serial profile factors are reviewed according to Army standards of AR 40-501.
- (10) Ensure the policy of AR 135-175, AR 135-178, AR 600-8-24, AR 635-200, and this regulation is followed concerning the precedence of administrative separation or disability evaluation when administrative separation action, or action under the Uniform Code of Military Justice (UCMJ), is begun or approved before, during, or after the Soldier is identified for or referred to the DES.

b. Unit commanders will—

- (1) Ensure medical profiles containing a P3/P4 or T3/T4 in one of the serial profile factors are reviewed according to Army standards in AR 40-501.
- (2) Ensure Soldiers attend all required medical and administrative appointments and exit briefings, and that Soldiers are in full compliance with all requirements during the DES process.
- (3) Ensure Soldiers enroll and attend all Soldier for Life – Transition Assistance Program events and meet all requirements of the Veterans Opportunity to Work Act and Career Readiness Standards.
- (4) Provide escort for non-compliant Soldiers utilizing unit funds.
- (5) Coordinate and fund transportation to enable the Soldier to report to scheduled appointments and to formal PEB (FPEB) hearings. This does not apply to cases referred under the non-duty related process, unless the Soldier is directed to a FPEB. Ensure Soldiers traveling to a FPEB have sufficient time to arrive (more than one duty day) in advance of the scheduled hearings to confer with appointed legal counsel.
- (6) Keep the PEBLO informed of all changes in Soldier's personal circumstances, to include command-approved leave (see para 4-7a), temporary duty orders, initiation of or pending administrative separation action or charges under the UCMJ.
- (7) Ensure all documentation required by the PEBLO is provided to include required LOD determinations.
- (8) Attend or review the DES orientation briefing with the Soldier.

- (9) Provide a non-medical assessment by completing DA Form 7652.
- (10) Ensure access to IDES.
- (11) Ensure Soldiers enrolled in the IDES are extended on active duty, if needed and upon the Soldier's consent, to complete the DES process.
- (12) Ensure Soldiers who have completed IDES (have approved cases) start the transition process within 7 workdays and begin transition leave or permissive temporary duty, if authorized, not later than 45 days of the case being approved.
 - c. If the information about a restricted report of sexual assault comes to the commander's attention as a result of a disclosure that is required for fitness of duty or disability determination, the commander shall not report the matter to the U.S. Army Criminal Investigation Command.

2-7. Soldier

The Soldier will—

- a. Attend all scheduled appointments.
- b. Assist with providing required personnel and administrative data and documentation.
- c. Keep PEBLO and unit informed of all changes in personal circumstances, appointment conflicts, and administrative actions that may impact the completion of evaluation and/or transition.
- d. Enroll in the Soldier for Life – Transition Assistance Program upon referral to the DES.
- e. Begin transition processing immediately upon notification that the case has been approved with an unfit finding.

Chapter 3

Military Occupational Specialty Administrative Retention Review

3-1. Overview

- a. This chapter implements and establishes policy for the MAR2. Soldiers must be of sufficient medical fitness to satisfactorily perform their PMOS or area of concentration (AOC), as well as those functional activities listed on the DA Form 3349, which all Soldiers must perform regardless of PMOS or AOC. (All functional activities listed on the DA Form 3349 must be marked "YES" for Soldier to be eligible for referral to a MAR2). The MAR2 is an administrative process for Soldiers who meet the medical retention standards of AR 40-501, but who nonetheless may not be able to satisfactorily perform the duties of their PMOS or AOC in a worldwide field or austere environment because of medical limitations. The MAR2 process is used to determine whether a Soldier will be retained in their PMOS or AOC or reclassified into another PMOS or AOC. Soldiers who do not meet PMOS or AOC standards and who do not qualify for reclassification will be referred into the DES.
 - b. See DA Pam 635-40 for process procedures.
 - c. The MAR2 review process replaces the Military Occupational Specialty Medical Retention Board process.

3-2. Referral

- a. Subject to the exclusions listed in paragraph 3-3, referral for MAR2 is required in the following circumstances:
 - (1) The Soldier is issued a DA Form 3349 with a P3/P4 in at least one of the profile serial factors for a medical condition(s) that meet the medical retention standards of AR 40-501. Any DA Form 3349 generated for a USAR Soldier in a drilling troop program unit or Active Guard Reserve (AGR) status must be validated by the U.S. Army Reserve Command's Medical Management Center (AFRC-CIE) before their referral into MAR2.
 - (2) When the MEB determines the Soldier meets medical retention standards and returns the Soldier to duty with a P3 or P4 profile.
 - (3) A Soldier previously evaluated by a MAR2 that resulted in retention in their PMOS or reclassification to a new PMOS, or a Soldier who was determined fit as the final outcome of PEB adjudication, when one of the following events occurs:
 - (a) The Soldier receives additional functional limitations for the condition(s) that initially generated the referral to MAR2 or processing through the DES.
 - (b) The Soldier receives a P3/P4 for a new condition(s) that meet medical retention standards.
- b. Soldiers previously retained by MAR2 or the DES may be referred again to MAR2 for the same condition(s) with no change in the profile status when there is evidence that the condition(s) for which the Soldier was retained precludes the Soldier from performing their duties in a satisfactory manner. Such referral must be recommended by the first O-6 in the Soldier's chain of command and occur no earlier than 120 days from the Soldier's previous evaluation. The Soldier must be referred to a MTF for an updated profile if, at the time of the resubmission, the profile is older than 12 months. RC Soldiers not on active duty are referred to their respective State or Regional Support Command Surgeon.

3–3. Ineligible for referral

Soldiers in the following circumstances will not be referred for MAR2:

- a. The Soldier is issued a DA Form 3349 confirming the Soldier is ineligible for a MAR2 because they have a condition that does not meet medical retention standards in accordance with AR 40–501 and/or prevents the Soldier from performing all required functional activities. These Soldiers will generally be processed through the DES. If the MEB, however, determines the Soldier meets medical retention standards but requires a P3/P4 profile, the Soldier’s command will refer the Soldier to MAR2.
- b. The Soldier’s request for regular retirement, non-regular retirement, or transfer to the Retired Reserve has been approved.
- c. An officer is within 12 months of their mandatory retirement and/or removal date.
- d. An enlisted Soldier within 12 months of their retention control point (RCP) and will be retirement eligible at RCP, or an RC enlisted Soldier within 12 months of their mandatory removal date and will be eligible for a 20-year letter on that date.
- e. The Soldier is within 90 days of their expiration term of service (ETS) and does not have a remaining military service obligation.
- f. The Soldier is being processed for administrative separation pursuant to AR 135–175, AR 135–178, AR 600–8–24, and AR 635–200.
- g. The Soldier failed to complete initial military training, advanced individual training, or Basic Officer Leaders Course.
 - (1) When the failure is due to medical reasons, the Soldier will be referred to the DES.
 - (2) When the Soldier receives a P3 during training (to include for a condition for which the Soldier was granted an accessions waiver) and the condition meets medical retention standards, the Soldier will undergo MAR2 evaluation no later than six months after reporting to their first duty assignment.
- h. The Soldier is serving on active duty as a retiree recall.
- i. The officer holds general officer rank. General officers will receive a retention standards physical. If they meet medical retention standards, their ability to deploy will be a command determination without referral to MAR2. If the general officer does not meet medical retention standards, the general officer will be referred to the DES under the applicable DES process (duty-related or non-duty-related) (see para 4–2).

3–4. Status of Soldier during evaluation

From the time a Soldier receives a P3/P4 profile until the time the MAR2 process is completed (including a decision on any appeal), the Soldier—

- a. Will perform PMOS or AOC duties, to include duties in a field environment, within the limitations of the profile.
- b. Is eligible for awards and for promotion consideration, promotion selection, and promotion.
- c. Is temporarily in a nondeployable status, but the commander may permit their deployment after consulting with a medical officer, the chain of command, and the combatant command surgeon for the proposed theater of operation.
- d. Is subject to disciplinary action.
- e. Is ineligible for reassignment instructions or orders. If the Soldier has already received reassignment orders prior to initiation of the MAR2 process, the process must be completed and a final decision rendered before the Soldier proceeds on assignment.
- f. Is ineligible for reenlistment, permanent change of station, transfer within a component or transfer between components.
- g. Is ineligible to be scheduled for or attend training for which the U.S. Army Training and Doctrine Command is the proponent.
- h. May extend their enlistment to complete MAR2 evaluation if otherwise eligible for such extension under the provisions of AR 601–280.

3–5. Outcomes of evaluation

Evaluation by MAR2 will result in one of the following outcomes:

- a. *Retention in occupation.* The Soldier meets PMOS or AOC medical requirements of DA Pam 611–21 for their grade and skill level or has been provided a proponent waiver of these requirements.
- b. *Reclassification/branch transfer.* The Soldier meets PMOS or AOC medical requirements of DA Pam 611–21 for their grade and skill level for a different PMOS or AOC and will be reclassified and/or transferred into that PMOS and/or AOC.
- c. *Referral for disability evaluation.* The Soldier does not meet PMOS or AOC medical requirements and does not qualify for reclassification and/or branch transfer into a different PMOS or AOC due to the Soldier’s medical limitations

(including anticipated progression of the medical condition) or because manpower requirements do not support reclassification and/or branch transfer. With referral for disability evaluation under the duty-related process, completion of the MEB and PEB phases of the DES are generally required for both Active Army and RC Soldiers. The MEB may only return the Soldier to duty when the Soldier's medical condition allows each of the profile factors to contain a P1 or P2 in addition to finding that the Soldier meets medical retention standards. With a MAR2 referral of an RC Soldier to the medical disqualification process for non-duty related condition(s), completion of a requested or otherwise required non-duty related PEB is required unless the Soldier qualifies for and concurs with separation due to medical disqualification or transfer to the Retired Reserve.

Chapter 4

The Disability Evaluation System

Section I

Disability Evaluation System Overview

4-1. Scope of the Disability Evaluation System

a. Public Law 110-181 defines the term, physical DES, in part, as a system or process of the DOD for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is comprised of MEBs, PEBs, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel. (See the notes to 10 USC 1171 for the Title XVI provisions.)

b. A Soldier may not be discharged or released from active duty because of a disability until they have made a claim for compensation, pension, or hospitalization with the VA or have signed a statement that their right to make such a claim has been explained, or have refused to sign such a statement.

c. The objectives of the DES are to—

(1) Maintain an effective and fit military organization with maximum use of available manpower;

(2) Provide benefits for eligible Soldiers whose military Service is terminated because of a disability incurred in the LOD.

(3) Provide prompt disability processing while ensuring that the rights and interests of the Government and the Soldier are protected.

d. The DES consists of the three systems listed below and as defined in the glossary. The policies and mandated procedures for these processes are set forth in this chapter. See DA Pam 635-40 for additional procedures.

(1) *Legacy Disability Evaluation System.* Under the legacy system, for cases referred under the duty-related process, the PEB determines fitness and determines the disability rating percentages using the Veteran's Administration Schedule for Rating Disabilities (VASRD). The legacy process also includes the RC non-duty related referral process. No disability ratings are assigned for non-duty related cases (see paragraph 4-18 and 4-32).

(2) *Integrated Disability Evaluation System.* The IDES features –

(a) A single set of disability medical examinations that may assist the DES in identifying conditions that may render the Soldier unfit.

(b) A single set of disability ratings provided by VA for use by both departments. The DES applies these ratings to the conditions it determines to be unfitting and compensable. The Soldier receives preliminary ratings for their VA compensation before the Soldier is separated or retired for disability.

(3) *Expedited Disability Evaluation System.* A voluntary process for Soldiers unfit for catastrophic injuries or diseases in which USAPDA may permanently retire the Soldier for disability without referral to the PEB based on the MTF's medical narrative summary (NARSUM).

e. The DES begins for a Soldier when either of the events below occurs:

(1) The Soldier is issued a permanent profile approved in accordance with the provisions of AR 40-501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in accordance with AR 40-501 (see glossary). Within (but not later than) one year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES. Any DA Form 3349 generated for a USAR Soldier in a drilling Troop Program Unit or AGR status must be validated by the U.S. Army Reserve Command's Medical Management Center before their referral into the DES.

(2) The Soldier is referred to the DES as the outcome of MAR2 evaluation.

f. The DES concludes for Soldiers as set forth below:

(1) For Soldiers determined by the MEB to meet medical retention standards and MAR2 did not refer the Soldier to the DES, the DES concludes the date the MEB returned the Soldier to duty. (If referral to MEB resulted from MAR2 evaluation, referral to the PEB may be mandatory (see para 3–5).)

(2) For Soldiers referred to the PEB and determined fit, the DES concludes as of the date of USAPDA’s memorandum approving the finding of fit.

(3) For Soldiers referred to the DES under a Legacy Disability Evaluation System (LDES) process and determined unfit, the DES concludes on the date of the Soldier’s separation or retirement for disability.

(4) For Soldiers referred to the DES under the IDES process and determined unfit, the DES concludes on the date of the Soldier’s notification of the VA’s benefits decision. However, the Soldier’s military status as a member of the Active Army or RC, as applicable, ends on the date of the Soldier’s disability separation or retirement.

g. Delaying DES processing or disposition is not authorized for the purpose of increasing the length of time the Soldier remains on active duty and receiving military benefits, allowing death in an active duty status, or increasing a Soldier’s compensation for or otherwise related to disability retirement or disability separation.

h. Information contained in a restricted report of sexual assault that is necessary for a fitness for duty or disability determination shall only be disclosed as necessary to the officials participating in the processing of the board and shall be limited to that purpose. Receipt of information from a restricted report by personnel involved in the processing of a disability case who are not individuals that can take a restricted report in accordance with DODI 6495.02 shall not cause a restricted report to be considered unrestricted. All restricted reporting information remains confidential and protected. Personnel who receive confidential information from a restricted report for the purpose of disability processing, shall be subject to the same requirements as healthcare personnel with regards to safeguarding personal information and may be subject to disciplinary action if such information is disclosed without authority.

4–2. Applicability

a. The DES applies to Active Army, RC Soldiers, recalled retirees, and cadets of the United States Military Academy.

(1) The non-duty related process applies to RC Soldiers who are not on active duty and who do not meet medical retention standards because of non-duty related impairments.

(2) RC Soldiers, who were called to active duty under the provisions of 10 USC 12301 but then released from active duty by the 30th day due to the identification of a pre-existing condition not aggravated by the current tour of active duty, and which fails retention standards, will come under the applicable DES process based on whether the pre-existing condition was previously incurred in the LOD (duty-related process) or was a condition incurred when not in a duty status (non-duty-related process).

(3) RC Soldiers on active duty orders specifying a period of more than 30 days will, with their consent, be kept on active duty for disability evaluation processing until final disposition, subject to the circumstances set forth in paragraph 4–2a(2).

(a) The original orders issuing authority is responsible for coordinating with MEDCOM to generate a 12301(h) order extending the RC Soldier on active duty to complete the DES process.

(b) The original orders issuing authority is responsible for providing the funding for the 12301(h) order and any temporary duty travel for DES required appointments.

b. The legacy process (see paras 4–18 and 4–32) may be used on a case-by-case basis for any Soldier or member eligible for IDES evaluation when circumstances exist that the IDES process may have a detrimental impact on the disability process, the Soldier, or the Army. The Soldier or command may request the LDES in lieu of IDES process.

c. Reserve Officers’ Training Corps cadets are not eligible for processing through the DES, even if injured during training. Cadets who are in a RC Simultaneous Membership Program are the exception, and are eligible for duty-related DES processing if injured in training.

d. Provided the Soldier has no other conditions which are cause for MEB referral, a Soldier with one or more congenital or developmental defects not compensable under the VASRD will not be referred to the DES even when these conditions require a P3/P4 profile or interfere with duty performance.

e. The legacy process will be used for Army Veterans referred to the DES by the Army Board for Correction of Military Records (see para 4–18).

4–3. Soldiers absent without leave, undergoing or pending adverse actions or involuntary administrative separation, or with prognosis of imminent death

a. *Absent without leave.* A Soldier who is absent without leave is not eligible to be referred to or continue the MEB, PEB, or final disposition phase of the DES. Once the Soldier is dropped from the rolls of the Army, their case is terminated. If the Soldier returns to military control before being dropped from the rolls of the Army, the Soldier’s DES processing may resume. The NARSUM, or addendum to the NARSUM, as applicable, will reflect the status of the medical evaluation

at the time the Soldier went absent without leave, and will address whether the Soldier incurred new medical conditions or aggravated medical conditions during the absent without leave period. If new or aggravated conditions exist, a formal LOD conducted in accordance with AR 600–8–4 is required.

b. Reserve Component Soldiers with unexcused absences. RC Soldiers who have nine or more unexcused absences from scheduled inactive duty training (IDT) during a one year period will be considered unsatisfactory participants. They will not be referred to or continue DES processing unless the Soldier has a documented LOD medical condition which fails medical retention standards. The condition must be the direct medical cause or a significant contributing factor to the unexcused absences. Exceptions will be for those RC Soldiers who have clear and incontrovertible evidence in the form of a documented LOD or equivalent establishing a direct cause for their absences, as determined by military medical authorities.

c. Action under the Uniform Code of Military Justice. When Soldiers are under investigation or are charged with an offense under the UCMJ that could result in a punitive discharge (dismissal, dishonorable discharge, or bad conduct discharge), they remain eligible to be referred to and complete the MEB phase of the DES. Eligibility for the PEB occurs when one of the actions listed below occurs. (The PEB or USAPDA, as applicable, will suspend adjudication or disposition when UCMJ action is initiated during the PEB or USAPDA review phases. These cases remain suspended until final UCMJ action is taken or one of the following events occurs.)

- (1) The investigation ends without charges.
- (2) The officer exercising proper court-martial jurisdiction dismisses the charges.
- (3) An officer submits a resignation for the good of the Service under the provisions of AR 600–8–24 (this includes when the resignation is in lieu of referral to a General Court-Martial).
- (4) The officer exercising proper court-martial jurisdiction refers the charge for trial by summary court-martial.
- (5) Court-martial conviction does not include confinement and discharge or Soldier completes confinement without discharge.

d. Civilian confinement. When Soldiers are under investigation for, or charged with, a civil criminal offense (misdemeanor or felony) and they are incarcerated in civilian confinement, pre or post trial, or are being held pending psychiatric evaluation or treatment, they are ineligible to continue any phase of the DES. If they are present for duty (on bail), they are eligible to complete the MEB. The Soldier, to include if on bail, becomes eligible for the PEB or disability disposition when the Soldier is cleared of the offense and has a military status (continues on active duty or in an RC active status), or the command, after conviction, specifically declines in writing to separate the Soldier on the basis of conviction by civil court (see AR 135–175, AR 135–178, AR 600–8–24, and AR 635–200).

e. Soldiers with military suspended sentences. Soldiers may not be referred for, or continue in, disability processing if under military sentence of dismissal or punitive discharge unless the sentence is suspended. A copy of the military order suspending the sentence must be included with the MEB packet forwarded to the PEB. If, after forwarding the case to the PEB, the command takes action to vacate the suspension, the PEBLO must notify the PEB. Disability processing may resume if the commander decides not to vacate the suspension. The Soldier may not be discharged through the DES process until the period of suspension has ended and the punitive discharge or dismissal has been disapproved.

f. Enlisted Soldiers pending administrative separation.

(1) Enlisted Soldiers who are approved for discharge in lieu of trial by court-martial are ineligible for referral to the MEB and PEB phases of the DES (see AR 635–200). If the Soldier is in the DES process, their DES case will be terminated, and the Soldier is discharged in lieu of trial by court-martial.

(2) Soldiers under processing for an administrative separation for fraudulent enlistment or misconduct remain eligible to be referred to the MEB. The Soldier's commander must notify the Soldier's PEBLO in writing that administrative separation action has been initiated. The Soldier's completed MEB must be referred to the Soldier's General Court-martial Convening Authority (GCMCA) in accordance with AR 635–200 to determine whether the Soldier will be referred to the PEB. Approval and suspension of an AR 635–200 separation action is not authorized when the Soldier is pending both an AR 635–200 and AR 635–40 action. The GCMCA must decide which action to pursue (as described in AR 635–200). Soldiers continue to be eligible for these administrative separation actions up until the day of their separation or retirement for disability even though their PEB findings have been previously completed and approved by USAPDA for the SECARMY. In no case will a Soldier, being processed for an administrative separation for fraudulent enlistment or misconduct be discharged through the DES process without the approval of the GCMCA.

(3) For administrative separation actions other than those addressed in paragraphs 4–3f(1) and 4–3f(2), referral and disposition under the DES takes precedence over the administrative separation action.

g. Officers pending administrative elimination.

(1) Generally, officers approved to resign for the good of the Service in lieu of trial by court-martial are ineligible for referral to the MEB and PEB. However, if the officer was referred to the MEB prior to approval of the resignation, the MEB and/or PEB must be completed and the case dual processed as described in paragraph 4–3g(2).

(2) Officers pending administrative elimination under AR 600–8–24 are normally dual processed for the elimination action and completion of the DES. For dual processing to occur, referral to the MEB must occur before the date the Deputy Assistant Secretary of the Army (Review Boards) approves the officer’s elimination.

h. Certain adverse line of duty findings. A Soldier whose disability results from intentional misconduct or willful negligence or was incurred during a period of unauthorized absence or excess leave may be subject to administrative separation under AR 135–175, AR 135–178, AR 600–8–24, or AR 635–200, as applicable, without referral to the DES for a fitness determination.

i. Prognosis of imminent death or terminal illness. Expediting a Soldier’s case or requesting that a Soldier’s case be expedited for a Soldier having a prognosis of imminent death is not authorized.

4–4. Waiver of Disability Evaluation System

In certain circumstances, Soldiers may waive referral to the DES process. The PEBLO must inform the Soldier about the DES process, their right to a PEB, and the potential benefits of remaining in an active duty or active Reserve status for purposes of completing the DES process. The Soldier will be advised that they have the right to consult with a SMEBC prior to waiving referral to the MEB or informal physical evaluation board (IPEB). The Soldier must request a waiver in writing and such request, or an affidavit, must attest that the Soldier has received the information described above and declines referral to the PEB. The waiver must be filed in the Soldier’s health records and official personnel record. Waiver requests are authorized in the circumstances listed below.

a. The Soldier’s conditions existed prior to service (EPTS). The Soldier must be on continuous active duty for more than 30 days. The MEB must provide clear and unmistakable evidence that the Soldier’s medical condition(s) that do not meet medical retention standards are EPTS and did not permanently worsen or progress beyond natural progression while on active duty (specifically, were not service aggravated) (see DA Pam 635–40 for procedures).

b. The DES process would likely require extension past the date of the Soldier’s ETS and the Soldier does not consent to retention.

(1) Soldiers cannot be involuntarily retained past ETS even though they may have a remaining service obligation.

(2) Soldiers approved for separation under any program that incurs a Reserve obligation, and who have condition(s) that are cause for referral to the DES, may not waive the DES process.

(3) Soldiers of the RC on active duty under a call to duty of more than 30 days may continue the DES process upon release from active duty (REFRAD). The Soldier must maintain a Ready Reserve status, sign a waiver declining retention on active duty, and be counseled that the provisions of 10 USC 1207a (coverage of unfitting, non-service-connected disability) will not apply when REFRAD occurs before the case is received at the PEB.

c. The DES process would likely require extension past a Soldier’s established retirement date (other than retirement under the Temporary Early Retirement Authority), and the Soldier does not wish to delay retirement.

(1) Soldiers who are pending permanent or temporary disability retirement and who are eligible for a length of service retirement at the time of their disability evaluation may elect to be retired for disability or for length of service. However, when retirement for length of service is elected, the Soldier’s retirement date must occur no later than the date the Soldier would have been retired for disability.

(2) Whether a Soldier may waive DES evaluation or disposition to elect retirement under a Temporary Early Retirement Authority depends upon the Temporary Early Retirement Authority eligibility policy in effect at the time of the Soldier’s DES referral or disposition.

4–5. Additional matters concerning legal representation of Soldiers

a. Legal representation of Soldiers by SMEBC personnel will terminate on the Soldier’s election for a FPEB, or upon separation, retirement, or return to duty, whichever occurs first. If a Soldier requests a FPEB and requests appointed counsel, the SMEBC will transfer the case to the appropriate office of SPEBC. Upon request by appointed SPEBC, the SMEBC will remain involved to assist the SPEBC throughout the PEB and post-PEB appeals process. When requested, the SMEBC’s role will continue to be covered by the provisions of AR 27–26.

b. Legal representation by the SPEBC terminates upon a Soldier’s separation, retirement, or return to duty.

c. Soldiers traveling to a FPEB must be afforded sufficient time to arrive (more than one duty day) in advance of their scheduled hearing to confer with appointed legal counsel.

d. The SMEBC and SPEBC will have access to information contained in computerized databases and electronic medical records that relate to their clients’ medical condition and DES case status. Access to information includes, but is not limited to, documents in eMEB, ePEB, data not restricted under paragraph 4–22e, Veterans Tracking Application, e-Profile, Armed Forces Health Longitudinal Technology Application (AHLTA), and Healthcare Artifact and Image Management Solution.

e. The SMEBC and SPEBC must receive the Soldier's DES case file in a timely manner to assist Soldiers with their timely DES elections and to prepare rebuttals, if appropriate. Counsel's failure to timely receive a Soldier's DES case file will constitute good cause to extend a Soldier's DES election period.

f. When Soldiers request appointed counsel, the SPEBC must be provided both the Soldier's DES case file and notice of a scheduled FPEB hearing at least 10 days prior to the hearing. Normally, caseload for SPEBCs will not exceed ten scheduled FPEB hearings per counsel per week. The MEDCOM SJA, in consultation with the Director of the OSC, MEDCOM, may approve exceptions to this caseload standard and will report any exceptions granted to the Director, Soldier and Family Legal Services.

g. The PEB will provide the Soldier's SMEBC and/or SPEBC with a copy of all correspondence, responses to appeals or requests for VA rating reconsideration, and all other documents directed to the Soldier.

4-6. The Reserve Component Medical Evaluation Board Tracking Office

a. The MEBTO is an established IDES service line component whose mission is to enhance Army readiness by providing clear, concise RC IDES guidance, training, and oversight to support the IDES enterprise.

b. The MEBTO will regulate all Component 2/Component 3 (excluding 10 USC AGR and RC Soldiers activated greater than 30 days) referrals to designated IDES locations. The RC referring authorities will ensure all referrals are processed in accordance with DA Pam 635-40.

c. The MTFs and/or MEB Remote Operating Centers will not accept direct referrals of Component 2/Component 3 (excluding 10 USC AGR and RC Soldiers activated greater than 30 days).

d. The RC will use the National Guard Bureau Health Information System, Medical Electronic Data (for) Care History and Readiness Tracking, and its sub-module named Medical Evaluation Board Preparation Module to process MEB referrals through the MEBTO.

Section II

Medical Evaluation Board

4-7. Policy

a. An MEB is convened to determine whether a Soldier's medical condition(s) meets medical retention standards per AR 40-501. With the exception of cases referred by MAR2, an MEB may determine that a Soldier's condition(s) meet medical retention standards and recommend the Soldier be returned to duty. (See para 3-5c, concerning MEB actions on MAR2 cases.)

b. The MEB must not provide conclusions or recommendations regarding fitness determinations.

4-8. Status of Soldiers undergoing disability evaluation

From the time a Soldier receives a P3/P4 profile referring them to a MEB until the time the DES process is completed (including a decision on any appeal) or the Soldier is returned to duty, the Soldier—

a. Will remain available for the DES process to complete any required actions. Leave, while permissible, is generally discouraged in the MEB phase with the exception of emergency situations. Commanders may grant leave as long as the leave or other required absence is communicated immediately to the assigned PEBLO and does not prevent timely completion of DES appointments. Commanders should encourage Soldiers to use accrued leave after the IPEB adjudication when the Soldier is not requesting a FPEB.

b. Is ineligible for assignment instructions or orders with the exception of orders for assignment to the Warrior Transition Unit or Community Care Unit. If the Soldier has already received assignment orders prior to initiation of the DES process, the process must be completed and a final decision rendered before the Soldier proceeds on assignment.

c. In accordance with AR 614-100 and AR 614-200, is ineligible for permanent change of station other than:

(1) Home on permanent change of station leave under the provisions of AR 600-8-10; or

(2) When required for a Soldier stationed outside the continental United States to complete the DES. (Also see DA Pam 635-40.)

d. Is ineligible for transfer within a component or transfer between components. This includes involuntary transfer to the IRR when the RC Soldier is otherwise eligible to remain a member of the Selected Reserve during DES evaluation. (Also see para 4-8f.)

e. Is ineligible to be scheduled for or attend training for which the U.S. Army Training and Doctrine Command is the proponent.

f. May extend their enlistment or be retained for medical reasons to complete DES process, if otherwise eligible for such extension and/or retention, under the regulations listed below. Requests for retention should be approved unless the Soldier is disqualified for retention under another provision of this regulation.

- (1) AR 135–175 for retention of USAR and ARNG officers in RC active status.
- (2) AR 135–178 for retention of USAR and ARNG enlisted Soldiers in RC active status.
- (3) AR 601–280 for extension of enlistments.
- (4) AR 635–200 for retention of enlisted Soldiers on active duty.
- (5) AR 600–8–24 for retention of officers on active duty.

g. Is eligible for awards and for promotion consideration, promotion selection, and promotion. (See AR 600–8–19 and AR 600–8–29. See also paragraph 4–30 for grade issues in relation to disability benefits and disposition.)

h. Is subject to the UCMJ, adverse administrative action, or separation pursuant to AR 635–200. Partial or complete dual processing may be required (see para 4–3).

4–9. Disenrollment from the Disability Evaluation System as a result of certain adverse circumstances or actions

Soldiers pending adverse actions or involuntary administrative action are eligible for the DES as set forth in paragraph 4–3. Disenrollment from DES, or termination of the case for any other reason, will occur no earlier than as prescribed below.

a. Enlisted Soldiers with an initiated or approved administrative separation for misconduct or fraudulent enlistment will be disenrolled when the MEB is completed, the Soldier’s GCMCA has reviewed the MEB, and the GCMCA has directed in writing to proceed with the administrative separation. If the separation action was initiated after the Soldier’s MEB was forwarded to the PEB, the last level of approved PEB findings prior to initiation of separation will be provided to the GCMCA for consideration in their decision.

b. Officers pending an administrative elimination action are disenrolled from the DES on the date the elimination action is approved by the Army Review Boards Agency.

c. Enlisted Soldiers and officers who are approved for discharge or resignation, as applicable, in lieu of trial by court-martial are disenrolled on the date the separation or resignation is approved. (Also see paras 4–3*f* through 4–3*g*.)

d. Officers and enlisted Soldiers who are under investigation for or charged with a UCMJ offense that could result in a punitive discharge will be disenrolled on the date the punitive discharge has been approved by the Soldier’s GCMCA.

e. Soldiers charged with civilian offenses that if charged under the UCMJ could result in a punitive discharge are disenrolled if the Soldier is—

- (1) Incarcerated or is otherwise not present for duty to complete the DES.
- (2) Approved for separation or elimination action on the basis of civil conviction. For an enlisted Soldier, the MEB must be completed and reviewed by the Soldier’s GCMCA and the GCMCA must have directed in writing to proceed with the separation action. For an officer, the MEB and PEB phase must be completed unless the Army Review Boards Agency approved the elimination action before the Soldier was referred to the MEB.

4–10. Preparation for the Medical Evaluation Board

a. Generally, upon referral into the DES, the physician approving the Soldier’s P3/P4 profile will initiate the VA Form 21–0819 (VA/DOD Joint Disability Evaluation Board Claim) by completing Section 1 and transmitting the form to the office designated by the MTF commander. For Soldiers referred from outside the continental United States and for RC Soldiers referred from a nonactive duty status, the MTF initiates and completes VA Form 21–0819, Section 1.

b. A PEBLO will be assigned to the Soldier to—

(1) Contact the Soldier to provide them with a general overview of the DES process, review Section 1 of the VA Form 21–0819 with the Soldier, and inform the Soldier of their right to be represented by an attorney during the DES process.

(2) Notify the unit commander of the Soldier’s enrollment in the DES. Verify with the Soldier’s unit commander whether there are any administrative or UCMJ actions pending or initiated on the Soldier and/or whether the Soldier is currently in civilian confinement awaiting trial or due to civilian sentencing.

(3) Initiate DA Form 5893 (Soldier’s Medical Evaluation Board/Physical Evaluation Board Counseling Checklist). The Soldier and PEBLO will initial and date counseling entries on the DA Form 5893 as counseling occurs. The supervisor of the PEBLO will review checklists to ensure that counseling occurs when required. At a minimum, the supervisor will document their review by initialing and dating the DA Form 5893 in the instances listed below.

- (*a*) Before the PEBLO forwards the case to the PEB.
- (*b*) When the PEBLO counsels the Soldier on PEB results.

(4) Request a non-medical assessment from the Soldier’s commander detailing the Soldier’s ability to perform their current duties, using DA Form 7652. When required by AR 600–8–4, ask the Soldier’s commander to conduct an LOD

investigation (informal or formal, as applicable) for referred conditions, and, upon approval of the investigation, provide a copy of it in its entirety to the PEBLO.

(5) Gather the complete service treatment record, including civilian medical records.

(6) Assemble the case file as outlined in DA Pam 635–40.

(7) Forward the case file to a VA military service coordinator (MSC).

(8) Advise eligible Soldiers that they are required to begin the Soldier for Life – Transition Assistance Program immediately (see para 4–31).

c. The Soldier will have the opportunity to claim conditions on VA Form 21–0819, Section 3. After the Soldier, or a designated representative, submits VA Form 21–0819 to the MSC, the Soldier may claim additional conditions, but the VA will not evaluate the added claimed conditions until after separation from Service unless the PEB refers the condition for further VA or MEB evaluation before issuing a final fitness determination, or if the MEB approving authority concludes that adding a new medical condition is necessary to ensure the MEB findings adequately reflect the complete spectrum of a Soldier’s injuries and illnesses. If desired, the Soldier may seek legal advice from an attorney assigned as MEB counsel, private legal counsel retained at their own expense, or a VA-accredited representative of a service organization recognized by the Secretary of VA. Submission of a DD Form 2807–1 (Report of Medical History) or completion of VA Form 21–0819, block 3, is entirely voluntary. Involuntary information provided on those forms relating to the origin, incurrence, or aggravation of a disease or injury will not be used by DOD in any manner against the interest of the Soldier.

d. If the member testifies or makes a statement as to information surrounding a restricted report of sexual assault to assist the PEB in a fitness for duty or disability determination, the disclosure to the PEB does NOT cause a restricted report to be considered unrestricted, and all restricted reporting information remains confidential and protected.

e. The VA will arrange for qualified medical examiners to perform the examination as required by the Army to complete the MEB and PEB determination.

4–11. Appointment of the Medical Evaluation Board

a. *General requirements.*

(1) The MTF commander or designee will appoint MEB members.

(2) MEBs will be composed of two or more physician members. One of the MEB members will prepare the NARSUM of the Soldier’s medical conditions. A senior medical officer will serve as the MEB approving authority and will have detailed knowledge of regulations pertaining to standards of medical fitness and disability separation processing. The other member(s) will have working knowledge of these matters. When a MEB is considering a dental condition, the membership of the board will include a dentist. When a MEB is considering a psychiatric diagnosis, the MEB will include a psychiatrist or a clinical psychologist with a doctoral degree in psychology, who may also substitute for the second MEB physician member. If the MEB members disagree on the case, the MTF commander or designee may appoint an additional voting member to review the proposed findings and provide the majority position.

b. *Medical Evaluation Board composition for Medical Corps officers.*

(1) Unless otherwise directed by MEDCOM, the MEB for Medical Corps (MC) officers will not be conducted by the MTF to which the MC officer is assigned. A MC officer may appear before a board at another MTF within their regional medical command provided the review authority is not in the officer’s rating chain.

(2) Requests for authority to deviate from policy regarding MEB procedures for MC officers will be forwarded to MEDCOM (MCHO–CL–P), 2748 Worth Road, Fort Sam Houston, TX 78234–6010. A copy of the approval, if granted, will be attached to each copy of the board proceedings.

(3) MEB will be held at San Antonio Military Medical Center for all MC officers with duty station at Fort Sam Houston except those assigned to San Antonio Military Medical Center and MEDCOM.

(4) MEB members for MC officers assigned to MEDCOM will be appointed by TSG or their designated representative.

4–12. Medical Board proceedings

a. The MEB NARSUM is the heart of the MEB. The NARSUM will be prepared in accordance with the procedures outlined in DA Pam 635–40.

b. The NARSUM will include the following information:

(1) Soldier identification. Soldier name and PMOS spelled out.

(2) Sources and references.

(3) Baseline documentation.

(4) Diagnoses for DA Form 3947 (Medical Evaluation Board Proceedings). Include AR 40–501 citation for diagnoses that do not meet medical retention standards.

(5) Medical retention determination point statement.

(6) Profile review and/or update and discussion. This is a crosswalk between conditions listed on the DA Form 3349 and specific associated functional activity limitations. Note: It is helpful for the MEB provider to specifically indicate they considered all conditions listed in section 4 of the NARSUM.

(7) For each condition that does not meet retention standards:

(a) Medical basis of diagnosis.

(b) Onset. (Duty status; date symptoms began and/or condition diagnosed; geographical location; mechanism of injury.)

(c) Treatment Summary. Brief summary of treatment; Soldier's response to treatment; current limitations.

(d) Noncompliance issues, if any (see AR 600–20).

(e) Prognosis statement. Indicate whether it is likely that Soldier's condition will significantly worsen or improve over the next five years.

(f) Impact on duty beyond profile limitations.

(g) Selection of applicable AR 40–501 provision with tailored discussion.

(8) Competency statement. Where the Soldier has one or more behavioral health diagnoses, the MEB provider indicates whether the Soldier is:

(a) Mentally competent for pay purposes.

(b) Capable of understanding the nature of, and cooperating in PEB proceedings.

(c) Dangerous to themselves or others.

(9) Conditions meeting retention standards.

(10) Timeliness issues and/or quality check. In this section, the MEB provider addresses any issues regarding timeliness of examinations and apparent inconsistencies.

(11) Signature of NARSUM provider and date signed.

c. Sources of information to prepare the NARSUM include the VA examination, the DA Form 7652, pertinent clinical records, and other records in the case file, as appropriate.

d. The NARSUM preparer conducts an administrative review of records, to include the VA medical examination. With reference to the VA medical examination, the NARSUM preparer may seek clarification or correction from the VA. The NARSUM preparer will resolve any inconsistencies regarding diagnosis, onset, severity, and impact on duty. Where there is sufficient information upon which to base a finding, no additional clinical evaluation is required. Where there is insufficient evidence upon which to base a finding, the MEB provider may obtain additional information from treating providers, commanders, and/or the Soldier through phone, email, or, when necessary, a non-clinical face-to-face meeting.

e. With reference to the proposed DA Form 3947 entries as specified in the NARSUM, the PEBLO will prepare a draft DA Form 3947 using the information set forth in section 4 of the NARSUM. The PEBLO will forward this draft and the case file to the MEB members for review and signature.

f. The MEB will recommend that the case file be forwarded to a PEB for a fitness determination when the MEB finds that one or more of a Soldier's medical conditions individually or collectively do not meet medical retention standards. The MEB will recommend the Soldier be returned to duty or returned to duty with limitations when the MEB finds all medical conditions meet retention standards, and the Soldier was not referred by MAR2. See paragraph 3–5c, regarding the Soldier referred by MAR2.

g. In cases where the Soldier has been determined mentally incompetent, a statement confirming the name, address, telephone number, and relationship of a person authorized to act on behalf of the Soldier, whether this person is available for counseling following PEB action, and whether the person has been advised of the referral to a PEB must be included in the MEB documents. If the next-of-kin is not known or cannot be located and no court-appointed guardian exists, include a summary of the attempts to identify or locate the next-of-kin. To establish the person having authority to act for a mentally incompetent Soldier, in the absence of a valid, durable, and pertinent power of attorney (dated before the finding of incompetence) or a court order authorizing an individual to act for a mentally incompetent Soldier, follow the guidelines below. The person authorized to act is the person highest in the line of authority listed below.

(1) Spouse, even if a minor.

(2) Adult sons or daughters in order of seniority. A person is an adult upon reaching the age of majority under the state law of the person's legal residence.

(3) Parent in order of seniority, unless legal custody was granted to another person by reason of court decree or statutory provision. The person to whom custody was granted remains as next-of-kin although the person has reached the age of majority.

(4) Blood or adoptive relative who was granted legal custody of the person by reason of a court decree or statutory provision. The person to whom custody has been granted remains the nearest next-of-kin although the person has reached age of majority.

(5) Adult brothers and sisters in order of seniority.

(6) Grandparents in order of seniority.

(7) Other relatives in order of relationship to the Soldier and according to the laws of the Soldier's domicile. A Soldier's domicile is the Soldier's legal residence. It is not necessarily where the Soldier is actually living, the Soldier's home of record, or where the Soldier is stationed.

(8) Persons who stand in place of a parent. Seniority in age will control when the persons are of equal relationship.

h. No individual will serve as both the MEB approval authority and MEB appellate authority.

i. If information about a restricted report of sexual assault comes to a commander's attention as a result of a disclosure that is required for fitness of duty or disability determination, the commander will not report the matter to an military criminal investigative organization. The nature of the report shall remain restricted and the disclosure of information shall only be used to assist the command in preparing input to the medical board via the non-medical assessment; and the victim's communications remain confidential.

4-13. Soldier's opportunities for further review

a. Following the MEB decision, the PEBLO will inform the Soldier of their election options. These election options include both an option to request an impartial medical review (IMR) and an option to submit a rebuttal of the MEB findings. With respect to these two options, the PEBLO will inform the Soldier that they may seek legal advice from an attorney assigned as MEB counsel, private legal counsel retained at their own expense, or a VA accredited representative of a service organization recognized by the Secretary of VA.

b. The Soldier must sign the DA Form 3947 within five days of receiving and being counseled on the MEB findings, unless an extension is granted for good cause (for example, appointed legal counsel is unavailable). Absent an approved extension, the MEB decision becomes final on the fifth day, and the MEB convening authority will authorize the PEBLO to forward the case file to the servicing PEB. In cases where the Soldier does not sign the DA Form 3947, the PEBLO will add to the case file a memorandum describing the efforts to contact the Soldier or indicating the Soldier was found to be incompetent by the MEB. The Soldier's signature on the DA Form 3947 indicates one of the following:

(1) The Soldier concurs with the MEB decision.

(2) The Soldier requests an IMR.

(3) The Soldier does not request an IMR, does not concur with the MEB findings, and has an additional seven days to submit a written rebuttal.

4-14. Impartial medical review

a. The purpose of the IMR is to inform the Soldier whether (in the IMR reviewer's opinion) the MEB findings adequately reflect the complete spectrum of the Soldier's injuries and illnesses. Generally, a Soldier may request one IMR. If the PEB returns a Soldier's case for further VA and MEB evaluation of a new medical condition as provided for in paragraph 4-10c, the Soldier will have an opportunity to request another IMR; however, it will be limited in scope to addressing the MEB findings for the PEB-returned condition.

b. The MTF commander or designee will appoint a physician or other appropriately credentialed provider to conduct the IMR. This impartial medical reviewer must not be either the MEB approval authority or a member of the MEB.

c. The impartial medical reviewer will examine the medical evidence as presented in the NARSUM and all other MEB information to include the completed VA examinations and all records the Soldier intends to submit for inclusion within the MEB.

d. Within five days of being appointed to conduct the IMR, the impartial medical reviewer will prepare their findings and inform the Soldier of whether the MEB findings adequately reflect the complete spectrum of the Soldier's injuries and illnesses. They will sign the DA Form 3947 and forward their findings to the PEBLO and the counsel of record, if any.

e. Where the IMR findings indicate that the MEB does not adequately reflect the complete spectrum of the Soldier's injuries and illnesses, the MEB approval authority will appoint an appropriately credentialed provider (who may be a member of the MEB) to consider the IMR findings. Barring unusual circumstances, when the Soldier requests an IMR and submits an MEB rebuttal, the same individual will consider both the IMR findings and the MEB rebuttal, respectively. In unusual circumstances, the MEB appeals authority may forward the IMR findings and the MEB rebuttal to TSG or another MTF for adjudication.

f. Within seven days of receiving the IMR findings, the MEB approval authority will uphold the original NARSUM or return the NARSUM to the NARSUM preparer for reconsideration.

g. The MEB approval authority will include a document specifically prepared in response to the IMR findings explaining the foundation for conclusions; whether these conclusions are that no changes are warranted in the NARSUM or other MEB document, or that additional consideration has caused the NARSUM preparer to revise the NARSUM or any other MEB component. The MEB approval authority will advise the PEBLO once all action is completed.

h. The PEBLO will provide a copy of the MEB approval authority's response to the IMR to the Soldier and the Soldier's appointed counsel (if counsel is identified on the IMR request as a point of contact).

i. Within seven days after Soldier and the PEBLO receive the IMR findings indicating the MEB adequately reflects the complete spectrum of the Soldier's injuries and illnesses, or within seven days of Soldier being informed by the PEBLO of the MEB approval authority's response to the IMR, the Soldier may submit a written MEB rebuttal to the PEBLO. Upon request by the Soldier or their representative and when good cause is shown, the MEB approval authority will extend this time period.

4-15. Medical Evaluation Board rebuttal

a. Provided the Soldier has not requested an IMR, the Soldier may submit a written MEB rebuttal to the PEBLO within seven days after signing the DA Form 3947. Upon request by the Soldier or their representative, the MEB approval authority will extend this time period when good cause is shown.

b. When the Soldier has requested an IMR, the Soldier may submit a written MEB rebuttal to the PEBLO within seven days after the Soldier and the PEBLO receive the IMR findings indicating the MEB adequately reflects the complete spectrum of the Soldier's injuries and illnesses or within seven days of the Soldier being informed by the PEBLO of the convening authority's response to the IMR review. Upon request by the Soldier or their representative, the MEB approval authority will extend this time period when good cause is shown.

c. In general, the Soldier may submit only one written MEB rebuttal. The Soldier may submit an additional MEB rebuttal when the MEB revises its prior findings with respect to adding or removing diagnoses and/or revising prior MEB findings with respect to whether one or more conditions is cause for MEB referral. Any additional MEB rebuttals will be limited to issues relating to MEB revisions.

d. The MTF commander will appoint a physician or other appropriately credentialed provider to address the Soldier's MEB rebuttal. Barring unusual circumstances, when the Soldier requests an IMR and submits a MEB rebuttal, the same individual will consider both the IMR findings and the MEB rebuttal, respectively. Within seven days of the MEB approval authority receiving the MEB rebuttal, the MEB approval authority will uphold the original MEB, amend the findings, or return it to the MEB. In unusual circumstances, the MEB appellate authority may forward the IMR findings and the MEB rebuttal to TSG or to another MTF for adjudication.

e. When, based on the MEB contents, it is not clear whether the MEB considered evidence included in the MEB rebuttal, the MEB approval authority will return the case to the MEB. The MEB (generally the NARSUM preparer) will prepare a document specifically addressing evidence presented in the MEB rebuttal and will either amend the MEB or will explain why, despite countervailing evidence, the preponderance of evidence continues to support the MEB findings (for example, whether diagnoses meet or do not meet retention standards).

f. The MEB approval authority will sign the DA Form 3947 and return it to the PEBLO for inclusion into the case file to be transmitted to the PEB president. The PEBLO will provide a copy of MEB approval authority's response to the Soldier and representative, if any.

4-16. Record of Medical Evaluation Board proceedings

The completed DA Form 3947 signed by the members of the MEB, to include any addendum prepared by the approval authority, is the official record of MEB proceedings. If the DA Form 3947 is revised, the date should be changed. The MEB case file must also include the completed NARSUM. See DA Pam 635-40 for listing of minimum required documents.

4-17. Training and education for the referral and Medical Evaluation Board phases

a. The SECARMY will annually certify that the following personnel assigned to or impacting the medical phase of the DES were formally trained prior to being assigned to performing DES duties.

- (1) Medical officers.
- (2) PEBLOs.
- (3) Patient administration officers.
- (4) In coordination with TJAG, MEDCOM SJA, and the Director, OSC, train SJAs and DA Civilian attorneys assigned to represent Soldiers at the MEB phase and PEB phases of the DES.

b. Training programs must be formal and documented. At a minimum, training curriculums will consist of the below topics.

- (1) An overview of the statutory and policy requirements of the DES, the electronic and paper recordkeeping policies of the Army, customer service philosophies, and VA processes, services, and benefits.
- (2) Familiarization with medical administration processes.
- (3) Knowledge of online and other resources pertaining to the DES, DOD and VA services, the chain of supervision and command, and the Army Inspector General hotlines.

c. Individuals assigned for duty as PEBLOs must receive at least one week of on-the-job training with an experienced PEBLO. Also see DA Pam 635–40 concerning PEBLO training.

4–18. Legacy procedures

The above procedures will apply, with the following exceptions:

- a. The SECARMY or designee approves requests for legacy on a case-by-case basis.
- b. The VA Form 21–0819 will not be used, to include cases referred by the Army Board for Correction of Military Records when the applicant does not have an active status. The VA will not conduct the examination upon which the MEB findings are based. Instead, the MEB convening authority will assign a physician or physicians to conduct the required examination(s). The examination(s) will meet the minimum criteria of the VA medical examination(s).
- c. Conditions evaluated during the DES will consist solely of those conditions for which a P3/P4 profile was approved and any other conditions which the physician conducting the MEB finds individually or in combination are not likely to meet medical retention standards. Cases referred by the Army Board for Correction of Military Records address conditions in the context of their status at the time of the Veteran’s separation.
- d. Soldiers approved for legacy must be provided information on, or offered to enroll in, the Department of Veterans Affairs Benefits Delivery at Discharge and/or Quick Start programs.

Section III

Physical Evaluation Board

4–19. Policy

PEBs determine fitness for purposes of Soldiers retention, separation or retirement for disability under 10 USC Chapter 61, or separation for disability without entitlement to disability benefits under other than 10 USC Chapter 61. The PEB also makes certain administrative determinations that may have benefit implications under other provisions of law. Chapter 5 addresses the standards for the PEB’s adjudicative determinations.

4–20. Appointment of physical evaluation boards

The CG, USAPDA, appoints informal and FPEB members.

- a. *Permanent members.* Permanent members will be appointed from personnel assigned to full-time duty at USAPDA or the PEBs. Permanent members may be designated as alternates for any other board position for which they are qualified. If a USAPDA member is used, they are excused from any review. If the USAPDA legal advisor recommends case-specific findings to the PEB, the legal advisor will refrain from rendering a legal opinion on the same matter, or from acting as an appellate reviewer, at the USAPDA level.
- b. *Alternate members.* Alternate members may be appointed with the concurrence of the alternate member’s commander. Alternate members supplement, or temporarily replace, permanent members to accomplish prompt disability adjudication.
- c. *Physical evaluation board president.* The CG, USAPDA will name, train, and certify an officer of either the Active Army or RC in the grade of colonel to be president at each PEB. The officer must be assigned to full-time duty at USAPDA and may be of any branch except the MC. The PEB president serves as the PEB administrator, responsible for the leadership and management of day-to-day PEB affairs. The PEB president will ensure that all permanent, alternate, and other voting participants are trained before they adjudicate a case. The PEB president may, but is not required to, serve as the presiding officer, or to otherwise participate as an adjudicative member of every case.

4–21. Composition of informal and formal physical evaluation boards

- a. *Requirements pertaining to both informal and formal physical evaluation boards.*
 - (1) Permanent and alternate members may not act on cases before being formally trained and certified on military physical disability adjudication. Normally, formal training consists of successful completion of training conducted by USAPDA. Under limited circumstances, the CG, USAPDA may designate an alternate training plan, successful completion of which will certify PEB members.
 - (2) In accordance with the provisions of 10 USC 12643, when the case under adjudication concerns a member of the USAR or ARNG, at least one member of the PEB must be a RC member. The RC representative need not be of the same component or senior to the RC Soldier under adjudication.
 - (3) A PEB member must recuse them self in any proceeding in which their impartiality may reasonably be questioned.
 - (a) Subject to the provisions of paragraph 4–21c(4), service as an IPEB member does not preclude appointment as a FPEB member of the same case.

(b) A medical officer appointed to an informal or FPEB may not have served in any capacity as a health care provider to the Soldier whose case is being adjudicated. The medical officer may not have served as a member of the Soldier's MEB, the Soldier's IMR of the MEB, or as the approval authority of the Soldier's MEB.

(4) The board decides all questions by majority vote. Dissenting PEB members may submit a minority report. The minority report must be referenced in the record of proceedings and a copy provided to the Soldier and the Soldier's representative. A minority report submitted at the last level of PEB adjudication before the case is submitted to USAPDA will result in mandatory review of the case by USAPDA as part of the adjudication process.

b. Informal physical evaluation board composition. The composition must consist of at least two military or civilian members meeting the requirements below. In the case of a split opinion, a third voting member will be assigned to provide the majority vote.

(1) The presiding officer will be either a field grade officer, of any component, in any authorized duty or training status, of any Army branch other than MC; or a DA Civilian adjudication officer in grade of General Schedule (GS)-13, or above, assigned to full-time duty on a PEB. Presiding officers must be approved, in writing, by the PEB president before they serve as such.

(2) The other members must be serving in or above the grade of O-4 or GS-12 or equivalent.

(3) At least one member must be a non-physician.

(4) A physician member is not required except when the MEB includes one or more behavioral health diagnoses in conjunction with one or more concussive conditions regardless of whether the behavioral health or concussive condition meets the medical retention standards of AR 40-501.

c. Formal physical evaluation board composition. The FPEB comprises at least three members in the positions of presiding officer, medical member, and personnel management officer, respectively.

(1) The presiding officer will be either an officer in the grade of O-5 or above, of any component, in any authorized duty or training status, of any Army branch other than MC; or a DA Civilian adjudication officer in grade of GS-13, or above, assigned to full-time duty on a PEB. Presiding officers must be approved, in writing, by the PEB president before they serve as such.

(2) The medical officer will be a MC officer of any service, component, in any authorized duty or training status, or a DA Civilian physician.

(3) The personnel management officer will be either a field grade officer of any component, in any authorized duty or training status, and of any Army branch other than MC, a DA Civilian adjudication officer in grade of GS-12, or above, or for FPEBs on enlisted Soldiers may be a noncommissioned officer serving in the grade of E-9. The personnel management officer must be familiar with duty assignments.

(4) A majority of the FPEB members could not have participated in the adjudication process of the same case at the IPEB.

4-22. The informal physical evaluation board process

a. Documentary review.

(1) All cases will be initially adjudicated by an IPEB. The IPEB conducts a documentary review of the case file without the presence of the Soldier to make an initial decision on the Soldier's fitness for continued service. The IPEB may obtain additional documents necessary for proper adjudication and will include them in the case file. If the IPEB discusses the case with personnel outside USAPDA to obtain information used in the adjudication, the presiding officer will ensure a memorandum for record regarding the discussion is included in the case file. This memorandum will be provided to the Soldier's legal counsel, if any.

(2) In cases where information of a restricted report of sexual assault is required for fitness for duty or disability determination, personnel must safeguard the disclosed information. The protected information is limited to only the information necessary to process fitness for duty or disability determinations for Servicemembers and disclosure shall be limited to the officials participating in the processing and adjudication of medical boards and physical evaluation boards. Receipt of information from a restricted report by personnel involved in the processing of a disability case who are not individuals that can take a restricted report in accordance with DODI 6495.02, shall NOT cause a restricted report to be considered unrestricted, and all restricted reporting information remains confidential and protected. No restricted report information received during the processing of a PEB case may be divulged outside the PEB without proper authority.

b. Informal determinations. The IPEB will make the determinations listed below according to the adjudication policy of chapter 5 of this regulation. These determinations are documented on DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings (EGA)). All PEB findings, to include initial findings and any revised findings (to include those reflecting subsequent considerations due to a Soldier's statement of rebuttal to an IPEB finding), will be presented in an orderly and itemized fashion with specific attention to each issue.

(1) Whether any medical conditions individually or collectively causes the Soldier to be unfit for continued military Service.

(2) Whether the unfitting medical conditions were incurred or aggravated in the LOD.

(3) For Soldiers being placed on the TDRL or permanently retired, whether the unfitting medical conditions are permanent and stable.

(4) If an unfitting condition is not compensable, the rationale for this determination. For all cases with a finding of a pre-existing medical condition without aggravation, of conditions incurred while on active duty orders of over 30 days, a discussion of the clear and unmistakable evidence establishing such a determination with citation to the specific well-established medical principle.

(5) For cases adjudicated under a LDES process, the determination of the disability rating percentage using the VASRD, including any applicable interpretation of the VASRD by the U.S. Court of Appeals for Veterans Claims.

(6) A determination and supporting documentation for purposes of employment under Federal civil service laws regarding whether the medical conditions making the Soldier unfit or contributing to the Soldier's unfitness were incurred in combat with an enemy of the United States or were the result of armed conflict or were caused by an instrumentality of war during a period of war.

(7) A determination and supporting documentation regarding whether the Soldier's disability compensation is excluded from Federal gross income under 26 USC 104.

(8) In accordance with 10 USC 10216, for military technicians with dual status in the Selected Reserve, whether the unfitting disability was combat-related.

(9) For cases in which the disposition is separate with disability severance pay whether the unfitting disabilities were incurred in a combat zone or were incurred during performance of duty in combat-related operations.

c. Preliminary ratings from the Department of Veterans Affairs. With the exception of cases adjudicated under a LDES process, if the initial decision by the PEB is that the Soldier is unfit, the PEB president will request preliminary VA ratings for each condition the PEB found to be unfitting. The request for preliminary VA ratings does not require the PEB to have determined that the unfitting condition is compensable. Once the PEB receives the VA disability rating percentages, it will apply them to the conditions determined compensable by the PEB, recommend a disposition, and generate the DA Form 199.

d. Physical evaluation board liaison officer notifications. Within three days of receiving the IPEB findings, the PEBLO will provide the Soldier the PEB findings and a copy of the VA-proposed ratings and benefits estimate letter. The PEBLO will inform the Soldier of the PEB and VA findings, the Soldier's election options, and the Soldier's right to consultation with legal counsel. With the Soldier, the PEBLO will complete the DA Form 5892 (PEBLO Estimated Disability Compensation Worksheet).

e. Legal counsel at the informal physical evaluation board level.

(1) The Soldier may seek legal advice regarding their options from an attorney assigned as MEB counsel, PEB counsel, private legal counsel retained at their own expense, or from a VA-accredited representative of a service organization recognized by the Secretary of VA.

(2) Whenever the case file indicates an attorney (or other counsel) is representing a Soldier regarding an issue under consideration by a PEB or USAPDA, a copy of any memorandum or letter prepared by the PEB or USAPDA on that case will be provided to the attorney (or other counsel). This includes correspondence that requests or directs PEBs to take corrective action (for example, USAPDA returns to PEB) or return a case to the MTF and correspondence to the VA.

(3) Soldiers who request services from the Office of SMEBC or SPEBC will provide appropriate authority for assigned Government legal counsel to have access to all pertinent documentation pertaining to the Soldier's disability case, to include medical records, MEB NARSUM, ratings, diagnostic code(s), LOD determinations, and any additional documentation that may be requested by the Office of SMEBC or SPEBC. Personnel from the Office of SMEBC or SPEBC must also have access to information contained in computerized databases and electronic medical records that relate to the Soldier's disabilities to include documents in AHLTA, eMEB, e-Profile, Veterans Tracking Application, and ePEB (except any portion of ePEB that is considered an exception under Freedom of Information Act, such as internal advice, recommendations, subjective evaluations or internal deliberations, and any agency attorney-client privilege work product).

(4) Attorneys from OSC are authorized to advocate on behalf of their clients on medical retention standards, fitness, disposition, stability of disability, compensability, administrative determinations, and ratings for conditions determined unfitting by the PEB, COAD, and/or COAR requests that generally must be filed within the IPEB election period.

f. Election timeframe.

(1) The Soldier has 10 days from their receipt from the PEBLO of the IPEB findings to make their election.

(2) The IPEB president, or their designated representative, will extend this 10-day time period upon request when good cause is shown. A written copy of the IPEB president's decision will be provided to the Soldier and their representative, if any.

(3) In the absence of an approved extension, if the Soldier's election is not received by the PEB by the 10th day, or the Soldier concurs with the PEB findings and waives the right to demand or request a formal hearing, the Soldier is deemed to have permanently waived their right to demand or request, as applicable, a FPEB hearing, unless good cause is established for the Soldier missing the election deadline.

g. Election options and impact of statement of appeals. The Soldier has the following election options to IPEB decisions.

(1) Accept the PEB decision, thereby waiving his or her right to a formal hearing. The presiding officer signs the PEB's findings and forwards the case to USAPDA for any required or quality assurance reviews and final processing.

(2) Nonconcur with the PEB decision and demand or request, as applicable, a formal hearing with or without a statement of appeal (also called a statement of rebuttal). (See paragraph 4–22*h* concerning the components of an appeal.) When a statement of appeal is submitted with a demand or request for a formal hearing, the same members who initially adjudicated the case, if reasonably available, will consider the appeal. The IPEB may issue new IPEB findings as a result of the Soldier's appeal. If the PEB issues new findings, the Soldier will be given the opportunity to make an election in the same manner as for the initial informal decision. If the appeal does not result in new IPEB findings, the PEB must provide a written response to the Soldier that addresses in an orderly and itemized fashion the issues the Soldier presented in their appeal and why they did not cause a change in the informal decision. The case will be processed for formal hearing.

(3) Nonconcur with the PEB decision with or without submitting a statement of appeal without demanding a formal hearing.

(a) If an appeal is submitted, the process in paragraph 4–22*g*(2) will be followed. If new PEB findings do not result, USAPDA will process the appeal.

(b) If no appeal is submitted, the case will be forwarded to USAPDA for approval and final disposition. However, the case remains subject to a mandatory or quality assurance review by USAPDA.

(4) Accept or request reconsideration of the VA preliminary ratings. The VA will only reconsider when there is new medical evidence or sufficient justification of an error to warrant reconsideration. When the Soldier demands, or is otherwise granted a formal hearing, the Soldier will defer submitting the request for ratings reconsideration until they have received the FPEB decision. This allows the VA to process a single request when the FPEB finds additional conditions unfitting. If a Soldier is initially found fit but is subsequently found unfit following a FPEB, the FPEB will forward the Soldier's case to the VA Disability Evaluation System Rating Activity Site (D–RAS) in order for the VA to issue ratings for all claimed and referred service-connected medical conditions.

(5) RC Soldiers may have additional election options concerning a choice between accepting disability severance pay or transfer to the Inactive Status List, or transfer to the Retired Reserve (see para 4–27).

h. Components of an appeal to informal physical evaluation board findings. An IPEB appeal should clearly present the issues of disagreement and the remedy sought. Appeals should be based on new medical evidence not previously considered by the PEB or by identification of the error the PEB made in its application of the policy and standards for the adjudicative determination.

4–23. Eligibility for a formal physical evaluation board

a. In accordance with the provisions of 10 USC 1214, no Soldier may be retired or separated for disability without a full and fair hearing if they demand it. The FPEB satisfies this provision of law. Though not required, Soldiers requesting a FPEB are encouraged to submit a statement of appeal as described in paragraph 4–22*h*.

b. By policy, the right to a FPEB is granted to Soldiers on the TDRL when determined fit. This is because the finding of fit causes a change in the Soldier's status. The Soldier is encouraged to submit a statement of appeal.

c. By policy, Soldiers in the Active Army and RC when determined fit by the IPEB may request (not demand) a formal hearing. The request should be based on the submission of new information (evidence not previously submitted to the PEB) or sufficient justification that the PEB did not properly consider the evidence before the board. The PEB president or their designated representative who is qualified as a presiding officer has discretion to approve or deny the request for a formal hearing. However, requests for formal hearings containing one or both of the required components for the request constitute a statement of rebuttal to the IPEB and must be considered and processed as set forth at paragraph 4–22*g*. In cases where a Soldier is found fit by presumption, the Soldier may request a formal hearing.

d. The PEB president, or the informal presiding officer, may direct a FPEB. When this occurs, the IPEB must still issue findings and the Soldier make elections. During directed FPEB hearings, the Soldier may not be compelled to appear or provide sworn testimony before the FPEB.

4–24. Formal physical evaluation board process

a. Composition of the formal physical evaluation board. See paragraph 4–21 for information regarding the composition of the FPEB.

b. Legal representation.

(1) During FPEB proceedings, the Soldier may only be represented by Soldiers' Counsel assigned to perform duties as PEB counsel, from TJAG, private legal counsel retained at their own expense, or from a VA-accredited representative of a service organization recognized by the Secretary of VA. A waiver by a Soldier of their right to representation by Soldiers' Counsel must be in writing and the waiver included in the case file as part of the record.

(2) RC Soldiers adjudicated under the non-duty related process have the right to the assistance of Government counsel provided at no expense to the Soldier or a personal representative provided at no expense to the Army.

c. Means of conducting formal hearings. Formals hearings may be conducted by the following means:

(1) In person.

(2) Through a designated representative.

(3) By video teleconference (VTC) or teleconference when directed by the PEB president.

d. Funding of Soldier's travel to formal hearing.

(1) Soldiers of the Ready Reserve referred to the DES under the non-duty related process are responsible for their personal travel and other expenses to attend the formal hearing unless the formal hearing is directed by the PEB.

(2) The Soldier's unit is required to fund travel for Soldier to attend formal hearing for Soldiers referred to the DES under the duty-related process.

(3) The USAPDA will fund required travel for formal hearings of Soldiers on the TDRL.

e. Scheduling the formal hearing.

(1) The PEB president is responsible for scheduling the FPEB hearing. The PEB will forward a letter of notification and DA Form 5890 (Acknowledgment of Notification of Formal Physical Evaluation Board Hearing) to the Soldier and their appointed SPEBC a minimum of 10 days in advance of the FPEB hearing. The Soldier, or their designated representative, will complete the DA Form 5890, which will be filed in the PEB case file. Soldiers being represented by Soldiers' Counsel from TJAG will be authorized to arrive the duty day before the date of the formal hearing to confer with their legal counsel.

(2) The PEB president or their designee may reschedule the formal hearing or the FPEB presiding officer may continue the formal hearing on their own motion or on the request of a Soldier if the president or presiding officer determines that rescheduling or a continuance is needed to afford the Soldier a full and fair hearing. Failure of counsel to appear is not a ground for continuance of the formal hearing, absent good cause as determined by the FPEB presiding officer.

(3) The Soldier may request withdrawal of their demand or request for a formal hearing by notifying the PEB president in writing. The PEB president or their designee may deny the request and direct a formal hearing. However, the Soldier retains the right not to appear at the formal hearing. Soldiers who withdraw their demand for a formal hearing do so permanently. When a Soldier withdraws or waives a previously requested formal hearing, the Soldier is deemed to have permanently waived their right to demand or request, as applicable, a FPEB hearing.

f. Soldier rights before the formal hearing. A Soldier has the following rights before a FPEB:

(1) The right to appeal any PEB adjudicative determination made by the IPEB, and to have their case considered by board members, a majority of whom were not voting members of their IPEB.

(2) The right to appear at the formal hearing, as set forth in paragraph 4-24c. Soldiers may also elect to appear through their designated representative.

(3) The right to waive personal appearance before the FPEB with or without submitting a written response in lieu of an appearance.

(4) The right to make a sworn statement or an unsworn statement either orally or in writing. A Soldier making an unsworn statement may not be cross-examined by the FPEB.

(5) The right to remain silent. When the Soldier exercises this right, they may not selectively respond but must remain silent throughout the hearing. The Soldier may not be compelled to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury.

(6) The right to introduce witnesses, depositions, documents, sworn or unsworn statements (affidavits), or other evidence on the Soldier's behalf and to question all witnesses who testify at the hearing.

(7) The right of access to all records and information received by the FPEB before, during, and after the formal hearing which may affect the findings of the FPEB. If the FPEB discusses the case with personnel outside USAPDA to obtain information used in the adjudication, the presiding officer will ensure a memorandum for record regarding the discussion is included in the case file.

g. Recording of formal hearings. All formal hearings will be recorded. A copy of the recording will be provided to the Soldier at the conclusion of the hearing if it is requested in writing. A copy will also be included as part of the record of proceedings. Typed transcripts are not required. However, if a transcript is prepared by the PEB, the transcript will be included as part of the record of proceedings. When the FPEB bases its findings on specific information within the formal hearing, the FPEB will identify the specific information. When feasible, the FPEB will identify the approximate place in

the formal board recording so others may locate the information. Failure of any recording device does not require a new formal hearing. If the recording device should fail during a material and relevant portion of the hearing, that the PEB or the Soldier is relying on as a critical part of the findings or appeal, the PEB and legal counsel will attempt to reconstruct the missing portions of the recording by agreed upon memorandums or other pertinent documents. If the parties cannot agree on the substance of the lost or unrecorded portion of the hearing, the Soldier or legal counsel may request that the formal hearing be re-opened to provide the missing testimony or evidence.

h. Attendance of witnesses. The PEB president may summon available witnesses on behalf of the FPEB. Witnesses will be summoned upon the determination of the PEB president that the witnesses' testimony is material, relevant, and necessary to a full and fair hearing.

(1) The Soldier may request the PEB summon witnesses on their behalf. The request must be in writing and submitted in a timely manner. The request must include the name, telephone number, address or location of the witness, a synopsis of the expected testimony sufficient to show it is relevant and necessary, and why the witness' personal appearance is necessary.

(2) Servicemembers and DOD employees located at the same installation as the FPEB usually will be considered available. When their testimony is required, the witness' commander or supervisor will ensure that the witness appears.

(3) Servicemembers and employees of DOD located at other installations may be available. When their testimony is required, the witness' commander or supervisor will ensure the witness appears in person or by the means directed by the PEB president.

(4) The PEB president may direct that testimony be heard by VTC or teleconference.

(5) Witnesses summoned by the PEB who are members or employees of the DOD are entitled to travel expenses and per diem allowances authorized by the Joint Travel Regulations (JTR). The commander of the command to which the witness belongs is responsible for these costs. If command funds are not available, and the PEB president considers the personal testimony of the witness essential, funds available to the PEB may be used to fund witness travel and travel-related expenses, in accordance with the JTR.

(6) The Soldier generally has the right to present witnesses who are not Servicemembers or DOD employees, and also Servicemembers and DOD employees whom the PEB president determined were not essential witnesses. The PEB president or formal presiding officer may deny the testimony of any witness if he determines that it is not material or relevant to the issues before the FPEB. The attendance of these witnesses is at no expense to the Government, and the Soldier is responsible for arranging their attendance. When the testimony of a witness requested by the Soldier is denied, the PEB president or presiding officer will explain the reasons for the denial to the Soldier and on the record of proceedings.

i. Formal physical evaluation board determinations. The formal hearing is a de novo hearing of all the adjudicative determinations made by the IPEB. Thus, the PEB may affirm or deny any finding or determination made by the IPEB, regardless of whether the Soldier raised the issue in appeal.

j. Record of proceedings. The FPEB findings will be documented on the DA Form 199-1 (Formal Physical Evaluation Board Proceedings (EGA)). The FPEB findings will convey the findings and conclusions of the board in an orderly and itemized fashion with specific attention to issues presented by the Soldier in regard to that Soldier's case. Any accepted medical principles upon which the PEB decision is based must be cited. Variances with the MEB or IPEB decision must be addressed.

k. Soldier election time frame.

(1) Normally, the Soldier will receive the PEB findings at the conclusion of the formal hearing. If this is not possible due to a hearing being conducted by VTC or teleconference, or other extenuating circumstance, the FPEB presiding officer will ensure the findings are forwarded to the PEBLO and the Soldier's legal counsel as soon as practicable.

(2) From the date the Soldier receives the FPEB findings, the Soldier has 10 days to make an election, even if a Soldier was initially found fit but is subsequently found unfit.

(3) For good cause, and upon request of the Soldier or his representative, the FPEB presiding officer or PEB president will extend this 10-day period.

(4) In the absence of an approved extension, the Soldier is deemed to have concurred with the FPEB findings and waived any right to appeal the FPEB findings to USAPDA when the PEB does not receive the Soldier's election by the 10th day. The PEBLO must prepare a memorandum stating reasonable efforts have been made to contact the Soldier.

l. Election options and impact of a statement of appeal. The Soldier has the following election options to FPEB decisions.

(1) Accept the FPEB decision, permanently waiving their right to appeal the FPEB decision to USAPDA.

(2) Nonconcur with the FPEB decision with the submission of a statement of appeal (also called a statement of rebuttal). Provided the same PEB members who composed the FPEB are reasonably available, these same members will consider any subsequent appeal. The FPEB may issue new findings. When this occurs, the Soldier will make an election in the same

manner as for the initial formal decision. When the FPEB determines new findings are unwarranted, the FPEB must provide a written response to the Soldier. This response will address each issue in an orderly and itemized fashion and discuss the reasons it did not change its findings. The FPEB will then forward the Soldier's case to USAPDA for a mandatory review.

(3) Nonconcur with the FPEB decision without submission of a statement of appeal. The FPEB will forward the case to USAPDA to be processed for final disposition. However, the case remains subject to a mandatory or quality assurance review by USAPDA.

(4) Accept or request reconsideration of the VA preliminary ratings. If the Soldier submitted a request for reconsideration of VA ratings at the IPEB phase, the Soldier is limited to requesting reconsideration of a VA rating on any new condition determined to be unfitting by the FPEB. The Soldier has 10 days from receipt of FPEB findings to submit a request for reconsideration of the rating.

(5) RC Soldiers may have additional election options concerning a choice between accepting disability severance pay, transfer to the Inactive Status List, or transfer to the Retired Reserve.

m. Conduct of the formal hearing.

(1) Formal hearings are generally closed proceedings given the protections provided by the Health Insurance Portability and Accountability Act and Privacy Act. Observers may be present provided the Soldier consents and the PEB president or presiding officer approves.

(2) At the start of the hearing, the FPEB presiding officer will inform Soldiers of their rights in reference to the FPEB process and under this publication. The presiding officer will announce the names and grades of the FPEB members in order to permit the Soldier to raise any concerns about a member's partiality. The statutory right to a full and fair hearing includes the right to challenge for cause. The presiding officer will excuse and replace any member whose impartiality in the judgment of the presiding officer may reasonably be questioned.

(3) If the member testifies or makes a statement as to information surrounding a restricted report of sexual assault to assist the PEB in a fitness for duty or disability determination, the disclosure to the PEB does NOT cause a restricted report to be considered unrestricted, and all restricted reporting information remains confidential and protected.

(4) If a Soldier fails to appear at the hearing, the FPEB presiding officer will recess the hearing and attempt to determine the reason for the Soldier's absence. If no reasonable excuse is apparent for the Soldier's absence, the hearing will proceed. Appointed Soldiers' Counsel will not be required to represent a Soldier who fails to appear at the hearing absent authorization from their client. The FPEB presiding officer will prepare a memorandum for record detailing their efforts to locate the Soldier.

(5) The Soldier may object to any actions taken or proposed to be taken by the FPEB or to the admission of evidence. When an objection is made, it will be recorded as part of the record. The presiding officer will rule on objections. In advance of ruling on an objection, the presiding officer may recess the hearing in order to consult with the other members. The FPEB members may contact staff members at USAPDA regarding questions on procedures or policy matters of concern to that proceeding. Discussion with those staff members does not disqualify those staff members from reviewing the case at the headquarters level or advising the CG, USAPDA regarding the merits of the case. Military witnesses will not be compelled to incriminate themselves or to answer any question to which the answer might tend to incriminate them.

(6) Following receipt of evidence, the FPEB will recess for deliberation and prepare the DA Form 199-1 with its decision. The FPEB will present its findings in an orderly and itemized fashion with specific attention to each issue. Only members of the FPEB may be present during deliberations.

n. Safeguarding information. In cases where information of a restricted report of sexual assault is required for fitness for duty or disability determination, personnel must safeguard the disclosed information. The protected information is limited to only the information necessary to process fitness for duty or disability determinations for Servicemembers and disclosure shall be limited to the officials participating in the processing and adjudication of medical boards and physical evaluation boards. Receipt of information from a restricted report by personnel involved in the processing of a disability case who are not individuals that can take a restricted report in accordance with DODI 6495.02, shall NOT cause a restricted report to be considered unrestricted, and all restricted reporting information remains confidential and protected. No restricted report information received during the processing of a PEB case may be divulged outside the PEB without proper authority.

4-25. Mandatory and quality assurance review by the U.S. Army Physical Disability Agency

a. Mandatory review. The USAPDA will review the following PEB cases before the PEB recommendations and findings are approved for or by the SECARMY or higher authority, as applicable. This review is part of the adjudication process for these cases and may result in those actions described in paragraph 4-25e.

(1) Decision of the IPEB when a Soldier nonconcur with the PEB and provides a timely statement of appeal, the appeal does not result in revised IPEB findings, and the Soldier waived a formal hearing.

(2) Decision of the FPEB when a Soldier nonconcur with the FPEB and submits a timely statement of appeal that does not result in revised FPEB findings.

(3) Cases of general and MC officers found unfit.

(4) Cases in which a voting member of the PEB submitted a minority report at the last level of PEB adjudication.

(5) Cases of Soldiers assigned, or previously assigned, to USAPDA or the PEBs.

(6) Any case previously reviewed by USAPDA and returned to the PEB for reconsideration, rehearing, or request for additional medical information.

(7) Categories of cases designated by the CG, USAPDA for review prior to final disposition of the case.

b. Quality assurance review. The USAPDA will conduct a quality assurance review on a sample of IPEB and FPEB cases that were not appealed and do not fall in a mandatory review category. A quality assurance review need not occur before the case is approved for or by the SECARMY. However, if the review is conducted before the Soldier's effective date of disability separation or retirement, the case is subject to the actions described in paragraph 4-25e.

c. Scope and purpose of review. The review will be confined to the case records, medical file or documentation, and related evidence received from the PEB. The purpose of the review is to ensure the criteria listed below are met. When the USAPDA review determines that the case file is missing information essential to satisfy these criteria, USAPDA should return the case to the PEB to conduct the required fact finding.

(1) The Soldier received a full and fair hearing.

(2) The proceedings of the MEB and PEB were conducted according to regulations.

(3) The findings of the MEB and PEB were just, equitable, supported by substantial facts, and in keeping with the provisions of law and regulations. The review of these findings does not include the disability rating percentage for those cases in which the rating percentage was assigned by the VA.

(4) Due consideration was given the facts and requests contained in the rebuttal to the PEB findings and recommendations submitted by, or for, the Soldier being evaluated.

(5) Records of the case are accurate and complete.

d. Receipt of outside information.

(1) If information and/or evidence is received during the review, USAPDA will include it within the Soldier's case file. The USAPDA will annotate documents received as to date of receipt, their source, and how they were used. Provided these documents did not originate from the Soldier or Soldier's counsel, USAPDA will provide a copy of these documents to Soldier and their attorney.

(2) The USAPDA will prepare a memorandum for record for discussions of the case with personnel outside of USAPDA. The USAPDA will provide the Soldier and their attorney with a copy of any such memorandum for record.

e. Action authorized. Based upon review of the PEB proceedings, USAPDA may take one or more of the following actions:

(1) Approve the PEB finding and recommendations for the SECARMY, except where approval is reserved for higher authority.

(2) Make administrative changes or corrections. An administrative change is one that does not—

(a) Change the disability disposition.

(b) Change a finding of unfit to fit for any condition adjudicated.

(c) Change any VA ratings.

(d) Change or delete a diagnosis or condition, to include any of multiple conditions that correspond to a specified DA Form 199 VASRD diagnostic code number.

(e) Vacate or substantively modify a favorable administrative determination.

(3) Return the case to the PEB for reconsideration, clarification, further investigation, a formal hearing, return of the case to the MTF, or other action when the case records show such action is in the best interests of the Soldier and/or the Army. The USAPDA will prepare a detailed explanation for the reasons for return of the case to the PEB.

(4) Issue revised findings.

f. Physical evaluation board reconsiderations resulting from U.S. Army Physical Disability Agency review. In the situation described below, the CG, USAPDA, will review the case and determine whether to refer the Soldier's case to the U.S. Army Physical Disability Appeal Board (APDAB) for final determination.

(1) The USAPDA returned the case to the PEB for the PEB to reconsider its findings and recommendations.

(2) The PEB revised its findings and recommendations.

(3) The Soldier nonconcur with the PEB's revised findings and recommendations with a timely statement of rebuttal.

(4) The subsequent USAPDA review affirmed the PEB's revised findings and recommendations.

g. Revised findings. The USAPDA will take the following actions when revising PEB findings and recommendations (DA Form 199 or DA Form 199-1, as applicable).

(1) Document the revised findings on DA Form 199–2 (U.S. Army Physical Disability Agency (USAPDA) Revised Physical Evaluation Board (PEB) Proceedings (EGA)). The revised findings will convey the rationale for the revision in an orderly and itemized fashion with specific attention to the basis for the revision. Any accepted medical principles upon which USAPDA relied must be cited.

(2) The USAPDA will forward the revised findings to the responsible PEBLO (or RC referring organization, as applicable). The PEBLO will deliver these findings to the Soldier. The PEBLO will advise the Soldier that the USAPDA must receive their election or rebuttal to the revision within 10 days from the Soldier's receipt of the revised findings, unless the Soldier requests an extension, and USAPDA receives and approves the extension within the same time frame. A Soldier who has not previously had a FPEB may demand or request, as applicable, a FPEB in accordance with paragraph 4–23.

h. Consideration of Soldier's election and rebuttal. After considering the Soldier's election and rebuttal to the revised findings, USAPDA will make one of the following determinations:

(1) Accept the rebuttal, issue new findings and recommendations according to the rebuttal, and issue instructions for final disposition.

(2) Concur with the original recommendations of the PEB and issue instructions for final disposition.

(3) Adhere to the revised findings and recommendations and forward the case file to the APDAB.

i. Revised findings due to revised line of duty determinations. The USAPDA revised findings resulting from the reversal of a favorable LOD determination by the HRC LOD section (AHRC–PDC–C) are ineligible for appeal to the APDAB. The Soldier remains eligible to appeal the unfitness determination to USAPDA and to request a FPEB if the Soldier has not had a formal hearing.

j. Reserve Component reviewer. To comply with the provisions of 10 USC 12643, a member of the RC must participate in the USAPDA review of an RC case reviewed on appeal, as a mandatory review case or when a quality assurance review recommends an action on the case. The RC reviewer need not be of the same component or duty status as the Soldier's case under review.

k. Approval authority for revised findings. The CG, USAPDA, is the approval authority for any modification of PEB findings, unless the decision is reserved for higher authority.

l. Response to Soldier appellate reviews. The USAPDA will inform the Soldier as well as the Office of the SPEBC (for cases involving appointed Soldiers' Counsel only) in writing of the outcome of the Soldier's appeal to USAPDA. When the Soldier's rebuttal to the USAPDA is the same as the rebuttal the Soldier sent the PEB, and provided the USAPDA determines the PEB's written response addressed the Soldier's issue in an orderly fashion with specific attention to each issue presented, the USAPDA may incorporate, by reference, the PEB's response. Otherwise, the USAPDA will respond to the Soldier's appeal and address each of the Soldier's contentions in an orderly fashion with specific attention to each issue presented.

4–26. Appellate review by the Army Physical Disability Appeal Board

a. General. The APDAB is a component of the Army Review Boards Agency. The APDAB reviews only cases in which USAPDA issued a revision to the Soldier's PEB findings and recommendations, the Soldier nonconcurred with the USAPDA revision, and the Soldier submitted a timely appeal. The Soldier is not eligible to appeal to APDAB when USAPDA makes an administrative correction to the Soldier's case, or when the USAPDA affirms the PEB findings and recommendations, unless the USAPDA affirmed PEB findings in a case where the USAPDA earlier returned a case to the PEB resulting in a revised PEB decision unfavorable to the Soldier. (Administrative corrections are addressed in para 4–25e.) In the situation of a USAPDA revision, the APDAB review is the final level of Soldier's appeal before disposition of the Soldier's case.

b. Scope. The APDAB will determine whether—

(1) The Soldier received a full and fair hearing.

(2) The proceedings conformed to laws, governing DOD issuances, and Army regulations.

(3) The USAPDA revision is supported by the applicable standard of evidence for the category of determination.

c. Authorized action. The APDAB will fully review the case and may take one of the actions listed below. The decision of APDAB is final. The Soldier does not have an election or rebuttal to the final decision of APDAB.

(1) Concur with the USAPDA revision and return the case to USAPDA for final processing.

(2) Return the case to USAPDA for reconsideration. If, after initial review, APDAB discovers issues or material evidence that it is of the opinion that USAPDA did not adequately address or comment on in their revision, the case will be returned to USAPDA for reconsideration. The APDAB will include specific written issues that USAPDA needs to address in their reconsideration. If the case does not need to be returned for additional medical evidence, USAPDA will reconsider the case within seven days.

(3) Nonconcur with the USAPDA revision and issue final findings to USAPDA.

d. Limitations.

(1) Any change to a USAPDA revision by APDAB affecting the ratings, disposition, or administrative findings must include specific findings and conclusions regarding the basis of APDAB's changes on all material issues of fact, law (DOD issuances and/or Army regulations), or discretion.

(2) The APDAB does not have final appellate review authority concerning the situations listed below.

(a) The MEB determination that a Soldier does or does not meet the medical retention standards of AR 40-501.

(b) A determination by the Secretary of Defense (SECDEF) pursuant to 10 USC 1216 overturning the unfit finding on a general or MC officer (see para 4-28). However, the officer remains entitled to APDAB review when the officer non-concurs with a USAPDA revision of their findings.

4-27. Final disposition by U.S. Army Physical Disability Agency

a. Disposition authority and action. Unless reserved for higher authority, USAPDA approves disability cases for the SECARMY and issues the disposition instructions to the Transition Center for Soldiers separated or retired for physical disability from an active duty status. The USAPDA publishes the disability orders on Soldiers of the USAR and ARNG who are not on active duty.

b. Disability cases requiring action by higher authority. With respect to cases of general and MC officers determined unfit at career end, the disability findings must be approved by the SECDEF, or his designee (see para 4-28).

c. Dispositions.

(1) *Permanent disability retirement.* This disposition is directed under 10 USC 1201 or 10 USC 1204, as applicable, when the Soldier is determined unfit for continued service and has a compensable disability in accordance with the standards of this regulation, and—

(a) The disability(ies) are permanent and stable or, subject to the requirements in chapter 5 concerning certain mental diagnosis, the disability rating will not improve to less than 80 percent.

(b) The Soldier has at least 20 years of service as computed under 10 USC 1208 (see DA Pam 635-40 for explanation of this computation).

(c) The Soldier has a combined disability rating of at least 30 percent.

(2) *Placement on the temporary disability retired list.* This disposition is directed under 10 USC 1202 or 10 USC 1205, as applicable, when the years of service or percentage requirements for permanent disability retirement are met but the disabilities are not determined to be permanent and stable.

(3) *Separation with disability severance pay.* This disposition is directed under 10 USC 1203 or 10 USC 1206, as applicable, when the Soldier is unfit due to a compensable physical disability determined under the standards of this regulation, and—

(a) The Soldier has less than 20 years of service computed under 10 USC 1208.

(b) The Soldier's combined disability rating is less than 30 percent, to include a rating of zero percent.

(4) *Separation for disability without entitlement to disability severance pay.*

(a) This disposition occurs under other than 10 USC Chapter 61 (10 USC 630, 10 USC 1165, 10 USC 1169 and 10 USC 12681) when the Soldier is determined unfit for a disability determined to be pre-existing and not permanently aggravated by service, or the Soldier is unfit for a disability incurred in an excess leave status other than for an emergency reason as determined by the SECARMY.

(b) This disposition is directed under 10 USC Chapter 61 (10 USC 1207) when the disability was incurred as a result of intentional misconduct, willful neglect, or during a period of unauthorized absence.

(5) *Revert to retired status with disability benefits.* This disposition applies when a retiree for regular or non-regular service is determined unfit for a disability rated at least 30 percent. (Revert to retired status without disability benefits applies if the rating is less than 30 percent.)

(6) *Fit.* The disposition of fit with return to duty applies to all Soldiers found physically fit. The USAPDA will publish a memorandum to the Soldier with copy furnished to the Soldier's command announcing fit as the approved finding. (For Soldiers on the TDRL, return to duty is subject to the Soldier's consent and meeting other requirements. See para 4-33.)

(7) *Disposition for Reserve Component determined unfit under the non-duty related process.* The disposition will be, "Unfit -- referred for case disposition under RC regulations."

d. RC Soldiers separating with or without disability severance pay.

(1) *10 United States Code 1209 election.* Under the provisions of 10 USC 1209, Ready Reserve Soldiers who have completed at least 20 qualifying years of Reserve service and who would otherwise be qualified for retirement for non-regular service may forfeit disability severance pay and request transfer to the Inactive Status List for the purpose of receiving non-disability retired pay at age 60 or at the age otherwise authorized by law. The USAPDA extends this election to the Ready Reserve Soldier being separated without entitlement to severance pay with 20 qualifying years. The Soldier will be afforded the opportunity to make their election when making elections to PEB or USAPDA findings.

(a) The election will include the election to be transferred to the Retired Reserve in lieu of placement on the inactive status list. (Soldiers in the Retired Reserve receive continued service longevity.)

(b) The PEBLO will advise the Soldier that they—

1. Forfeit all rights to future non-regular retired pay and a retired status when disability severance pay is accepted.
2. The election becomes irrevocable on the date of the Soldier's separation.

(c) Soldiers of the Regular Army who may have completed 20 good years or otherwise have a 20-year letter are not authorized an election under 10 USC 1209. The Soldier may be released from active duty to the IRR and request transfer to the Retired Reserve.

(2) *Election for 15-year notice of eligibility.* RC Soldiers who are members of the Selected Reserve and have a disability disposition of separate with or without disability severance pay will be afforded the opportunity to make an election to transfer to the Retired Reserve under the provisions of 10 USC 12731b as set forth below.

(a) A finding of unfit by the PEB or USAPDA is required for eligibility for the 15-year notice of eligibility when—

1. The RC Soldier's disability was incurred in the LOD or is compensable under the provisions of 10 USC 1207a.
2. The RC officer is an obligated RC participant in the Health Professions Scholarship Program Financial Assistance Program.

(b) The Selected Reserve Soldier is ineligible for the election if—

1. The disposition of separation without entitlement to disability severance pay is due to disability determined to be the result of the Soldier's intentional misconduct, willful negligence, or was incurred during a period of unauthorized absence.
2. The HRC determines that the Soldier's disability was due to willful failure to comply with standards and qualifications for retention established by the SECARMY or that the Soldier was not qualified to continue in the Ready Reserve for nondisability reasons.

4–28. Final decision authority for unfit findings on certain general and medical corps officers

a. Under the provisions of 10 USC 1216, the SECDEF has final approval authority on unfit findings of a general or MC officer when and, at the time of referral for physical disability evaluation, they were (or scheduled for) processing for retirement under any provisions of 10 USC by reason of age or length of service.

b. The Assistant Secretary of Defense for Health Affairs will provide to the SECDEF a recommendation concerning the officer's fitness.

c. To be considered "processing for retirement by reason of age or length of service," the officer's case must require adjudication under the presumption of fitness rule. (See Section I of chapter 5 of this regulation.)

4–29. Final disposition for unfit Soldiers on active duty with 18 but less than 20 years active Service

The provisions of law in 10 USC on the retention of Soldiers on active duty after they complete 18 but less than 20 years of active Service vary in addressing application to Soldiers who are determined unfit due to physical disability. In the interest of equity and uniformity across all components, these Soldiers will be dispositioned as set forth below.

a. *Secretarial review.*

(1) A Soldier on active duty will be provided Secretarial review when the disposition of their case is one of the following:

(a) Separation with entitlement to disability severance pay.

(b) Separation without entitlement to disability benefits. (Normally, Soldiers are ineligible for referral to the DES for disability due to intentional misconduct, willful negligence, or incurred during a period of unauthorized absence or was incurred in an excess leave status not covered under 10 USC Chapter 61 (see para 4–3h). However, in the event the Soldier's case is accepted and completes DES evaluation, Secretarial review is required.)

(2) A Soldier may waive Secretarial review by submitting a written statement to the USAPDA in which they attest their desire to waive this process and to proceed with their disability disposition.

b. *Process requirements for Secretarial review.*

(1) The USAPDA is responsible for ensuring a service computation is performed by the appropriate transition center to confirm the Soldier meets the 18, but less than 20, year criterion.

(2) The USAPDA will submit the case through the DCS, G–1 (DAPE–MPE) to the Assistant Secretary of the Army (Manpower and Reserve Affairs) for final approval or disapproval to separate the Soldier or to defer disability disposition until the Soldier obtains 20 years of active Service.

c. *Retention under Secretarial review.* When the Assistant Secretary of the Army (Manpower and Reserve Affairs) directs that a Soldier pending separation with or without entitlement to disability benefits be retained to 20 years of active Service, the Soldier will be managed as a COAD.

d. Retirement after retention under Secretarial review. Generally, Soldiers retained as a result of Secretarial review will be retired effective the first day of the month after the Soldier attains 20 years active Service. Any referral back to the DES for final disability evaluation before retirement will be in accordance with the provisions of paragraph 6–9.

(1) A Soldier initially entitled to disability severance pay will generally be retired for permanent disability with the disability rating percentage initially awarded.

(2) A Soldier may waive disability retirement for regular retirement.

(3) A Soldier whose initial disability disposition was separation without entitlement to benefits will retire for length of service.

e. Delegation of disposition authority. The CG, USAPDA is delegated final disposition authority for the dispositions listed below.

(1) Permanent disability retirement.

(2) Placement on and removal from the TDRL.

(3) A case otherwise requiring Secretarial approval when the Soldier submits a written statement to the USAPDA in which they attest their desire to waive this right and to proceed with their disability disposition.

4–30. Grade on retirement or separation for physical disability

The grade at which a Soldier is retired or receives disability severance pay will be the highest of the options listed below in accordance with the provisions of 10 USC 1212 and 10 USC 1372, respectively, and as implemented by AR 15–80 for determinations of highest grade satisfactorily held.

a. Current grade. No time-in-grade is required.

b. Highest grade satisfactorily held. In accordance with AR 15–80, Soldiers determined unfit who are not currently serving in the highest grade served will be referred by the USAPDA to the Army Grade Determination Review Board, unless the Soldier is entitled to a higher or equal grade by operation of law (10 USC 1212 and 1372) or the Soldier upon being advised of his entitlement to a review fails to submit matters. If a Soldier referenced in this paragraph does not receive a review by the Army Grade Determination Review Board before the placement on the disability retired list, separation with severance pay for disability, or receives a review and is dissatisfied with the determination, the Soldier may apply to the Army Board for Correction of Military Records for a review of their retired grade.

c. Grade to which the Soldier would have been promoted had it not been for the physical disability for which the Soldier was determined unfit. In general, this provision pertains to Soldiers on a promotion list. For Active Army and RC enlisted disability cases, this option is implemented under the provisions of AR 600–8–19. For Active Army and RC officers, upon USAPDA confirming that the officer meets the requirements below, as applicable, the officer's orders will list the higher grade at the order's lead line for retired grade. Promotion orders are not issued.

(1) The officer is on an approved (and confirmed, if required) promotion list prior to the effective date of transfer to the retired list. Officers recommended for automatic promotions to first lieutenant and chief warrant officer two must be beyond the minimum time-in-grade requirement prior to the effective date of the transfer. ARNG officers selected for promotion by a Federal Recognition Board must be on a promotion nomination scroll approved by the Deputy Secretary of Defense or have received Senate confirmation, if recommended for promotion to colonel or higher, prior to the effective date of transfer to the retired list. Active Army officers will be transferred in the higher grade whether or not the promotion sequence number has been reached on the date of transfer.

(2) The officer must not be serving under a suspension of favorable personnel action on the effective date of transfer.

4–31. Transition benefits and pre-separation counseling

a. Soldiers who are on active duty when separated or retired for disability are entitled to the transition benefits established by DODI 1332.35 as modified by Directive-Type Memorandum 12–007 unless waived by DOD or prohibited by Federal law. The 180-day transitional health care benefit is applicable to disability separation with entitlement to disability severance pay.

b. Upon the Soldier's referral to the MEB (as defined in para 4–1e), the Soldier will begin the Soldier for Life – Transition Assistance Program. Soldiers assigned and/or attached to a Warrior Transition Unit and/or Community Care Unit that are medically unable to complete Soldier for Life – Transition Assistance Program may have the process waived, in writing, by their commander.

c. Soldiers ordered to active duty for more than 30 days will not be separated or retired because of physical disability prior to completion of pre-separation counseling (transition counseling) as provided for by 10 USC 1142. The counseling should normally be accomplished 90 days before separation; however, the law does not prohibit separation or retirement for disability cases within the 90-day period.

4–32. Procedures for cases referred under the legacy process

- a. The PEB president will not request proposed VA ratings from the VA for each condition found to be unfitting.
- b. The PEB will determine the disability rating to be applied to each condition found unfitting and compensable, using the VASRD to make this determination.
- c. See paragraphs 4–2 and 4–18.

4–33. Temporary disability retired list

a. *General.* In accordance with 10 USC 1376, the SECARMY is required to maintain a list of Soldiers placed on the TDRL. The USAPDA maintains this list and manages Army Soldiers on the TDRL for the SECARMY.

b. *Criteria for placement on the list.* Under the provision of 10 USC 1202 and 10 USC 1205, Soldiers will be placed on the TDRL when they would be qualified for permanent disability retirement and the preponderance of evidence indicates one or more conditions will change within the next five years so as to result in a change in rating or a finding of fit. See chapter 5 for the standards for this determination.

c. *Statutory requirement for re-evaluation.*

(1) In accordance with 10 USC 1210, the Army DES will re-evaluate each Soldier placed on the TDRL at least once every 18 months. Evaluation may be sooner.

(2) The SECARMY will make a final determination of the case of each Soldier whose name is on the TDRL upon the expiration of five years after the date when the Soldier's name was placed on that list. If, at the time of that determination, the physical disability for which the Soldier was placed on the TDRL still exists, it will be considered to be permanent and stable.

(3) Placement on the TDRL confers no right to remain on the TDRL for the entire five-year period authorized by 10 USC 1210.

d. *Refusal or failure to report for periodic re-examination or to comply with related requirements.*

(1) When a Soldier on the TDRL refuses or fails to report for a required periodic physical examination or to provide their military and DA Civilian medical records, their disability retired pay may be suspended. Further, if the Soldier on the TDRL fails to inform USAPDA of current contact information and USAPDA is unable to contact the Soldier to schedule the re-evaluation, disability retired pay may be suspended.

(2) Soldiers on the TDRL who have waived retired pay to receive compensation from the VA are still required to undergo TDRL examination when directed by USAPDA.

(3) Soldiers on the TDRL with the requisite number of years to qualify for nondisability retirement remain subject to termination of retired pay and administrative removal from the TDRL for noncompliance with required periodic re-examination.

(4) In accordance with 10 USC 1210(a), if the Soldier later reports for the physical examination and provided the Soldier has not been administratively removed from the TDRL, retired pay will be resumed retroactively, to the date the examination was actually performed. If the Soldier subsequently shows just cause for their failure to report, as determined by USAPDA, disability retired pay may be paid retroactively. If payments are so resumed, they may be made retroactive for not more than one year.

(5) If the Soldier does not complete a required periodic physical examination, the Soldier generally will be administratively removed from the TDRL on the fifth anniversary of placement on the list and separated without entitlement to benefits under 10 USC Chapter 61. However, if the final re-evaluation was not completed due to no fault of the Soldier, the final PEB determination will be made later than the five-year mark but will be backdated so as to be effective the day after the five-year mark.

(6) There is no provision under 10 USC 1210 to extend the receipt of TDRL retired pay past the fifth year.

(7) There is no provision under 10 USC 1210, or other statute, to extend the expiration period of the Soldier's identification cards and those of the Soldier's dependents. The Soldier remains eligible for military examinations, consultations, and procedures required for completion of the TDRL periodic examination or PEB adjudication. Any other medical care, to include medical care for the Soldier's dependents, will require approval of Secretarial designee status for the Soldier and their dependents. (See AR 40–400.) The Soldier should contact the MTF Patient Administration Division if designee status is needed.

e. *Re-evaluation.*

(1) Requirements at time of initial retirement.

(a) When forwarding the case to the D–RAS, the case will include a medical assessment prepared by a DOD clinician, stating whether each unfitting condition will most likely improve, remain stable, or worsen based on accepted medical principles and the clinician's findings.

(b) For cases that initially received ratings from D–RAS, the PEB will use the future examination requirements set by the D–RAS as an indicator of stability when making the PEB's recommendations of stability determinations and case

disposition. If the PEB decides to temporarily retire a Soldier for disability for whom the D-RAS has not scheduled a future examination within 18 months of the Soldier being placed on the TDRL, the Army will execute required TDRL examinations and ratings in accordance with 10 USC 1210.

(2) Review of medical documentation prior to re-evaluation.

(a) No later than 16 months after temporarily retiring a Soldier for disability or after the Soldier's previous re-evaluation, USAPDA will obtain and review available DOD medical treatment documentation, VA or Veteran-provided medical treatment or disability examination that occurred within 16 months of being placed on the TDRL, and rating documentation. If the documents reviewed are deemed sufficient and consistent with the requirements of 10 USC Chapter 61, USAPDA may rely on that documentation to determine whether there has been a change in disability(ies) for which the Soldier was temporarily retired without the requirement for additional physical examination. The USAPDA will review the available evidence to determine if the documentation is sufficient to:

1. Fully describe the unfitting unstable condition(s) for which the Soldier was placed on the TDRL, the current status of such disabilities, the progress of the disability, and a suggested time frame (not to exceed 18 months) for the next determination.

2. Fully describe, including treatment and etiology, any new disability that was caused by or directly related to the treatment of a disability for which the Soldier was previously placed on the TDRL.

(b) If the current information is not sufficient but the Soldier is scheduled for a VA examination within the period required for PEB adjudication, USAPDA may wait until after the re-examination has been conducted and evaluate it for sufficiency for PEB TDRL re-evaluation.

(c) When a Soldier on the TDRL has filed an appeal of a VA decision and the appeal resides with the Board of Veterans Appeals or Court of Appeals for Veterans Claims, USAPDA will obtain from the VA a copy of the most current rating and medical evidence available. The USAPDA will review the available medical evidence to determine if the documentation is sufficient to conduct the TDRL re-evaluation process without the requirement for a physical examination of the Soldier. If USAPDA determines that the Veteran requires a medical re-examination, USAPDA will coordinate the required actions for Army to meet the 18-month examination requirement of 10 USC 1212. The Soldier will be given the opportunity to review and comment on the report of examination before it is forwarded to the PEB.

(3) Medical information sufficient for re-evaluation.

(a) If the evidence obtained from the VA, or other source, is sufficient to rate the Soldier without further re-examination, USAPDA will notify the Soldier in writing of the following:

1. Identify the documentation from the VA (or other source) examination to be provided to the PEB for adjudication.
2. Advise that the PEB will only rate the unstable condition(s).
3. Advise that other conditions that were found unfitting at the time of placement on the TDRL and were determined to be stable at that time will have the rating for the condition carried forward into the new ratings to be issued by the PEB.
4. Advise on the rules for finding compensable new unfitting conditions.

(b) The USAPDA will forward the medical information and any Soldier provided information to the PEB.

(c) The PEB will adjudicate the case in accordance with the adjudicative policy of chapter 4.

(d) The PEB will issue findings and forward those findings to the PEBLO.

(4) Current medical information insufficient for re-evaluation.

(a) If a re-examination is not scheduled or the pending examination is not timely, USAPDA will direct that MEDCOM complete a re-examination on the Soldier. The USAPDA memorandum will identify to MEDCOM the unstable conditions to be re-evaluated and any new conditions. The MEDCOM re-examination will meet the minimum criteria of the VA medical examination.

(b) The USAPDA will notify the Soldier in writing of the pending scheduling of the examination. This notification will at a minimum include the following information:

1. Advise the Soldier of the medical conditions to be examined.
2. Advise the Soldier of the basis for any new conditions to be included in the examination.
3. Advise on reimbursable travel.

(5) Report of medical re-examination.

(a) The report requires only the signature of the medical officer or physician appointed to conduct the medical examination. If the condition is a psychiatric diagnosis, the report will include a psychiatrist (who is authorized to sign the report as the medical officer) or a clinical psychologist with a doctoral degree in psychology (psychologist is not authorized to sign the report as the medical officer). After review and approval of the report by a medical officer, the report is forwarded to the MTF commander, or their designee, for review and approval.

(b) The MTF commander will give the TDRL member the opportunity to review and comment on the report of examination before forwarding it to the PEB. The TDRL member will sign the report of examination acknowledging receipt. If

the TDRL member does not agree with the report of examination, the MTF commander will review and act on any objections. The MTF commander has the right of final approval; however, any written appeal or objection prepared by or for the TDRL member will be attached to the medical examination report.

(c) The MTF commander, or their designee, will approve and forward the report to the servicing PEB.

(d) The report must address the elements listed below.

1. The TDRL member's identification.

2. Sources and references.

3. Diagnosis list. In this section, the TDRL examiner lists all applicable diagnoses the PEB initially found unfitting and unstable and new, related conditions.

4. Evaluation of section three diagnoses. In general, the TDRL examiner completes a separate VA worksheet examination, impact statement, and prognosis statement for each distinct diagnosis. However, for closely related conditions that were combined into one disability rating or where the same VA worksheet examination or disability benefits questionnaire applies, the TDRL examiner may combine related conditions within one of the elements listed below. The TDRL examiner will complete the rationale for relationship described below for each new, related condition.

a) VA worksheet examination(s) or disability benefits questionnaires.

b) Impact on duty performance. The TDRL examiner describes required duty limitations (were the TDRL member to return to duty) and profile limitations (as compared to the initial MEB). The TDRL examiner discusses whether and how this condition would impact duty performance in the TDRL member's PMOS or AOC. In making these findings, the TDRL examiner will consider whether the condition has progressed or responded to treatment while on the TDRL.

c) Prognosis statement. Based on the TDRL member's maximum TDRL tenure and response to treatment, disease progression, and general medical principles, the TDRL examiner offers an opinion regarding the TDRL member's prognosis for change for each condition. The TDRL examiner chooses one of the following prognosis statements: likely to improve to permit full duty performance; likely to significantly deteriorate; unlikely to either improve to permit return to duty or to significantly deteriorate; or cannot opine without resort to mere speculation. The TDRL examiner provides their supporting rationale.

d) Rationale for relationship. In this section, the TDRL examiner discusses the basis for their conclusion that the condition is related to one or more section 3 diagnoses and/or treatments.

5. Mental competency statement, when applicable. In this section, the TDRL examiner identifies the diagnosis(es) which could potentially impact a TDRL member's mental competency. The TDRL examiner indicates whether the TDRL member is mentally competent for pay purposes; capable of understanding the nature of, and cooperating in, PEB proceedings; and/or, dangerous to themselves or others. When necessary, the TDRL examiner includes other relevant discussion.

6. Noncompliance, when applicable. The TDRL examiner completes this section when it appears the TDRL member has been noncompliant with treatment. In making this determination, the TDRL examiner considers such factors as:

a) Whether declined treatment will relieve the TDRL member's incapacity and permit their return to duty;

b) Whether declined treatment is an established procedure that qualified and experienced doctors would ordinarily recommend and undertake.

c) Whether the TDRL member's reasons for declining treatment are due to risks ordinarily associated with the declined treatment; the TDRL member's age; general physical condition; previous unsuccessful operations and procedures; and special risks involved in the proposed medical treatment. When it appears the TDRL member has been noncompliant, the TDRL examiner discusses the foregoing considerations and their basis for this initial finding. When the TDRL examiner believes the declined treatment would significantly improve the condition but would not permit the TDRL member to return to duty, the TDRL examiner describes and/or discusses the extent to which the condition would likely be improved were the TDRL member to accept the treatment. With reference to general medical principles, medical literature, and so forth, the TDRL examiner includes the foundation for this assessment. The TDRL examiner will forward any case to the Office of TSG and/or MEDCOM IDES service line where it appears the TDRL member has been noncompliant with treatment, because TSG makes the ultimate determination of whether the TDRL member's noncompliance is "unreasonable."

7. Comprehensive examination (selected IDES cases). The IDES TDRL examiner includes a comprehensive examination only when the PEB initially determined each of the TDRL member's unfitting, compensable conditions were unstable, and the TDRL examiner now concludes each previously unstable condition has sufficiently improved to permit the TDRL member's return to duty. The TDRL examiner will obtain a review of systems and perform a physical examination. The TDRL examiner may use the VA General Medical Examination Worksheet, the DD Form 2807-1 and DD Form 2808 (Report of Medical Examination), or other standard comprehensive examination (to include review of systems) protocol. This may be hand-written in part or in whole and must be included within the TDRL report. After completing the examination, the TDRL examiner identifies and discusses those conditions, if any, that would interfere with duty performance or require profile limitations.

(6) Final ratings.

(a) Once the PEB finds each condition is stable, the PEB will assign a final rating that includes the ratings for the disabilities determined to be permanent and stable when the Soldier was placed on the TDRL or during preceding TDRL adjudications in the case of multiple retentions on the TDRL. After five years, the PEB will consider all remaining unfitting and unstable conditions to be permanent and stable.

(b) When the PEB rates the case, the ratings will be under the VASRD in effect at the time of the current TDRL adjudication.

f. *Soldiers incarcerated when re-evaluation is required.* A report of medical examination, if required, will be requested from the appropriate confinement authorities in the case of a Soldier on the TDRL who is imprisoned by civil authorities. In the event that no report, or an inadequate report, is received, documented efforts will be made to obtain an acceptable report. If an acceptable examination is not received, the Soldier will be processed as a failure to report for TDRL re-examination.

g. *Administrative finality in adjudication.* See the compensability section of chapter 5.

h. *Compensability of new diagnoses.* See the compensability section of chapter 5.

i. *Formal hearing and legal assistance and representation.*

(1) Soldiers on the TDRL who disagree with the findings of the IPEB, other than a finding of retention on the TDRL, are entitled to a formal hearing without regard to whether the IPEB determined the Soldier fit or unfit.

(2) Soldiers on the TDRL are entitled to legal representation the same as for PEB adjudication before their placement on the TDRL.

(3) Soldiers on the TDRL may consult with a SMEBC when given the opportunity to review and comment on the report of examination before the examination is forwarded to the PEB.

j. *Travel entitlements.*

(1) The Soldier is authorized reimbursement for travel costs associated with travel to a required periodic examination and to the FPEB hearing. Soldier's travel costs are funded in accordance with the JTR. All travel must be approved in advance by USAPDA.

(2) If medically required, a relative or friend can accompany a Soldier to the exam or to the formal hearing as a non-medical attendant. The attendant's travel is funded in accordance with the JTR. If a private conveyance is used for travel, only the retired Soldier may be reimbursed for transportation costs. Requests must be made in advance to USAPDA with accompanying medical documentation citing the need for a non-medical attendant and signed competent medical authority. Requests for attendant must be made and approved in advance of the travel by the Deputy Commander, USAPDA or designee. The PEB will include as part of its initial written communication (Formal Board Memorandum) advising the Soldier of his hearing's time, place, uniform, and that non-medical attendees may be entitled to funded travel under the JTR if medically required and requests are submitted and approved in advance of the travel by the Deputy Commander, USAPDA or designee.

k. *Removal from the temporary disability retired list.* (See para 4–27.)

l. *Return to military status upon a finding of fit.*

(1) Under the provisions of 10 USC 1210, a Soldier determined fit as a result of a periodic TDRL re-evaluation, who was required to be discharged, retired, or eliminated from an active status (active duty) when placed on the TDRL, is ineligible to be returned to active status under 10 USC 1211. An example of this situation is an officer who was pending REFRAD due to nonselection for promotion when placed on the TDRL.

(2) Soldiers are not required to complete a former military Service obligation under the provisions of 10 USC 1210.

(3) Subject to their consent, former Active Army officers and warrant officers who are determined fit will be returned to active duty, if otherwise qualified.

(4) Subject to their consent and if otherwise qualified, former Regular Component enlisted Soldiers, who are determined fit, will be enlisted in the regular component in the grade held on the day before the date placed on the TDRL or in the next higher grade. The Soldiers may request, but have no statutory right, to return as a member of the RC. (See AR 600–8–19 for grade determinations for these Soldiers.)

(5) Former Soldiers of the USAR, subject to their consent, will be reappointed or reenlisted in the USAR in the grade held on the day before the date placed on the TDRL, in the next higher grade, or transferred to the Retired Reserve, if eligible. They may request active duty under USAR regulations; however, they have no statutory right to return to active duty even though they may have been on active duty, to include as AGR, at the time of placement on the TDRL.

(6) Soldiers of the ARNGUS, subject to their consent, may be reappointed or reenlisted in the ARNGUS in the grade held on the day before the date placed on the TDRL, or in the next higher grade, if the proper State authorities reappoint or reenlist them in the ARNG of the State concerned. The ARNG AGRs may request return to the AGR program, but they do not have a statutory right to return to active duty. If the Soldier cannot be reappointed or reenlisted in the ARNG, and

subject to the Soldier's consent, they will be reappointed or reenlisted in the USAR or transferred to the Retired Reserve, if eligible, in accordance with 10 USC 1211.

m. Removal from the temporary disability retired list and termination of retired pay when determined fit.

(1) Soldiers who do not request to return to duty will be removed from the TDRL as soon as possible. The date of removal is the effective date TDRL pay is terminated. However, enlisted Soldiers are entitled to return to their former component, if otherwise eligible, provided they enlist within 90 days or as otherwise specified by AR 601–210, whichever period is earlier.

(2) Former Active Army officers who request return to an active duty status will remain on the TDRL and in receipt of TDRL pay, subject to the five-year limit, until they are reappointed to the active duty list. Removal from the TDRL will occur one day prior to appointment. The USAPDA has discretion to administratively remove the officer from the TDRL if the officer's actions delay reappointment.

(3) Officers of the USAR who request return to RC active status will remain on the TDRL and in receipt of TDRL pay, subject to the five-year limit, while the return to active status is processed. Removal from the TDRL will occur one day prior to return to active status. The USAPDA has discretion to administratively remove the officer from the TDRL if the officer's actions delay their return to active status. The 10 USC 1211 does not entitle USAR officers to remain on the TDRL for the processing of a request to return to active duty, notwithstanding that the officer may have been on active duty preceding placement on the TDRL.

(4) Enlisted Soldiers who elect return to active duty (Component 1) or active Reserve status (Component 2 and 3) must contact their local recruiting office within 15 days of being notified of their fit findings. The USAPDA will retain the Soldier on the TDRL with entitlement to retired pay until the day before the Soldier is enlisted. The USAPDA has discretion to administratively remove the Soldier from the TDRL if the Soldier's actions delay their enlistment.

(5) When the Soldier's medical examination determines the Soldier meets medical retention standards for the condition(s) for which they were placed on the TDRL, the medical examination will also address whether the Soldier meets medical retention standards for any other conditions. Also see paragraph 5–20c.

n. Retirement for length of service or non-regular service. Under the provisions of 10 USC 1210, Soldiers determined fit as a result of TDRL re-evaluation or unfit without entitlement to disability benefits and who meet the service requirements for regular or non-regular retirement, as applicable, may request such retirement. These Soldiers must meet the time-in-grade requirements for the grade at which to be retired. As a result, their retired grade for regular or non-regular retirement may be lower than the grade at which they were placed on the TDRL. The USAPDA will coordinate the retirement for length of service with HRC.

o. Removal from the temporary disability retired list of unfit Soldiers. Upon approval of PEB findings of unfit or when administratively removing Soldiers who did not complete a required re-examination, USAPDA will issue orders retiring or separating the Soldier off the TDRL. A DD Form 214 (Certificate of Release or Discharge from Active Duty) is not issued for Soldiers being removed from the TDRL.

4–34. Reserve Component non-duty related process

The RC non-duty related process is established by policy. It affords RC Soldiers not on call to active duty of more than 30 days and who are pending separation by the RC for non-duty related medical conditions to enter the DES for a determination of fitness and whether the condition is duty-related. A LOD investigation resulting in a finding of not in LOD is not required when it is clear that the disqualifying disability is non-duty related. For example, RC Soldier's disqualifying condition is an amputation that was incurred when the Soldier was not in a duty status.

a. Except for the circumstances listed below, referral to the RC non-duty related process is upon the request of the RC Soldier. If the Soldier does not request referral, they are subject to separation for medical disqualification under RC regulations.

(1) All obligated RC officers who have a remaining service obligation from participation in the Health Professional Scholarship Program or Financial Assistance Program.

(2) When the SECARMY or designee directs referral.

b. Soldiers referred to the non-duty related process as an outcome of MAR2 evaluation may waive referral to the DES and be separated for medical disqualification provided—

(1) The RC Soldier does not have a service obligation.

(2) The RC determines that the Soldier's medical condition does not meet medical retention standards. If the condition meets medical retention standards, referral to the PEB is required to determine the Soldier's fitness for retention.

c. In the situation of a RC Soldier having multiple disqualifying conditions, if any one of the conditions was incurred or aggravated in the LOD, the Soldier is not eligible to be processed under the non-duty related process.

d. In the absence of a not in LOD determination made in accordance with AR 600–8–4 for the non-duty related medical condition, the PEB president has the authority to direct the return of the cause for re-referral under the IDES process. Such

action is warranted when the PEB has evidence that the condition was incurred or aggravated in the LOD. For example, the Soldier's military medical records reflect that the condition was incurred or aggravated when the Soldier was in a duty status. In this situation, the PEB terminates the non-duty related case adjudication.

e. An MEB is not required to establish that the Soldier does not meet medical retention standards. However, the medical documentation must be sufficient for the PEB to adjudicate fitness.

f. The PEB will issue its decision on fitness using the applicable DA Form 199, DA Form 199-1, or DA Form 199-2.

g. Medical documentation must provide a clear and adequate description of the medical condition(s) that cause the Soldier not to meet medical retention standards. Cases received by the PEB in which the medical evaluation is inadequate for a determination of fitness by the PEB will be returned to the referring organization with a memorandum documenting the insufficiency.

h. The RC is responsible for counseling RC Soldiers on their right to a PEB. Counseling will also include advising the Soldier that they may consult with an attorney from the OSC at no cost to the Soldier. The RC organization will provide the Soldier the OSC contact information.

4-35. Expedited Disability Evaluation System processing

a. Soldiers with catastrophic injuries or illnesses from combat or combat-related operations incurred in the LOD may request an expedited process to obtain a permanent disability retirement. The Soldier waives DES processing and requests immediate permanent retirement with a combined 100 percent disability rating.

b. The Soldier is eligible for expedited DES (EDES) processing when—

(1) The Soldier has a catastrophic injury or illness. A Soldier's injury or illness may be designated as catastrophic if it is a permanent, severely disabling injury, disorder, or disease that compromises the ability to carry out the activities of daily living to such a degree that the Soldier requires personal or mechanical assistance to leave home or bed, or requires constant supervision to avoid physical harm to self or others.

(2) The catastrophic condition was incurred in the LOD through one of the following:

- (a)* As a direct result of armed conflict.
- (b)* While engaged in hazardous service.
- (c)* Under conditions simulating war.
- (d)* Caused by an instrumentality of war.

c. Primary care managers (PCMs), other medical providers, Federal recovery care coordinators, and PEBLOs will collaborate in identifying Soldiers who are potential candidates for EDES processing. The Soldier's PCM will inform the Soldier that they may be eligible for EDES processing. If the Soldier informs the PCM that they will consider EDES processing:

(1) Soldiers counsel from TJAG will be appointed to advise the Soldier. The Soldier may waive assistance from Soldiers counsel, but any waiver must be in writing.

(2) The PEBLO, the MSC, and a medical provider will jointly inform the Soldier regarding the Soldier's prognosis for return to duty with or without medical waiver, the differences between IDES processing and the EDES process, and that medical care and continuum of recovery will continue under either process. Family members will be invited to attend this informational meeting.

(3) No decisions from the Soldier regarding EDES processing will be solicited or accepted until at least 30 days have elapsed from the date the PEBLO and MSC have informed the Soldier about the EDES process. If the Soldier decides to proceed with EDES processing, they must, in writing, waive processing through the IDES process.

d. Upon consent of the Soldier, the Soldier's PCM will prepare a NARSUM listing all known medical conditions, describing the Soldier's course of medical treatment since injury, current condition, description of the treatment plan and prognosis. The PCM will forward the abbreviated NARSUM to the USAPDA.

e. The USAPDA will determine whether the Soldier is eligible for EDES processing. If so, the USAPDA will take steps to retire the Soldier with a 100 percent disability rating. At any time prior to separation, the Soldier may revoke their decision to use the EDES process and will be processed through the IDES process.

Chapter 5

Adjudicative Policy for Physical Evaluation Board and U.S. Army Physical Disability Agency Determinations

Section I

Policies for Determining Fitness and Permanence and Stability of Unfitting Conditions

5-1. Standard for unfitness due to disability

A Soldier will be considered unfit when the preponderance of evidence establishes that the Soldier, due to disability, is unable to reasonably perform the duties of their office, grade, rank, or rating (hereafter call duties) to include duties during a remaining period of Reserve obligation.

5-2. Duties of office, grade, rank, or rating

For purposes of unfit determinations, the duties of office, grade, rank, or rating will normally be the following duties:

- a. The duties of an officer's branch or specialty code at the officer's current rank.
- b. The duties of an enlisted Soldier's PMOS at the Soldier's current rank and skill level.
- c. The duties of a terminal assignment preceding eligibility for regular or non-regular retirement and the Soldier has no remaining active duty or Reserve obligation.

5-3. General criteria for making unfitness determinations

In making a determination of unfitness, the following criteria may be included in the assessment:

- a. The medical condition represents a decided medical risk to the health of the Soldier or to the welfare of other Soldiers were the Soldier to continue on active duty or in an active Reserve status.
- b. The medical condition imposes unreasonable requirements on the Army to maintain or protect the Soldier.
- c. The Soldier's established duties during any remaining period of Reserve obligation.

5-4. Reasonable performance of duties

a. *General.* With the exception of cases adjudicated under the presumption of fitness rule, determining whether a Soldier's medical impairments preclude the Soldier from reasonably performing their duties will be determined based on the factors below.

b. *Congenital and developmental defects not ratable under the VASRD.* A PEB will not consider conditions and circumstances not ratable under the VASRD.

c. *Common military tasks.* The PEB considers whether the Soldier can perform the common military tasks required for the Soldier's office, grade, rank, or rating, including those duties during a remaining period of Reserve obligation.

(1) As a minimum standard, the functional tasks listed on DA Form 3349 will be considered common military tasks required of all Soldiers.

(2) The PEB will request the MEB clarify MEB case file inconsistencies relating to recorded DA Form 3349 limitations when such inconsistencies prevent the PEB from rendering a fitness finding. The PEB request and MEB response will be added to the Soldier's case file.

d. *Army Physical Fitness Test.* The PEB considers whether the Soldier is medically prohibited from taking the Army Physical Fitness Test (APFT).

(1) Generally, when the Soldier's DA Form 3349 precludes all aerobic events of the APFT, the Soldier will be determined unfit. However, when a finding of fit is warranted, the inability of the Soldier to pass the APFT will not form the basis for administrative separation of the Soldier.

(2) Inability of the Soldier to perform all of the required events of the standard APFT or to participate in local physical training requirements that exceed Army standards for a record APFT are inappropriate criteria on which to solely base an unfit determination.

e. *Ability to deploy.* The PEB considers whether the Soldier (Active Army and RC) is deployable individually or as part of a unit, with or without prior notification, to any location specified by the Army.

(1) The provisions in this paragraph concerning the ability to deploy do not apply to the following DES cases:

(a) General and MC officers.

(b) When the presumption of fitness rule applies.

(2) With the exception of the cases identified in paragraphs 5-4e(1)(a) and 5-4e(1)(b), the PEB will find Soldiers unfit who are medically disqualified for worldwide deployment in a field or austere environment.

(3) Worldwide deployment means a deployment for 30 days or more to any environment in which the Army is operating or is likely to operate, including:

(a) Areas that regularly experience significant environmental hazards (for example, heat, cold, altitude, aerosol particles) that would exacerbate existing medical conditions.

(b) Areas that have limited access to a reliable source of electricity.

(c) Areas where force protection levels mandate prolonged use of body armor and/or chemical or biological protection equipment.

(d) Areas requiring immunization or force health protection prescription products.

(e) Areas with limited medical services.

(4) The medical conditions listed in Department of Defense Instruction (DODI) 6490.07, enclosure 3, represent the minimum medical conditions that may cause a Soldier to be medically nondeployable. A PEB will find a Soldier with these listed conditions unfit, provided the medical condition is one which does not meet the medical retention standards of AR 40–501.

f. Special qualifications. For Soldiers whose medical condition causes loss of qualification for specialized duties, the PEB will consider whether the specialized duties comprise the Soldier's current duty assignment, the Soldier has an alternate branch or specialty, or reclassification or reassignment is feasible.

g. Overall or combined effect. A Soldier may be determined unfit as a result of the overall effect of two or more impairments even though each of them, standing alone, would not cause the Soldier to be found unfit because of physical disability. Further, unfitness due to overall or combined effect may include one or more conditions determined to be unfitting in combination with an independently unfitting condition.

5–5. Presumption of fitness

The DES compensates disabilities when they cause or contribute to career termination. Servicemembers who are pending retirement at the time they are referred for disability evaluation are presumed fit for military Service as set forth below.

a. Application. Soldiers in the presumptive periods of “b” below are eligible to be referred to the DES when they have medical impairments that do not meet the medical retention standards according to AR 40–501. With the exception of unfit Soldiers approved for continuation, these Soldiers enter the PEB phase of the DES under the rebuttal presumption that they are physically fit.

b. Presumptive period. The PEB will presume Soldiers to be pending retirement when the Soldier's date of referral to the DES is after any of the circumstances listed below.

(1) The Soldier's request for voluntary retirement has been approved. Revocation of voluntary retirement orders for purposes of referral into the DES does not negate application.

(2) An officer has been approved for selective early retirement.

(3) An officer is within 12 months of mandatory retirement due to age or length of service.

(4) An officer or enlisted is within 12 months of mandatory removal date and will be retirement eligible.

(5) An enlisted member is within 12 months of their RCP or expiration of term of service and will be eligible for regular retirement.

(6) An RC member is within 12 months of mandatory removal date from active status and qualifies for a 20-year letter at the time of referral to the DES.

(7) The Soldier is a retiree recall, to include those who transferred to the Retired Reserve, with eligibility to draw retired pay upon reaching the age prescribed by statute unless the recalled retiree incurred or aggravated the medical condition while on their current active duty orders and overcomes the presumption of fitness.

(8) The Soldier has been approved for retirement under a Temporary Early Retirement Authority so long as the Army program guidance allows Soldiers to accept such offer when they require or are pending DES evaluation, or otherwise before the outcome of the DES is known.

c. Impact of stop loss on the presumption of fitness rule. When a Soldier's retirement is not executed due to stop loss and the retirement is suspended rather than revoked, the presumption of fitness rule applies to the PEB adjudication. If the retirement was revoked and the revocation was in accordance with AR 600–8–24 (officers) and AR 635–200 (enlisted), the presumption of fitness rule does not apply.

d. Overcoming the presumption of fitness rule. Soldiers may overcome this presumption by presenting a preponderance of evidence that they are unfit for military Service. The presumption of fitness rule may be overcome (rebutted) when—

(1) Within the presumptive period an illness or injury occurs that would prevent the Soldier from performing further duty if they were not retiring or not a retiree recall.

(2) 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 Soldier were not retiring or not a retiree recall.

(3) The condition for which the Soldier is referred is a chronic condition and a preponderance of evidence establishes that the Soldier was not performing duties befitting the Soldier's office, grade, rank, or military occupational specialty (MOS) before entering the presumptive period. The ability to perform further duty is not a consideration. (For retiree recalls, this overcoming circumstance pertains to whether the Soldier was performing befitting duties before initially retiring.)

e. Instances of pending retirement not applicable. The presumption of fitness rule will not be applied to Soldiers in the following instances of pending retirement:

(1) The disability is one for which a Soldier was previously determined unfit and approved for COAD or COAR. The presumption of fitness will be applied to other medical impairments unless the medical evidence establishes they were impacted by the original unfitting conditions.

(2) Selected Reserve Soldiers who are eligible to qualify for non-regular retirement pursuant to the provisions of 10 USC 12731b (15-year notice of eligibility).

(3) A RC member referred to the non-duty related process.

5–6. Evidentiary standards for determining unfitness because of physical disability

a. Factual finding. Findings will be made (and cited in the record of proceedings) on the basis of objective evidence in the record as distinguished from personal opinion, speculation, or conjecture. When the evidence is not clear concerning a Soldier's fitness, an attempt will be made to resolve doubt by further investigation. Benefit of the doubt will be resolved in favor of fitness under the presumption that the Soldier desires to be found fit for duty.

b. Preponderance of evidence. With the exception of presumption of fitness cases, fitness or unfitness will be determined on the basis of the preponderance of the objective evidence in the record.

c. Referral following illness or injury. When referral for physical disability evaluation immediately follows acute, grave illness or injury, the medical evaluation may stand alone, particularly if medical evidence establishes that continued service would be harmful to the Soldier's health or is not in the best interests of the Army.

d. Referral for chronic impairment.

(1) When a Soldier is referred for physical disability evaluation for a medical impairment of a chronic nature (see terms), evaluation of the Soldier's performance of duty by supervisors as indicated, for example, by letters, evaluation reports, status of physician medical privileges, or personal testimony, may provide better evidence than a clinical estimate by a physician of the Soldier's ability to perform their duties. Particularly in cases of chronic illness, these documents may be expected to reflect accurately a Soldier's capacity to perform.

(2) Changes in medications or other therapy for chronic conditions do not alone establish deterioration of a chronic condition. Unless significant deterioration was incurred or unexpected adverse results are evident from the new treatment, such changes are not a basis for finding a Soldier unfit.

e. Cause and effect relationship. Regardless of the presence of illness or injury, inadequate performance of duty, by itself, will not be considered as evidence of unfitness due to physical disability unless it is established that there is a cause-and-effect relationship between the two factors.

5–7. Standards for determining permanence and stability for permanent or temporary retirement

a. A disability will be determined stable when the preponderance of medical evidence indicates the severity of the conditions will probably not change enough within the next five years to increase or decrease the disability rating percentage.

b. Notwithstanding paragraph 5–7a, when a Soldier has a combined rating of 80 percent or greater for a permanent and stable condition (or conditions) not related to a diagnosis of a mental disorder due to traumatic stress, the Soldier will be permanently retired. In this situation, the Soldier's disabilities are deemed permanent and stable because the provisions of 10 USC 1401 caps the disability rating percentage at 75 percent for purposes of calculation of the Soldier's retired pay.

c. With the exception of mental disorder due to traumatic stress, unfitting conditions will be presumed stable in the absence of medical evidence that they are not stable. For cases that initially received ratings from D–RAS, the PEB will use the future examination requirements set by the D–RAS as an indicator of stability when making the PEB's recommendations of stability determinations and case disposition.

d. The SECARMY will abide by 10 USC 1216a and Title 38 Code of Federal Regulations (38 CFR) for disposition of Soldiers found unfit because of a mental disorder due to traumatic stress.

(1) For Soldiers found unfit with a rating of 80 percent or greater for a permanent and stable condition (or conditions) not related to diagnosis of the mental disorder due to traumatic stress, the Soldier will be permanently retired.

(2) All other such Soldiers will be placed on the TDRL and re-evaluated within a timeframe that is not less than 90 days but consistent with the maximum timeframes stipulated by 38 CFR or other applicable statutes.

Section II

Policies for Determining the Compensability of Unfitting Conditions

5–8. Applicability of 10 United States Code 1201 through 10 United States Code 1203

Adjudication of compensability under the provisions of 10 USC 1201 through 10 USC 1203 applies to:

- a. Soldiers of the Active Army.
- b. RC Soldiers currently on an order to active duty specifying a period of more than 30 days (other than for training under 10 USC 10148(a) or as limited by 10 USC 1206a).
- c. RC Soldiers in a REFRAD status who are referred to the DES for a disability incurred or aggravated when the Soldier was on an order to active duty specifying a period of more than 30 days.
- d. Any other Soldier on active duty for a period greater than 30 days but is not entitled to basic pay by reason of 37 USC 502(b) due to authorized absence—
 - (1) To participate in an educational program.
 - (2) For an emergency purpose, as determined by the SECARMY.
- e. Any cadet of the United States Military Academy.

5–9. Compensable criteria under 10 United States Code 1201 through 10 United States Code 1203

The requirements listed below pertain to the categories of Soldiers delineated in paragraph 5–8, above. The statutory requirements listed below concerning unfit, duty status, in sound condition, and line of duty determine compensability. The requirements listed below concerning stability, years of service, or disability rating percentage determine disposition (retirement or separation).

- a. The disability is permanent and stable.
- b. The member has—
 - (1) At least 20 years of service computed in accordance with 10 USC 1208; or
 - (2) The disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and either that disability—
 - (a) Was not noted at the time of the member's entrance on active duty unless the Secretary of the Military Department concerned demonstrates with clear and unmistakable evidence that the disability existed before the member's entrance on active duty and was not aggravated by active military Service;
 - (b) Is the proximate result of performing active duty;
 - (c) Was incurred in the line of duty in time of war or national emergency; or
 - (d) the disability was incurred in the line of duty after 14 September 1978.

5–10. On active duty for more than 30 days

- a. In accordance with 10 USC 101(d)(2), to be considered on active duty for more than 30 days, the Soldier must be called to active duty under an order that does not specify a period of 30 days or less. However, the provisions of 10 USC 1206 impact this definition for RC Soldiers who are called to active duty for more than 30 days but released within 30 days of commencing such period of active duty (see para 5–15).
- b. With the exception of application of 10 USC 1207a, RC Soldiers who are not on active duty when referred to the DES are adjudicated under the provisions of 10 USC 1201 through 10 USC 1203 when the disability for which they are referred to the DES was incurred or aggravated while they were on active duty for more than 30 days.

5–11. Presumption of sound condition for Soldiers on orders to active duty specifying a period of more than 30 days

- a. The PEB will presume Soldiers, including RC Soldiers and recalled retirees on continuous orders to active duty specifying a period of more than 30 days, entered their current period of military Service in sound condition when the disability was not noted at the time of the Soldier's entrance to the current period of active duty.
- b. The PEB may overcome this presumption if clear and unmistakable evidence demonstrates that the disability existed before the Soldier's entrance on their current period of active duty and was not aggravated by their current period of military Service. Absent such clear and unmistakable evidence, the PEB will conclude that the disability was incurred or aggravated during their current period of military Service.
- c. The PEB must base a finding that the Soldier's condition was not incurred in or aggravated by their current period of military Service on objective evidence in the record, as distinguished from personal opinion, speculation, or conjecture. When the evidence is unclear concerning whether the condition existed prior to their current period of military Service or

if the evidence is equivocal, the presumption of sound condition at entry to the current period of military Service has not been rebutted, and the PEB will find the Soldier's condition was incurred in or aggravated by military Service.

d. Any hereditary or genetic disease will be evaluated to determine whether clear and unmistakable evidence demonstrates the disability existed before the Soldier's entrance on active duty and was not aggravated by their current period of military Service. However, even if the disability is determined to have been incurred prior to entry on their current period of active duty, any aggravation of that disease, incurred during the Soldier's current period of active duty, beyond that determined to be due to natural progression, will be determined to be service aggravated.

e. An EPTS condition is deemed to have been incurred while entitled to basic pay and will be considered for purposes of determining whether the disability was incurred in the LOD when the criteria set forth in paragraph 5-15, are met.

f. The provisions of paragraph 5-14 apply to Soldiers serving on an order to active duty of more than 30 days.

5-12. Applicability of 10 United States Code 1204 through 10 United States Code 1206

a. Adjudication of compensability under the provisions of 10 USC 1204 through 1206 applies to RC Soldiers whose injury, illness, or disease was incurred or aggravated in a duty status other than that listed in 10 USC 1201 through 1203 (see para 5-8).

b. There is no presumption of sound condition for RC Soldiers serving on a call to active duty of 30 days or less or otherwise serving in a duty status listed in 10 USC 1204 through 1206.

c. The provisions of paragraph 5-14 apply to these duty statuses.

5-13. Compensable criteria under 10 United States Code 1204 through 10 United States Code 1206

See paragraph 5-12, above, concerning applicability. In general, the statutory requirements listed below concerning unfit, duty status, and line of duty determine compensability. The requirements listed below concerning stability, years of service, or disability rating percentage determine disposition (retirement or separation). However, in the case of an RC member who lives in the vicinity where IDT or Funeral Honors Duty is to be conducted, and is in an overnight status before or between such duty, the disability disposition in consideration of the member's years of service or the disability rating percentage impacts compensability.

a. Criteria for disability retirement for members on active duty for 30 days or less, Funeral Honors Duty, or training pursuant to 10 USC 10148—

(1) The disability is permanent and stable.

(2) The Servicemember has—

(a) At least 20 years of service computed in accordance with 10 USC 1208 or

(b) A disability of at least 30 percent and that disability meets at least one of the following criteria:

1. The disability was incurred or aggravated before 24 September 1996, as the proximate result of—

a) Performing active duty or IDT;

b) Traveling directly to or from the place of active duty or IDT; or

c) An injury, illness, or disease incurred or aggravated immediately before the commencement of IDT or while remaining overnight between successive periods of IDT, at or in the vicinity of the site of the IDT, if the site of the IDT is outside reasonable commuting distance of the Servicemember's residence.

2. The disability is a result of injury, illness, or disease that was incurred or aggravated in the LOD after 23 September 1996—

a) While performing active duty or IDT;

b) While traveling directly to or from the place of active duty or IDT; while remaining overnight immediately before the commencement of IDT; or while remaining overnight between successive periods of IDT at or in the vicinity of the site of the IDT.

c) The disability is a result of an injury, illness, or disease incurred or aggravated in the LOD while serving Funeral Honors Duty pursuant to 10 USC 12503.

d) While the Servicemember was traveling to or from the place at which the member was to serve; or while the Servicemember remained overnight at or in the vicinity of that place immediately before serving, if it is outside reasonable commuting distance from the member's residence.

b. Criteria for separation with disability severance pay for members on active duty for 30 days or less, Funeral Honors Duty, or training pursuant to 10 USC 10148—

(1) The Servicemember has less than 20 years of service as computed in accordance with 10 USC 1208.

(2) The disability is or may be permanent.

(3) The disability is the result of an injury, illness, or disease incurred or aggravated in the line of duty while—

(a) Performing active duty or IDT;

(b) Traveling directly to or from the place of active duty;

(c) Remaining overnight immediately before the commencement of IDT, between successive periods of IDT, at or in the vicinity of the site of the IDT, if the site is outside reasonable commuting distance of the member's residence;

(d) Serving on Funeral Honors Duty pursuant to 10 USC 12503 while the Servicemember was travelling to or from the place at which he or she was to serve; or while the Servicemember remained overnight at or in the vicinity of that place immediately before serving.

(4) Is less than 30 percent under the VASRD at the time of the determination and, in the case of a disability incurred before 5 October 1999, was the proximate result of performing active duty or IDT or of traveling directly to or from the place at which such duty is performed.

(5) If the Servicemember is eligible for transfer to the inactive status list pursuant to 10 USC 1209 and chooses to, he or she may be transferred to that list instead of being separated.

5-14. Impairments incurred during prior service

Any medical condition incurred or aggravated during one period of active Service or authorized training in any of the Armed Forces that recurs, is aggravated, or otherwise causes the Soldier to be unfit, should be considered incurred in the LOD, provided the origin of such impairment or its current state is not due to the Soldier's misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the Soldier was not in a duty status.

5-15. 10 United States Code 1207a and pre-existing conditions

a. Under the provisions of 10 USC 1207a, a pre-existing condition is deemed to have been incurred while entitled to basic pay and will be so considered for purpose of determining whether the disability was incurred in the LOD when—

(1) The Soldier is called to duty for more than 30 days (other than for training under 10 USC 10148(a)) when the PEB determines that the Soldier is unfit.

(2) An RC Soldier was not released within 30 days of their orders to active duty in accordance with 10 USC 1206a due to the identification of a pre-existing condition not aggravated by the current call to active duty.

(3) The Soldier will have at least 8 years of active Service. The 8 years of service does not require a continuous 8-year period.

b. If upon final issuance of the PEB's informal findings and recommendations, the Soldier will have at least 7 years and 9 months of active Service, the PEB will adjudicate the case under the provisions of 10 USC 1207a. Otherwise, USAPDA will modify the case to apply the provisions of 10 USC 1207a if the Soldier obtains the 8 years by time of their separation or retirement date.

c. The record of proceedings (DA Form 199, DA Form 199-1, or DA Form 199-2, as applicable) will document that the disability EPTS and was not permanently aggravated by service but is compensable per 10 USC 1207a.

5-16. Impact of Section 1206a Title 10 United States Code on Title 10 United States Code Section 1207a

a. *Reserve Component Soldiers released from active duty within 30 days.* Under the provisions of 10 USC 1206a, an RC Soldier who is ordered to active duty for a period of more than 30 days and is released from active duty within 30 days of commencing such period of active duty for a reason stated in paragraph 5-16b, will be considered for all purposes under this chapter to have been serving under an order to active duty for a period of 30 days or less.

b. *Applicable reasons for release.* Paragraph 5-16a applies in the case of an RC Soldier released from active duty because of a failure to meet—

(1) Physical standards for retention due to a pre-existing condition not aggravated during the period of active duty.

(2) Medical or dental standards for deployment due to a pre-existing condition not aggravated during the period of active duty.

c. *Impact.*

(1) RC Soldiers who are released within 30 days of commencing a call to active duty of more than 30 days are not covered under the provision of 10 USC 1207a.

(2) RC Soldiers who require disability evaluation at time of demobilization but elect, in writing, to complete MEB or PEB from a REFRAD status are not covered under the provisions of 10 USC 1207a.

5-17. Other matters related to pre-existing disability

The matters presented in this paragraph apply to all cases referred under the duty-related process.

a. *Medical waivers.* Soldiers who entered the Service with a medical waiver for a pre-existing condition and who are subsequently determined unfit for the condition will not be entitled to disability separation or retired pay unless the circumstances listed below apply.

(1) Military Service permanently aggravated the medical condition. Permanent aggravation includes when service hastens the impairment's rate of natural progression.

(2) The Soldier is on active duty when their case is referred to the PEB and has completed 8 years of active Service by the date of separation from active duty.

b. Compensating unfitness resulting from combined effect disabilities. The finding of unfitness may depend on the combined effect of two or more disabilities which standing alone, would not result in unfitness. When an in the LOD condition is unfitting due to combined effect with an EPTS condition that is not permanently aggravated by service, the in the LOD disability remains compensable. When the in the LOD condition is unfitting due to combined effect with a condition that is due to misconduct or willful negligence, the in the LOD condition is non-compensable.

c. Rating of disabilities that have a pre-existing component. When considering EPTS cases involving aggravation by active Service, the rating will reflect only the degree of disability over and above the degree existing at the time of entrance into active Service, less natural progression occurring during active Service. This will apply whether the particular condition was noted at the time of entrance into active Service or is determined upon the evidence of record or accepted medical principles to have existed at that time.

d. Treatment of pre-existing conditions. Generally recognized risks associated with treating pre-existing conditions will not be considered service aggravation. Unexpected adverse events over and above known hazards, directly attributable to treatment, anesthetic, or operation performed or administered for a medical condition existing before entry on active duty, may be considered service aggravation.

5-18. Failure to comply with prescribed treatment

a. There are many conditions, such as neuropsychiatric disorders, asthma, hypertension, epilepsy, diabetes, and certain injuries, which may be improved sufficiently by treatment to prevent disability or to significantly decrease it. If a Soldier unreasonably fails or refuses to submit to medical or surgical treatment, therapy, take prescribed medications, or to observe prescribed restrictions on diet, activities, or the use of alcohol, drugs, or tobacco, that portion of the disability that results from such failure or refusal will not be rated where the following is clearly demonstrated—

(1) The Soldier was advised clearly and understandably of the medically proper course of treatment, therapy, medication, or restriction(s) and documented by a physician.

(2) The Soldier's failure or refusal was willful or negligent and not the result of mental disease or a physical inability to comply.

b. MTFs will forward MEB cases involving a refusal to submit to recommended medical care to TSG for determinations under the provisions of AR 600-20 before forwarding the case to the PEB. Failure to comply with treatment recommendations regarding the taking of appropriate dosages of prescribed medications is not, by itself, considered refusal to submit to medical care.

5-19. Disability resulting from non-approved elective surgery or treatment

Soldiers choosing to have elective surgery or treatment done at their own expense will not be eligible for compensation under the provisions of this regulation for any adverse residual effects resulting from the elected treatment, unless it can be shown that such election was reasonable or resulted from significant impairment of judgment that is the product of a ratable medical condition.

5-20. Temporary disability retired list determinations

a. Previous determinations. During TDRL re-evaluation, previous determinations concerning application of any presumption established by this regulation, LOD, misconduct, and whether a medical impairment was service-incurred or pre-existing and permanently aggravated will be considered administratively final for those conditions for which the Soldier was placed on the TDRL unless one of the following circumstances apply:

(1) There is evidence of fraud.

(2) There is an expected change of diagnosis that warrants the application of accepted medical principles for a pre-existing condition. For example, the diagnosis of schizophreniform disorder either resolves or becomes a different mental diagnosis.

(3) Correction of error in favor of the Soldier.

(4) Rating percentages are administratively final unless the condition was determined unstable at the time of placement on the TDRL or one of the exceptions to administrative finality at paragraph 5-20a, applies. However, the change of a rating percentage occurs at the time the Soldier is removed from the TDRL. For example, a Soldier retained on the TDRL does not incur a change of rating for purposes of recompilation of retired pay though the Soldier's condition may have improved or worsened.

b. Compensability of new diagnoses or new unfitness.

(1) Conditions newly diagnosed since placement on the TDRL or conditions that have progressed since the Soldier was placed on the TDRL will be compensable when—

(a) The condition is unfitting.

(b) The condition was caused by the unstable disability for which the Soldier was placed on the TDRL, or it was caused or is otherwise directly related to its treatment either before or after the Soldier was placed on the TDRL.

(c) The evidence of record establishes the condition was either incurred while the Soldier was entitled to basic pay and/or was incurred in the LOD and was an unfitting disability at the time the Soldier was placed on the TDRL.

(2) Unfitting conditions that do not meet any of the criteria of paragraph 5–20b(1), will be deemed unfitting due to the natural progression of the condition and non-compensable under 10 USC Chapter 61. The Soldier may be eligible for benefits for these conditions from the VA.

c. *Unfitting condition improves to meet medical retention standards.* When a Soldier was placed on the TDRL with only one unfitting condition and upon re-examination of that condition by the MTF it is determined that the member now meets medical retention standards for that condition, the MTF will conduct a thorough medical examination to determine if there are any other conditions that fail retention standards or would preclude a return to duty. The MTF will also conduct an examination if there were multiple unstable and unfitting conditions and all have improved to meet retention standards and the member had no unfitting condition that was stable at time of placement on TDRL. The PEB will not find a Soldier fit off the TDRL unless the Soldier is fully capable (medically) of performing duty. If the Soldier was found fit for the condition(s) causing placement on the TDRL but has other unrelated and unfitting conditions, the provisions above apply and the Soldier will not be found fit. If the PEB does not receive a comprehensive medical examination on a Soldier who is being found fit for the condition(s) causing placement on the TDRL, they will return the case to the MTF for such an examination rather than issue a finding of fit.

5–21. The rating of compensable disabilities

Disabilities determined to be unfitting and compensable will be rated in accordance with the VASRD. This rating will generally be determined by the D–RAS. For those cases that are evaluated as an exception to IDES, the military department determines the rating.

5–22. Disability incurred during excess leave for review of court-martial proceedings

In accordance with B–205953, Decision of the Comptroller General, 18 June 1982, a Soldier who is disabled while in an excess leave status for review of court-martial proceedings is not entitled to disability benefits under 10 USC Chapter 61.

5–23. Line of duty requirements for disability cases

a. *Referral requirement.* When a LOD determination (DA Form 2173 (Statement of Medical Examination and Duty Status)) and the approval memo, or DD Form 261 (Report of Investigation Line of Duty and Misconduct Status) is required under AR 600–8–4, it will be accomplished before the forwarding of the Soldier’s case to the PEB.

b. *Return of cases.* The PEB and USAPDA are authorized to return a case for completion of a LOD determination in the situations below.

(1) The LOD in the case does not relate to the incurrence or aggravation of the medical impairment under adjudication.

(2) An informal LOD was presented when AR 600–8–4 requires a formal LOD.

(3) The case includes only an informal LOD and the determination was “no.”

c. *Relationship to physical evaluation board determinations.*

(1) Neither the PEB nor USAPDA may overrule an approved LOD. When the PEB or USAPDA believes a LOD determination (otherwise correctly done under AR 600–8–4) is questionable, the PEB or USAPDA is authorized to request HRC (AHRC–PDC–C) to confirm the correctness of the LOD determination. The request will be in the form of a memorandum that includes the justification for the request. The PEB or USAPDA will justify its request to HRC in writing but is not required to provide clear and unmistakable or substantial evidence that the LOD finding is incorrect. The DA Form 199 will inform the Soldier of the conditional adjudication and request for review. For example, “The PEB questions the validity of the LOD determination rendered in your case. Your case has been adjudicated assuming the decision is valid. Should an unfavorable LOD determination result, you will not be eligible for entitlement to benefits under the Army DES. Your case will be held in abeyance until the LOD decision is resolved.”

(2) Under the provisions of 10 USC 1207, Soldiers who incur a physical disability that, in the determination of the SECARMY, makes them unfit to perform the duties of his office, grade, rank, or rating and resulted from the intentional misconduct, willful neglect, was incurred during a period of unauthorized absence, or for conditions that do not meet the exception criteria in 10 USC 1207a will be separated from the Army without entitlement to any benefits under 10 USC Chapter 61 and any implementing DODD or DODI.

d. Line of duty challenges during the formal hearing. It is not intended that PEBs act as hearing authorities for Soldier appeals of LOD determinations. AR 600–8–4 sets out appeal procedures.

(1) The above, notwithstanding the Soldier or Soldier’s counsel, may present evidence of error concerning a LOD finding that a condition is EPTS without permanent aggravation. The PEB will consider such evidence. If the PEB believes the evidence warrants reconsideration of the LOD finding, the PEB may request review of the determination in accordance with the provisions of paragraphs 5–23*b* and 5–23*c*. The Soldier’s counsel will be notified. If the PEB determines that the evidence does not provide reason to question the LOD determination, the PEB will inform the Soldier and the counsel of this fact and that the case was adjudicated based upon the approved LOD.

(2) The PEB will not consider evidence of error concerning a formal LOD-no finding due to misconduct or willful negligence. A Soldier is not eligible to be referred to the DES for a condition resulting from the Soldier’s misconduct or willful negligence.

Section III

Policy for Administrative Determinations

5–24. Determinations for purposes of federal civil service employment

a. Overview. Physical disability evaluation will include a decision and supporting documentation regarding whether the injury or disease that makes the Soldier unfit or that contributes to unfitness was incurred in combat with an enemy of the United States, was the result of armed conflict, or was caused by an instrumentality of war during a period of war.

b. Benefits. These determinations impact the eligibility of certain military retirees for the benefits listed below when employed under the Federal Civil Service System.

(1) Credit of military Service towards Federal Civil Service retirement without waiver of the military annuity upon retirement from Federal Civil Service (see 5 USC 8332 and 8411).

(2) Retention preference during reduction in force (see 5 USC 3502).

(3) Credit of military Service for annual leave accrual (see 5 USC 6303).

c. Documentation of decision. The determinations will be recorded on the record of proceedings of the Soldier’s adjudication. Notwithstanding that the determinations concern disability retirements, the determination will be documented on the record of proceedings for a disability disposition of separate with disability severance pay.

d. Required determinations for Section 8332 Title 5 United States Code. The Soldier’s retired pay is awarded based on service-connected disability—

(1) Incurred in combat with an enemy of the United States.

(2) Caused by an instrumentality of war and incurred in LOD during a period of war as defined by 38 USC 101.

e. Required determinations for Section 3502 Title 5 United States Code and Section 6303 Title 5 United States Code 6303. The Soldier’s retirement was based on disability—

(1) Resulting from injury or disease received in LOD as a direct result of armed conflict.

(2) Caused by an instrumentality of war and incurred in the LOD during a period of war as defined in 38 USC 101.

f. Armed conflict. The fact that a Soldier may have incurred a medical impairment during a period of war, in an area of armed conflict, or while participating in combat operations is not sufficient to support a finding that the disability resulted from armed conflict. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

(1) To be considered incurred as a result of armed conflict does not require the armed conflict to have been occurred during a period of war.

(2) Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, riot, or any other action in which Soldiers are engaged with a hostile or belligerent nation, faction, force, or terrorists.

(3) Armed conflict may also include such situations as incidents involving a Soldier while interned as a prisoner-of-war or while detained against their will in custody of a hostile or belligerent force or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

(4) Normally Soldiers who sustain injuries while assigned to administrative, supply, or other support duties in the rear area are not considered to be in the area of combat operations unless the injury is actually incurred during an enemy attack in the immediate area.

g. Periods of war. The periods of war defined by 38 USC 101 include the following:

(1) *World War II.* The period beginning 7 December 1941 and ending 31 December 1946 and any period of continuous service performed after 31 December 1946 and before 26 July 1947 if such period began before 1 January 1947.

(2) *Korea.* The period beginning 27 June 1950 and ending 31 January 1955.

(3) *Vietnam*. The period beginning on 28 February 1961, and ending on 7 May 1975, inclusive, in the case of a veteran who served in the Republic of Vietnam during that period. The period beginning on 5 August 1964, and ending on 7 May 1975, inclusive, in all other cases. The "Dominican Intervention" occurred during this period (28 April 1965 to 1 June 1966).

(4) *Persian Gulf*. The period beginning 2 August 1990 through date to be prescribed by Presidential proclamation of law. (Note: As of the date of this publication, this period is still in effect.)

5–25. Determinations for federal tax benefits

a. Overview. Physical disability evaluation will include a determination and supporting documentation on whether the Soldier's disability compensation is excluded from Federal gross income under the provisions of 26 USC 104. The entitlement to this exclusion is based on the Soldier having a certain status on 24 September 1975 or being retired or separated for a disability determined to be combat related as set forth in this paragraph. The determination will be recorded on the record of proceedings of the Soldier's adjudication.

b. Exclusion amount. The amount of disability retired pay subject to exclusion from Federal gross income is the amount equal to the product of the Soldier's disability percentage (up to 75 percent for an IDES case) times the Soldier's retired pay base.

c. Status on 24 September 1975. To receive an affirmative determination, the Soldier on this date must have been a member of a uniformed service or under a binding written agreement to become such a member. Eligible members include Soldiers who were in the statuses below on that date. (Entitlement to the exclusion is based solely on the Soldier's status on that date. A Soldier who served through 25 September 1975, separated and re-enlisted, and incurs a disability during the subsequent enlistment is entitled to the exclusion.)

- (1) Ready Reserve.
- (2) National Oceanic and Atmospheric Administration (formerly the Coast and Geodetic Survey).
- (3) U.S. Public Health Service.
- (4) A contracted cadet of the Army Reserve Officer Training Corps or of one of the U.S. Service academies.
- (5) A Soldier who was a member of an armed force of another country.

d. Combat related. This standard covers those injuries and diseases attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict. A physical disability will be considered combat related if it causes the Soldier to be unfit or contributes to unfitness and was incurred under any of the following circumstances:

- (1) *As a direct result following armed conflict*. See paragraph 5–24f.
- (2) *While engaged in hazardous service*. Such service includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.
- (3) *Under conditions simulating war*. In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training (combatives training), rappelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

(4) *Caused by an instrumentality of war*. Occurrence during a period of war is not required. A favorable determination is made if the disability was incurred during any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury, or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, if a Soldier is on a field exercise and is engaged in a sporting activity and falls and strikes an armored vehicle, the injury will not be considered to result from the instrumentality of war (the armored vehicle), because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the Soldier, the injury would be considered the result of an instrumentality of war (the armored vehicle).

5–26. Reserve Component Soldiers who are dual status technicians

Under the provisions of 10 USC 10216, a military technician (dual status), who loses such dual status as the result of a combat-related disability (as defined in 10 USC 1413a for combat-related special compensation), may be retained as a non-dual status technician so long as other requirements of that law are met. The criteria for the determination under 10 USC 10216 are the same as for the determination of combat related under 26 USC 104, as set forth in paragraph 5–24.

5–27. Determinations relating to disability severance pay

a. The National Defense Authorization Act for 2008 made several enhancements to disability severance pay. Two of the enhancements (disability severance pay computed as though the Soldier had at least 6 years of active duty and no

recoupment of the severance pay by the VA) require the PEB make a determination as to whether the disability was incurred as described below. These determinations will be documented on the record of proceedings.

(1) The disability was incurred in the LOD in a combat zone as designated by the SECDEF.

(2) The disease or injury was incurred in the LOD during the performance of duty in combat-related operations. To be considered incurred during the performance of combat-related operations, the criteria of paragraph 5–25*d*, must be met.

b. To qualify as a combat zone, the area must qualify as a combat zone tax exclusion area.

c. To qualify as performance of duty in combat-related operations, the disease or injury must meet the requirements to be combat related as set forth at paragraph 5–25*d*.

Chapter 6

Continuation on Active Duty and Continuation on Active Reserve Status of Unfit Soldiers

6–1. General

This chapter prescribes the criteria for Soldiers to be continuation on Active Duty (COAD) and continuation on Active Reserve (COAR), as applicable, subsequent to being found unfit after completion of the duty-related DES process.

a. The purpose of this exception to policy is to conserve manpower by effective use of needed skills or experience in a limited duty status.

b. The fact that a Soldier has or has not applied for COAD or COAR will not influence the determination of fitness or the determination of the disability rating percentage, when applicable.

c. A Soldier who has been found unfit by a PEB for further military Service has no inherent or vested right to continuation.

d. Soldiers must elect to be considered for COAD or COAR. However, the SECARMY, or designee, may involuntarily continue the Soldier in consideration of the Soldier's service obligation, special skill, or experience.

e. Requests will be approved based on the needs of the Army. Requests will not be approved solely to increase the Soldier's separation or retirement benefits.

f. A status of COAD or COAR is not authorized until a finding of unfit is approved by USAPDA.

6–2. Duty statuses eligible for continuation on active duty and continuation on active Reserve status

a. The categories of Soldiers listed below are eligible to request COAD:

(1) Officers on the active duty list.

(2) Enlisted Soldiers who are Active Army.

(3) Soldiers in the AGR program or who are on full-time National Guard duty requesting continuation as AGR or full-time National Guard duty.

b. The categories of Soldiers listed below are eligible to request COAR:

(1) Soldiers who are AGR requesting continuation in the IRR or troop program unit status.

(2) Soldiers of the ARNG on full-time National Guard duty requesting continuation as traditional (drilling) unit members.

(3) Soldiers who are ARNG unit members, USAR Troop Program Unit members, IRR members, or individual mobilization augmentees.

c. Other than AGR members, and those RC Soldiers designated in paragraph 6–2*a*(3), RC Soldiers who are on active duty under 10 USC 12301 when determined unfit are ineligible to request COAD.

d. Soldiers pending placement on the TDRL are eligible to be considered for COAD or COAR if they otherwise meet the criteria in paragraph 6–3. Once the Soldier is on the TDRL, the Soldier is no longer eligible to be considered for COAD or COAR during TDRL re-evaluation.

6–3. Eligibility criteria for requests to be considered (adjudicated)

The Soldier must meet the criteria listed below to have their request for COAD or COAR, as applicable, considered. The USAPDA will screen all requests and return requests ineligible for consideration to the Soldier through the Soldier's PEBLO.

a. The Soldier is not on the TDRL. Soldiers pending placement on the TDRL remain eligible to request COAD or COAR if they otherwise meet the qualifications of this paragraph.

b. The Soldier's request must be submitted within the timeline and with the documents required by DA Pam 635–40.

c. The disability for which the Soldier was found unfit must not be due to the Soldier's misconduct, willful negligence, or incurred when the Soldier was absent without authority.

d. The Soldier must meet at least one of the criteria listed below---

- (1) For COAD, have at least 15 but less than 20 years of active Service. For COAR, have at least 15 but less than 20 years of qualifying service for non-regular retirement.
- (2) Be qualified in a critical skill or shortage MOS.
- (3) The disability resulted from combat or terrorism.

6-4. Approval and disapproval authority

The approving authority listed in paragraphs 6-4a through 6-4c will act on the Soldier's request for continuation. The DCS, G-1 is the disapproval authority for requests from combat-wounded Soldiers tracked by the Army Wounded Warrior Program. The CG, HRC has authority to delegate the approval authority given to him in paragraphs 6-4a and 6-4b, at his discretion without approval or coordination from the DCS, G-1 office. It is recommended that such delegation, if made, be limited to no lower than a commissioned officer in the grade of colonel or civilian equivalent.

a. Active Component and U.S. Army Reserve enlisted Soldiers, to include Active Guard Reserve members. Commander, U.S. Army Human Resources Command (AHRC-EPO-A), 1600 Spearhead Division Avenue, Fort Knox, KY 40122.

b. Active Component and U.S. Army Reserve officers, to include Specialty Branch officers and Active Guard Reserve members. Commander, U.S. Army Human Resources Command (AHRC-OPL-R), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5407. The office of the approval authority will coordinate with the applicable Specialty Branch office listed below when considering requests from an AC officer of a specialty branch.

(1) *Officers of the Army Medical Department (Active Army).* Headquarters, Department of the Army, Office of the Surgeon General (DASG-PTZ), 5109 Leesburg Pike, Falls Church, VA 22041-3258.

(2) *Chaplains (Active Army).* Headquarters, Department of the Army (DACH-PEZ), 2206 Army Pentagon, Room 1D143A, Washington, DC 20310-2206.

(3) *The Judge Advocate General officers (Active Army).* Headquarters, Department of the Army, Office of the Judge Advocate General (DAJA-PT), 2200 Army Pentagon, Washington, DC 20310-2200.

c. Army National Guard of the United States officers and enlisted, to include Active Guard Reserve members (10 USC and 32 USC). The Adjutant General of the officer's or enlisted Soldier's respective State.

6-5. Decision criteria

Approval of an eligible request remains subject to the needs of the Army (see para 6-3). In addition, the approval authority will use the criteria and considerations below to decide approval or disapproval.

a. Criteria.

(1) The Soldier's unfitting disability(ies) must be basically stable or of slow progression according to accepted medical principles. (This standard does not cause disqualification of requests from Soldiers pending placement on the TDRL based on TDRL disposition, alone.)

(2) The Soldier's disability must not be detrimental to the Soldier's health or to the best interests of the Army. For example, the disability does not preclude the Soldier from being physically capable of performing useful duty; does not require undue loss of time from duty for medical treatment; and does not pose a risk to the health or safety of other Soldiers.

b. Considerations.

(1) Time in service.

(2) Level of performance, trends in efficiency, and professional values and/or attributes.

(3) Performance prior to injury.

(4) Ability to attend professional military education.

(5) The ability to lead or positively influence Soldiers.

c. Reconsideration or appeal. Once a request for continuation is disapproved by an approving authority, there is no reconsideration or appeal.

6-6. Length of continuation

The approval authority will determine the length of continuation on a case-by-case basis. Final determinations for enlisted Soldiers will take into consideration established dates for ETS and RCPs. An approved period of continuation, to include to 20 years of active Service, does not constitute a waiver of disability disposition at expiration of the continuation period. (See para 6-9, concerning disposition at end of COAD or COAR period.)

a. A request for COAD may be approved for any period up to the last day of the month in which the Soldier attains 20 years of active Service, but will not exceed the RCP, if applicable, for the current grade. (There are no RCPs for 32 USC AGRs below 20 years active Service.) The continuation period will not exceed the maximum service time an officer is allowed to serve in accordance with 10 USC.

b. A request for COAR may be approved for any period of time up to the minimum time required for the Soldier to attain 20 qualifying years for a non-regular retirement but will not exceed the maximum years of service authorized for the Soldier's grade or mandatory removal date from active status.

c. A Soldier approved for continuation for a period of less than 20 years as outlined in paragraphs 6-6*a* and 6-6*b* may reapply for another period of continuation after completion of the follow-on MEB.

d. Normally, a Soldier approved for continuation to the applicable 20-year period will not be approved for another period of continuation unless their skills or specialties are mission-essential. Such requests must be endorsed by the first O-6, or DA Civilian equivalent, in the requesting organization's chain of command. The request must justify the nature of the mission-essential requirement. Mandatory removal or retirement dates and maximum years of service will be considered in the adjudication of such requests.

6-7. Termination

a. A Soldier's COAD or COAR will normally expire upon the end of the approved retention period. However, the COAD or COAR may be terminated earlier. Circumstances justifying termination include, but are not limited to, the following:

(1) The Soldier's command determines the Soldier should be medically re-evaluated based on unsatisfactory performance of the Soldier's assigned duties, and no other assignment options exist.

(2) The Soldier's treating physician changes the Soldier's permanent profile limitations. For example, the Soldier's PCM determines that further duty compromises the Soldier's well-being.

(3) Soldier is referred back to the DES.

(4) The Soldier's performance or conduct warrants administrative separation action pursuant to one of the applicable Army or National Guard regulations (NGRs) listed below. (The list of NGRs, below, is not inclusive for National Guard Soldiers in a status under 32 USC. Statutes of the State and territory may be relevant to separation of these Soldiers.)

(*a*) AR 135-175.

(*b*) AR 135-178.

(*c*) AR 600-8-24.

(*d*) AR 635-200.

(*e*) NGR 600-5.

(*f*) NGR 600-100.

(*g*) NGR 600-101.

(*h*) NGR 600-200.

(*i*) NGR 635-100.

(*j*) NGR 635-101.

(*k*) NGR 635-102.

(5) The Soldier requests termination of COAD or COAR.

b. With the exception of the circumstance in paragraph 6-7*a*(3), final disposition will be in accordance with paragraph 6-9.

c. Soldiers whose COAD or COAR is pending termination due to the initiation of administrative separation action or other adverse action are eligible for final disability disposition or referral to the DES in accordance with paragraphs 4-3 and 6-9. This will include the following requirements:

(1) When an enlisted Soldier is pending administrative separation under AR 635-200, chapter 14, the Soldier's GCMCA must determine, in writing, whether the Soldier is to proceed with separation under chapter 14, or to proceed with final disability disposition.

(2) When the enlisted Soldier is approved for separation in lieu of trial by court-martial, the Soldier is ineligible for final disability disposition.

(3) When an officer's COAD or COAR is pending termination due to administrative separation action or approval for resignation for the good of the Service, the Deputy Assistant Secretary of the Army (Review Boards) will determine whether the Soldier will proceed with disposition for disability.

6-8. Medical re-evaluation

Soldiers with approved COAD or COAR will complete the annual Periodic Health Assessment to confirm whether their disability has worsened to the degree that continuing in COAD or COAR status would be deleterious to the Soldier's health or prejudicial to the best interests of the Soldier or the Army.

6–9. Disposition at end of continuation period

Approval authorities for COAD/COAR Soldiers (HRC or National Guard Bureau, as appropriate) will manage all COAD/COAR Soldiers during the COAD/COAR period. When the Soldier is within seven months of the end of the continuation period, the COAD/COAR manager must ensure the Soldier's unit commander and supporting MTF are aware of the expiration of the COAD/COAR period so the procedures identified below can be accomplished. If the decision is made that the Soldier needs to go through the IDES again prior to separation/retirement, the COAD/COAR manager will ensure that referral occurs. If the decision is made that the Soldier does not need to through IDES again, the COAD/COAR manager should notify USAPDA. USAPDA will ensure that the Soldier's orders are issued reflecting a disability separation or retirement, and that VA is notified of his or her pending separation/retirement, so that VA benefits can be awarded after discharge, if applicable.

a. If the Soldier was entitled to permanent disability retirement when COAD or COAR was approved or the Soldier was entitled to disability severance pay but continued to 20 years of active Service, there is no requirement for the Soldier to be referred for a final evaluation under the DES unless all of the circumstances listed below apply. In these circumstances, the Soldier should be referred to the MEB no later than 6 months before expiration of the continuation period. The Soldier must be counseled on the provisions of paragraph 6–9*d*(3).

(1) Soldier requests final evaluation based on Soldier's belief that their conditions have worsened and new conditions have arisen that the Soldier believes need evaluation.

(2) The MTF indicates that a new MEB is required.

b. If the Soldier was required to be placed on the TDRL in accordance with VASRD 4.129, the Soldier is not required to undergo a new DES evaluation. The Soldier may be placed on the TDRL at the expiration of their COAD at the disability rating percentage previously determined by the PEB. A TDRL re-evaluation date will be designated for six months after placement on the TDRL. The exceptions designated in paragraph 6–9*a*, apply for the Soldier to have a final evaluation.

c. If the Soldier was required to be placed on the TDRL for reasons other than VASRD 4.129, and the Soldier's COAD period is greater than 2 years, the Soldier is required to have a final DES evaluation to determine whether the disposition of TDRL should be continued. If the COAD period is two years or less, the Soldier will be placed on the TDRL at the disability rating previously determined by the PEB. A TDRL re-evaluation will be scheduled for 18 months after placement on the TDRL. The exceptions designated in paragraph 6–9*a* apply for the Soldier to have a final evaluation.

d. When referral for final DES evaluation occurs, the evaluation will be under the fitness and ratings standards in effect at that time.

(1) If the disability has healed or improved so that the Soldier is capable of performing their PMOS or specialty code duties in other than a limited duty states, a finding of fit is appropriate. Ability to perform in the future is not a consideration.

(2) The ability to perform duties with prosthetics does not constitute a healing or improvement of a Soldier's disability for purposes of finding the Soldier fit during this final re-evaluation.

(3) The presumption of fitness rule will be applied to any new conditions that are unrelated to the unfitting condition(s) for which the Soldier was COAD or COAR when final evaluation occurs when the Soldier is or will be eligible for a length of service retirement (otherwise known as a regular retirement).

e. An RC Soldier who comes under the provisions of 10 USC 12686 and is granted COAD subsequent to being found unfit remains eligible for final DES evaluation in accordance with paragraph 6–9*a*.

Appendix A

References

Section I

Required Publications

DOD issuances are available at <http://www.dtic.mil>. NGRs are available at <http://www.ngbpd.c.ngb.army.mil>. USCs and CFRs are available at <https://www.gpo.gov/>.

AR 15–80

Army Grade Determination Review Board and Grade Determinations (Cited in para 4–30.)

AR 27–26

Legal Services: Rules of Professional Conduct for Lawyers (Cited in para 4–5a.)

AR 40–400

Patient Administration (Cited in para 4–33d(7).)

AR 40–501

Standards of Medical Fitness (Cited in para 1–1d.)

AR 135–175

Separation of Officers (Cited in para 2–6a(10).)

AR 135–178

Enlisted Administrative Separations (Cited in para 2–6a(10).)

AR 600–8–4

Line of Duty Policy, Procedures, and Investigations (Cited in para 2–6a(4).)

AR 600–8–10

Leaves and Passes (Cited in para 4–8c(1).)

AR 600–8–19

Enlisted Promotions and Reductions (Cited in para 4–8g.)

AR 600–8–24

Officer Transfers and Discharges (Cited in para 2–6a(10).)

AR 600–8–29

Officer Promotions (Cited in para 4–8g.)

AR 600–20

Army Command Policy (Cited in para 4–12b(7)(d).)

AR 601–210

Regular Army and Reserve Components Enlistment Program (Cited in para 4–33m(1).)

AR 601–280

Army Retention Program (Cited in para 3–4h.)

AR 614–100

Officer Assignment Policies, Details and Transfers (Cited in para 4–8c.)

AR 614–200

Enlisted Assignments and Utilization Management (Cited in para 4–8c.)

AR 635–200

Active Duty Enlisted Administrative Separations (Cited in para 2–6a(10).)

B–205953, Decision of the Comptroller General, 18 June 1982

Entitlement to Disability Retirement and Retired Pay (Available at <http://www.gao.gov/>) (Cited in para 5–22.)

DA Pam 220–1

Defense Readiness Reporting System-Army Procedures (Cited in para 2–6a(2).)

DA Pam 611–21

Military Occupational Classification and Structure (Cited in para 3–5a.)

DA Pam 635–40

Procedures for Disability Evaluation for Retention, Retirement, or Separation (Cited in para 3–1b.)

DODI 1332.35

Transition Assistance Program (TAP) for Military Personnel (Cited in para 4–31a.)

DODM 1332.18, Volumes 1 through Volume 3

Disability Evaluation System (DES) Manual: General Information and Legacy Disability Evaluation System (LDES) Time Standards (Cited in title page.)

JTR

Joint Travel Regulations (Available at <http://www.defensetravel.dod.mil/>.) (Cited in para 4–24h(5).)

NGR 600–5

The Active Guard Reserve (AGR) Program, Title 32, Full Time National Guard Duty (FTNGD) Management (Cited in para 6–7a(4)(e).)

NGR 600–100

Commissioned Officers-Federal Recognition and Related Personnel Actions (Cited in para 6–7a(4)(f).)

NGR 600–101

Warrant Officers-Federal Recognition and Related Personnel Actions (Cited in para 6–7a(4)(g).)

NGR 600–200

Enlisted Personnel Management (Cited in para 6–7a(4)(h).)

NGR 635–100

Termination of Appointment and Withdrawal of Federal Recognition (Cited in para 6–7a(4)(i).)

NGR 635–101

Efficiency and Physical Fitness Boards (Cited in para 6–7a(4)(j).)

NGR 635–102

Officers and Warrant Officers Selective Retention (Cited in para 6–7a(4)(k).)

38 CFR

Pensions, Bonuses, and Veterans' Relief (Cited in para 5–7d.)

5 USC 3502

Order of retention (Cited in para 5–24b(2).)

5 USC 6303

Annual leave; accrual (Cited in para 5–24b(3).)

5 USC 8332

Creditable service (Cited in para 5–24b(1).)

10 USC Chapter 61

Retirement or Separation for Physical Disability (Cited in title page.)

10 USC 101(d)(2)

Definitions (Cited in para 5–10a.)

10 USC 630

Discharge of commissioned officers with less than six years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade) (Cited in para 4–27c(4)(a).)

10 USC 1142

Pre-separation counseling; transmittal of medical records to Department of Veterans Affairs (Cited in para 4–31c.)

10 USC 1165

Regular warrant officers: separation during three-year probationary period (Cited in para 4–27c(4)(a).)

10 USC 1169

Regular enlisted members: limitations on discharge (Cited in para 4–27c(4)(a).)

10 USC 1171

Regular enlisted members: early discharge (Cited in para 4–1*a*.)

10 USC 1201

Regulars and members on active duty for more than 30 days: retirement (Cited in para 4–27*c*(1).)

10 USC 1202

Regulars and members on active duty for more than 30 days: temporary disability retired list (Cited in para 4–27*c*(2).)

10 USC 1203

Regulars and members on active duty for more than 30 days: separation (Cited in para 4–27*c*(3).)

10 USC 1204

Members on active duty for 30 days or less or on inactive-duty training: retirement (Cited in para 4–27*c*(1).)

10 USC 1205

Members on active duty for 30 days or less: temporary disability retired list (Cited in para 4–27*c*(2).)

10 USC 1206

Members on active duty for 30 day or less or on inactive-duty training: separation (Cited in para 4–27*c*(3).)

10 USC 1206a

Reserve component members unable to perform duties when ordered to active duty: disability system processing (Cited in para 5–8*b*.)

10 USC 1207

Disability from intentional misconduct or willful neglect: separation (Cited in para 4–27*c*(4)(*b*).)

10 USC 1207a

Members with over eight years of active service: eligibility for disability retirement for pre-existing conditions (Cited in para 4–4*b*(3).)

10 USC 1208

Computation of service (Cited in para 4–27*c*(1)(*b*).)

10 USC 1209

Transfer to inactive status list instead of separation (Cited in para 4–27*d*(1).)

10 USC 1210

Members on temporary disability retired list: periodic physical examination; final determination of status (Cited in para 4–33*c*(1).)

10 USC 1211

Members on temporary disability retired list: return to active duty; promotion (Cited in para 4–33*l*(1).)

10 USC 1212

Disability severance pay (Cited in para 4–30.)

10 USC 1214

Right to full and fair hearing (Cited in para 4–23*a*.)

10 USC 1216

Secretaries: powers, functions, and duties (Cited in para 4–26*d*(2)(*b*).)

10 USC 1216a

Determinations of disability: requirements and limitations on determinations (Cited in para 5–7*d*.)

10 USC 1372

Grade on retirement for physical disability: members of armed forces (Cited in para 4–30.)

10 USC 1376

Temporary disability retired lists (Cited in para 4–33*a*.)

10 USC 1401

Computation of retired pay (Cited in para 5–7*b*.)

10 USC 1413a

Combat-related special compensation (Cited in para 5–26.)

10 USC 10148a

Ready Reserve: failure to satisfactorily perform prescribed training (Cited in para 5–8*b*.)

10 USC 10216

Military technicians (dual status) (Cited in para 4–22*b*(8).)

10 USC 12301

Reserve components generally (Cited in para 4–2*a*(2).)

10 USC 12503

Ready Reserve: funeral honors duty (Cited in para 5–13*a*(2)(*b*)(2)(*c*).)

10 USC 12643

Boards for appointment, promotion, and certain other purposes: composition (Cited in para 4–21*a*(2).)

10 USC 12686

Reserves on active duty within two years of retirement eligibility: limitation on release from active duty (Cited in para 5–5*b*(7).)

10 USC 12731b

Special rule for members with physical disabilities not incurred in line of duty (Cited in para 4–27*d*(2).)

26 USC 104

Compensation for injuries or sickness (Cited in para 4–22*b*(7).)

37 USC 502b

Absences due to sickness, wounds, and certain other causes (Cited in para 5–8*d*.)

38 USC 101

Definitions (Cited in para 5–24*d*(2).)

Section II

Related Publications

A related publication is a source of additional information. The user does not have to read a related publication to understand this regulation.

AR 11–2

Managers' Internal Control Program

AR 25–30

The Army Publishing Program

ARMY DIR 2012–18

Military Occupational Specialty Administrative Retention Review (MAR2)

ARMY DIR 2012–22

Changes to Integrated Disability Evaluation System Procedures

DODI 1332.18

Disability Evaluation System (DES)

DODI 6495.02

Sexual Assault Prevention and Response (SAPR) Program Procedures

DODM 1332.18, Volume 2

Disability Evaluation System (DES) Manual: Integrated Disability Evaluation System (IDES)

DODM 1332.18, Volume 3

Disability Evaluation System (DES) Manual: Qualify Assurance Program (QAP)

PL 101–510, Section 502

Other Transition Benefits and Services

PL 110–181

National Defense Authorization Act for Fiscal Year 2008

PL 112–56

An act to amend the Internal Revenue Code of 1986 to repeal the imposition of 3 percent withholding on certain payments made to vendors by government entities, to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain healthcare-related programs, and for other purposes

Under Secretary of Defense Memorandum, dated 6 January 2009

Expedited DES Process for Members with Catastrophic Conditions and Combat-Related Causes (Available at [http://prhome.defense.gov/.](http://prhome.defense.gov/))

32 CFR 199.2

Definitions

38 CFR Part 3

Adjudication

38 CFR Part 4

Schedule for Rating Disabilities

5 USC 8411

Creditable service

10 USC 12681

Reserves: discharge authority

32 USC 115

Funeral honors duty performed as a Federal function

Section III

Prescribed Forms

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate (APD) Web site (<http://armypubs.army.mil>). DA Form 199, DA Form 199–1, and the DA Form 199–2 are controlled forms and not available for public download. These forms are only available within the electronic Physical Evaluation Board (ePEB) application.

DA Form 199

Informal Physical Evaluation Board (PEB) Proceedings (EGA) (Prescribed in para 4–22*b*.)

DA Form 199–1

Formal Physical Evaluation Board Proceedings (EGA) (Prescribed in para 4–24*j*.)

DA Form 199–2

U.S. Army Physical Disability Agency (USAPDA) Revised Physical Evaluation Board (PEB) Proceedings (EGA) (Prescribed in para 4–25*g*(1).)

DA Form 3947

Medical Evaluation Board Proceedings (Prescribed in para 4–12*b*(4).)

DA Form 5890

Acknowledgment of Notification of Formal Physical Evaluation Board Hearing (Prescribed in para 4–24*e*(1).)

DA Form 5892

PEBLO Estimated Disability Compensation Worksheet (Prescribed in para 4–22*d*.)

DA Form 5893

Soldier’s Medical Evaluation Board/Physical Evaluation Board Counseling Checklist (Prescribed in para 4–10*b*(3).)

DA Form 7652

Disability Evaluation System (DES) Commander’s Performance and Functional Statement (Prescribed in para 2–6*a*(4).)

Section IV

Referenced Forms

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate (APD) Web site (<http://armypubs.army.mil>); DD forms are available on the Office of the Secretary of Defense (OSD) Web site (www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm).

DA Form 11-2

Internal Control Evaluation Certification

DA Form 2028

Recommended Changes to Publications and Blank Forms

DA Form 2173

Statement of Medical Examination and Duty Status

DA Form 3349

Physical Profile (Form is available on <https://medpros.mods.army.mil/eprofile/default.aspx?returnurl=%2fefprofile%2fadmin%2fusersmanager.aspx>.)

DD Form 214

Certificate of Release or Discharge from Active Duty (Available through normal forms supply channels.)

DD Form 261

Report of Investigation Line of Duty and Misconduct Status

DD Form 2807-1

Report of Medical History

DD Form 2808

Report of Medical Examination

VA Form 21-0819

VA/DOD Joint Disability Evaluation Board Claim (Available at <http://www.va.gov/vaforms/>.)

Appendix B

Internal Control Evaluation

B–1. Function

The functions covered by this evaluation are required training for permanent and alternate PEB adjudicators and PEBLOs; required mandatory and quality control reviews for disability adjudication; and management of the TDRL.

B–2. Purpose

The purpose of this evaluation is to assist the USAPDA in evaluating the key internal controls listed.

B–3. Instructions

Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, sampling, simulation, other). Answers that indicate deficiencies must be explained and the corrective action identified in supporting documentation. These internal controls must be evaluated at least once every 5 years. Certification that the evaluation has been conducted must be accomplished on DA Form 11–2 (Internal Control Evaluation Certification).

B–4. Test questions

- a.* Are PEBLOs trained in accordance with paragraph 2–4 before commencing to counsel Soldiers on the DES?
- b.* Are permanent and alternate members of the PEB trained in accordance with paragraph 4–20 prior to adjudicating cases?
- c.* Does USAPDA conduct mandatory and quality assurance review in accordance with paragraph 4–24?
- d.* Does USAPDA maintain the TDRL in accordance with 10 USC 1376 and AR 635–40?
- e.* Does each Veteran currently on the TDRL have an active file maintained at USAPDA?
- f.* Are orders and letters of instruction issued to the MTFs and the Veteran far enough in advance of a Soldier’s scheduled examination date to achieve compliance with 10 USC 1210 for conduct of physical examination at least once every 18 months?
- g.* Does USAPDA suspend or terminate retired pay as required under 10 USC 1212 when the Veteran fails to report for their periodic physical examination?
- h.* Does USAPDA stop TDRL pay after Veterans who are determined fit have opted not to return to active duty or Reserve active status, as applicable, or have been given the opportunity to enlist?
- i.* Except when 10 USC 1211 applies, does USAPDA remove Veterans from the TDRL within 1 year of completion of re-evaluation?
- j.* Are Veterans on the TDRL pending removal from the TDRL correctly notified of their options under 10 USC 1211 concerning return to active duty or request for voluntary retirement for length of service?
- k.* Is the TDRL status and retired pay of Veterans who are determined fit and who request return to active duty terminated in accordance with 10 USC 1211?

B–5. Supersession

Not applicable.

B–6. Comments

Help make this a better tool for evaluating internal controls. Submit comments to the DCS, G–1 (DAPE–MP), 300 Army Pentagon, Washington, DC 20310–0300 or usarmy.pentagon.hqda-dcs-g-1.list.medical-policy@mail.mil.

Glossary

Section I

Abbreviations

AGR

Active Guard Reserve

AHLTA

Armed Forces Health Longitudinal Technology Application

AOC

area of concentration

APDAB

Army Physical Disability Appeal Board

APFT

Army Physical Fitness Test

AR

Army regulation

ARNG

Army National Guard

ARNGUS

Army National Guard of the United States

CAR

Chief, Army Reserve

CFR

Code of Federal Regulation

CG

commanding general

CNGB

Chief, National Guard Bureau

COAD

continuation on Active Duty

COAR

continuation on Active Reserve

DA

Department of the Army

DA Pam

Department of the Army pamphlet

DARNG

Director, Army National Guard

DCS

Deputy Chief of Staff

DES

Disability Evaluation System

DOD

Department of Defense

DODD

Department of Defense directive

DODI

Department of Defense instruction

DODM

Department of Defense manual

D-RAS

VA Disability Evaluation System Rating Activity Site

EDES

Expedited Disability Evaluation System

e-Profile

electronic profile

EPTS

existed prior to service

ETS

expiration term of service

FPEB

formal PEB

GCMCA

General Court-martial Convening Authority

GS

general schedule

HRC

U.S. Army Human Resources Command

IDES

Integrated Disability Evaluation System

IDT

inactive duty training

IMR

impartial medical review

IPEB

informal physical evaluation board

IRR

Individual Ready Reserve

JTR

Joint Travel Regulations

LDES

Legacy Disability Evaluation System

LOD

line of duty

MAR2

Military Occupational Specialty Administrative Retention Review

MC

Medical Corps

MEB

Medical Evaluation Board

MEBTO

Medical Evaluation Board Tracking Office

MEDCOM

U.S. Army Medical Command

MOS

military occupational specialty

MSC

military service coordinator

MTF

military treatment facility

NARSUM

narrative summary

NGR

National Guard regulation

OSC

Office of Soldiers' Counsel

P

permanent

PCM

primary care manager

PEB

physical evaluation board

PEBLO

physical evaluation board liaison officer

PMOS

primary military occupational specialty

RC

Reserve Component

RCP

retention control point

REFRAD

release from active duty

SECARMY

Secretary of the Army

SECDEF

Secretary of Defense

SJA

staff judge advocate

SMEBC

Soldiers' Medical Evaluation Board Counsel

SPEBC

Soldiers' PEB counsel

T

temporary

TDRL

temporary disability retired list

TJAG

The Judge Advocate General

TSG

The Surgeon General

UCMJ

Uniform Code of Military Justice

USAPDA

U.S. Army Physical Disability Agency

USAR

U.S. Army Reserve

USC

United States Code

VA

U.S. Department of Veterans Affairs

VASRD

Veteran's Administration Schedule for Rating Disabilities

VTC

video teleconference

Section II**Terms****Accepted medical principles**

Fundamental deductions, consistent with medical facts that are so reasonable and logical as to create a virtual certainty that they are correct.

Activities of daily living

Feeds (including special diets), dresses and shelters; personal hygiene services; observation and general monitoring; bowel training or management (unless abnormalities in bowel function are of a severity to result in a need for medical or surgical intervention in the absence of skilled services); safety precautions; general preventive procedures (such as turning to prevent bedsores); passive exercise; transportation; and other such elements of personal care that can reasonably be performed by an untrained adult with minimal instruction or supervision. Activities of daily living may also be referred to as "essentials of daily living" (as defined in 32 CFR 199.2(b)). For the purposes of eligibility for Special Compensation for Assistance with Activities of Daily Living, activities of daily living and "personal functions required in everyday living" are the same.

Acute, grave illness

A pathological condition having a sudden onset or sharp rise that is very serious or dangerous to life. It is usually short and relatively severe as oppose to a prolonged, chronic condition.

Aggravation

The permanent worsening of a pre-service medical condition over and above the natural progression of the condition caused by trauma or the nature of military Service.

Chronic condition

Illnesses that are chronic typically develop slowly over time and do not end. Symptoms may be continual or intermittent, but the patient usually has the condition for life.

Disability Evaluation System

The system used by DOD to implement the provisions of 10 USC Chapter 61.

Electronic profile (e-Profile)

A Web-based application within the Medical Operational Data System that allows tracking of Soldiers who have temporary or permanent medical conditions that may render them not medically ready to deploy. The e-Profile System creates, routes, and stores all DA Form 3349. It allows commanders and designated Medical Protection System read-access personnel immediate visibility of Soldiers' profiles.

Expedited Disability Evaluation System

A voluntary expedited process to authorize benefits, compensation, and specialty care to Soldiers who sustain catastrophic injuries or illnesses.

Integrated Disability Evaluation System

The Joint Army-VA process to determine whether ill or injured Soldiers are fit for continued military Service and Army and VA determine appropriate benefits for Soldiers who are separated or retired for disability.

Legacy Disability Evaluation System

A DES process to determine whether eligible wounded, ill, or injured Soldiers are fit for continued military Service and determines appropriate benefits for Soldiers who are separated or retired for disability. Soldiers processed through the LDES may also apply for Veterans disability benefits through the VA pre-discharge benefits delivery at discharge or quick start programs, or upon attaining Veteran status. A subset of the legacy system is the RC non-duty related referral process.

Medical Protection System

The database of record for all medical readiness data elements; the Web module to the Medical Operational Data System and the primary tool to record, track, and report the medical readiness for Soldiers and units.

Natural progression

The worsening of a pre-Service impairment that would have occurred within the same timeframe regardless of military Service.

Non-duty related impairments

Impairments of members of the RC that were neither incurred nor aggravated while the member was performing duty, to include no incident of manifestation while performing duty which raises the question of aggravation. Soldiers with non-duty related impairments are referred to the PEB for solely a fitness determination, but not a determination of eligibility for disability benefits.

P3 or P4

A DA Form 3349 with a permanent 3 or 4 in one of the profile serial factors.

Permanent, catastrophic injury or illness

A permanent severely disabling injury, disorder, or illness incurred or aggravated in the LOD that compromises the ability of the afflicted person to carry out activities of daily living to such a degree that the person requires personal or mechanical assistance to leave home or bed, or constant supervision to avoid physical harm to self or others.

Recruit

A newly enlisted member of the Armed Forces who has not yet begun in-processing for training.

Serial profile factors

The six serial profile factors are the P-U-L-H-E-S. These stand for physical capacity or stamina, upper extremities, lower extremities, hearing and ears, eyes, and psychiatric. See AR 40-501 for further description of the factors and the four numerical designations that may be assigned to each factor.

Trainee

An individual undergoing in-processing at a reception station or who is in initial military training.

Unfitting

Pertaining to a physical disability that makes a Soldier unfit to perform their duties.

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