

Personnel Separations

Physical Evaluation for Retention, Retirement, or Separation

Rapid Action Revision (RAR) Issue Date: 20 March 2012

Headquarters
Department of the Army
Washington, DC
8 February 2006

UNCLASSIFIED

SUMMARY of CHANGE

AR 635-40

Physical Evaluation for Retention, Retirement, or Separation

This rapid action revision, dated 20 March 2012--

- o Identifies Department of Defense documents that must be read in conjunction with AR 635-40 for military disability evaluation: DODD 1332.18; DODI 1332.38; DOD Memorandum, May 3, 2007, Policy Guidance for the Disability Evaluation System and Establishment of Recurring Directive-Type Memoranda; DOD Memorandum, December 19, 2007, Directive Type Memoranda (DTM) on Standards for Determining Unfitness Due to Medical Impairment (Deployability); DOD Memorandum, March 13, 2008, Directive-Type Memorandum (DTM) on Implementing Disability-Related Provisions of the National Defense Authorization Act of 2008 (PL 110-181); DOD Memorandum, October 14, 2008, Policy Memorandum on Implementing Disability-Related Provisions of the National Defense Authorization Act of 2008 (PL 110-181); and DOD Memorandum, January 6, 2009, Expedited DES Process for Members with Catastrophic Conditions and Combat-Related Cases (available at <http://prhome.defense.gov/WWCTP/Reports.aspx>); and DOD Memorandum, December 19, 2011, Directive-Type Memorandum (DTM) 11-015 on Integrated Disability Evaluation System (IDES) (available at <http://www.dtic.mil/whs/directives/corres/dir3.html>) (app A, sec I).
- o Changes title from Commanding Generals of Health Services Command, 7th Medical Command/Europe, and 18th Medical Command to Commanding General, U.S. Army Medical Command (para 2-7).
- o Changes reference from AR 600-6 (obsolete) to AR 40-66 (para 4-8).
- o Revises paragraph for record of proceedings of the physical evaluation board (para 4-19o).
- o Revises DA Form 199 (Physical Evaluation Board Proceedings) to be the record of proceedings for the findings and recommendations of the informal physical evaluation board (para 4-20b).
- o Revises paragraphs for Soldier's election to the informal physical evaluation board findings and recommendations on DA Form 199, section IX (paras 4-20c and 4-20d(2)).
- o Changes the role of the physical evaluation board liaison officer (paras 4-20d and 4-20d(1)).
- o Revises paragraph to read "Complete DA Form 5893 (Soldier's Medical Evaluation Board/Physical Evaluation Board Counseling Checklist)" (para 4-20d(5)).
- o Removes instructions on how to locally reproduce DA Form 5890 (para 4-21e(2)).

- Revises DA Form 199-1 (Formal Physical Evaluation Board Proceedings) as the record of proceedings for the findings and recommendations of the formal physical evaluation board proceedings (para 4-21r(3)).
- Changes paragraph "Soldier's response" to "Soldier's election" and revises paragraph to read "DA Form 199-1, section X, records the Soldier's election options to formal findings and recommendations" (para 4-21s).
- Adjusts wording in paragraph for transmittal letter for mental incompetency cases (para 4-21u(2)).
- Authorizes DA Form 199-2 (U.S. Army Physical Disability Agency (USAPDA) Revised Physical Evaluation Board (PEB) Proceedings) to document the U.S. Army Physical Disability Agency revisions to physical evaluation board findings, decisions of the Army Physical Disability Appeal Board, and decisions of the Army Board for Correction of Military Records (paras 4-22d(4), 4-22f, and 4-25b(6)).
- Changes title from U.S. Army Human Resources Command to U.S. Army Physical Disability Agency (paras 4-24, 7-9, and 7-10).
- Deletes suspense for issuing letter of instructions to the medical treatment facility commander (para 7-9a).
- Changes U.S. Army Finance and Accounting Center to Defense Finance and Accounting Service, Cleveland, Ohio (para 7-11b(1) and 7-12).
- Deletes Rating Principles and Special Instructions and Explanatory Notes (app B, secs II and III).
- Deletes Instructions for DA Form 199 (Physical Evaluation Board (PEB) Proceedings) (app D).
- Adds Internal Control Evaluation Checklist (app F).
- Makes additional rapid action revision changes (removed "R" from DA Form 5889 (para 4-15a); adjusted reference to DA Form 199 and DA Form 199-1 (paras 4-15h, 4-19l(1), 4-19p(1), para 4-19p(2), 4-21t(4) (b), 4-21t(5), 4-21u(1), and 4-21u(2)); deleted paras 4-19r and 4-21u(3); deleted figs 4-1 through 4-8, 7-1 through 7-4, 8-1, and E-1; deleted tables 4-1, 4-2, and 8-1).
- Makes administrative changes (app A: deleted publications AR 135-200 and NGR 40-501 (not used); added DA Form 199-2 and removed -R from DA Form 5889, DA Form 5890, DA Form 5891, DA Form 5892, and DA Form 5893 in required forms; deleted DA Form 201 and DA Form 3430-R and added DA Form 11-2, DD Form 28 (RET), and DFAS Form 702 in related forms; glossary: deleted unused acronyms and corrected abbreviations as prescribed by Army Records Management and Declassification Agency).
- Changes USA HRC to USAPDA (throughout).
- Updates office symbols for the Human Resources Command and/or adds new address: U.S. Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5208 (throughout).
- Changes acronym for medical evaluation board from MEBD to MEB (throughout).

Effective 8 March 2006

Personnel Separations

Physical Evaluation for Retention, Retirement, or Separation

By Order of the Secretary of the Army:

RAYMOND T. ODIERNO
General, United States Army
Chief of Staff

Official:


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History. This publication is a rapid action revision (RAR). This RAR is effective 26 March 2012. The portions affected by this RAR are listed in the summary of change.

Summary. This regulation governs the evaluation for physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability. The Department of Defense policies listed in the summary of change and at appendix A under required publications must be read in conjunction with this regulation until a full revision of this regulation is completed.

Applicability. This regulation applies to the active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated.

Proponent and exception authority. The Deputy Chief of Staff, G–1 is the proponent of the regulation. 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. 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 management 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 F).

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. The proponent agency of this regulation is the Office of the Deputy Chief of Staff, G–1. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Commander, U.S. Army Physical Disability Agency (AHRC–DRP), Policy Officer, 2530 Crystal Drive, Arlington, VA 22202–3934.

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

Contents (Listed by paragraph and page number)

Chapter 1

Introduction, page 1

Purpose • 1–1, page 1

References • 1–2, page 1

Explanation of abbreviations and terms • 1–3, page 1

Responsibilities • 1–4, page 1

Ineligibility for processing • 1–5, page 1

Chapter 2

Responsibilities and Functions, page 1

Section I

Responsible Individuals, page 1

*This regulation supersedes AR 635–40, dated 15 August 1990. This edition publishes a rapid action revision of AR 635–40.

Contents—Continued

Secretary of the Army • 2-1, *page 1*
Deputy Chief of Staff, G-1 • 2-2, *page 1*
Commander, U.S. Army Human Resources Command • 2-3, *page 1*
Commanding General, U.S. Army Physical Disability Agency • 2-4, *page 2*
The Surgeon General • 2-5, *page 2*
The Judge Advocate General • 2-6, *page 2*
Commanding General, U.S. Army Medical Command • 2-7, *page 2*
Commander, medical treatment facility • 2-8, *page 2*
Unit commander • 2-9, *page 2*

Section II

Related Boards, page 2
Board elements • 2-10, *page 2*
Army Physical Disability Appeal Board • 2-11, *page 3*
The Army Board for Correction of Military Records • 2-12, *page 3*
Army Disability Rating Review Board • 2-13, *page 3*

Chapter 3

Policies, page 3

Standards of unfitness because of physical disability • 3-1, *page 3*
Presumptions • 3-2, *page 4*
Conditions existing before active military service • 3-3, *page 5*
Line of duty decisions • 3-4, *page 5*
Use of the Department of Veterans Affairs schedule for Rating Disabilities • 3-5, *page 5*
Length of hospitalization • 3-6, *page 6*
Retaining Soldiers on active duty after scheduled nondisability retirement or discharge date • 3-7, *page 6*
Counseling provided to Soldier • 3-8, *page 6*
The temporary disability retired list • 3-9, *page 6*
Continuation on active duty or continuation on active Reserve status of Soldiers determined unfit due to physical disability • 3-10, *page 7*
Limitation on appearance by Soldiers • 3-11, *page 7*
Findings and recommendations of agencies reviewing disability cases • 3-12, *page 7*
Special rules applicable to general and medical corps officers • 3-13, *page 7*
Factors governing time of processing • 3-14, *page 7*

Chapter 4

Procedures, page 7

Section I

Eligibility for Disability Evaluation, page 7
Soldiers charged with an offense • 4-1, *page 7*
Soldiers with suspended sentences • 4-2, *page 8*
Enlisted Soldiers subject to administrative separation • 4-3, *page 8*
Commissioned or warrant officers who may be separated under other than honorable conditions • 4-4, *page 8*
Soldiers absent without leave • 4-5, *page 8*

Section II

Initiation of Medical Evaluation, page 8
Referral by headquarters • 4-6, *page 8*
Referral by commanders of medical treatment facilities • 4-7, *page 8*
Referral by commanders • 4-8, *page 9*

Section III

Medical Processing Related to Disability Evaluation, page 9
Medical examination • 4-9, *page 9*
The medical evaluation board • 4-10, *page 9*

Contents—Continued

Narrative summary • 4-11, *page 9*
Counseling Soldiers who have been evaluated by a medical evaluation board • 4-12, *page 9*
Referral to a physical evaluation board • 4-13, *page 10*
Psychiatric and spinal cord injury patients requiring continuing hospitalization • 4-14, *page 10*
Action following approval of a medical evaluation board report • 4-15, *page 10*
Rehospitalization of disabled Soldier • 4-16, *page 12*

Section IV

Physical Disability Evaluation, page 12
Physical evaluation boards • 4-17, *page 12*
Initial processing • 4-18, *page 13*
Physical evaluation board decisions—common criteria • 4-19, *page 13*
Informal board • 4-20, *page 18*
Formal board • 4-21, *page 20*

Section V

Review and Confirmation of Physical Evaluation Board Action, page 25
Review by the U.S. Army Physical Disability Agency • 4-22, *page 25*
Disposition of medical records • 4-23, *page 27*

Section VI

Disposition Subsequent to Adjudication, page 27
Disposition by the U.S. Army Physical Disability Agency • 4-24, *page 27*
The Army Physical Disability Appeal Board • 4-25, *page 28*
Army Disability Rating Review Board • 4-26, *page 28*

Chapter 5

Separation for Non-Service Aggravated, Existed Prior to Service Conditions upon Soldier's Waiver of Physical Evaluation Board Evaluation, page 29

General • 5-1, *page 29*
Criteria • 5-2, *page 29*
Actions by physical evaluation board liaison officer • 5-3, *page 29*
Authority to order discharge • 5-4, *page 29*
Action by commander authorized to effect discharge • 5-5, *page 29*

Chapter 6

Continuation on Active Duty and Continuation on Active Reserve Status of Unfit Soldiers, page 31

General • 6-1, *page 31*
Objective • 6-2, *page 31*
Duty statuses eligible for continuation on active duty and continuation on active Reserve status • 6-3, *page 31*
The period for which continuation on active duty and continuation active Reserve status may be approved • 6-4, *page 31*
Precedence of continuation on active duty and continuation on active Reserve status to enlistment contracts or other obligated service • 6-5, *page 32*
Referral to the physical disability evaluation system prior to expiration of continuation period • 6-6, *page 32*
Qualification and process for continuation on active duty and continuation on active Reserve status • 6-7, *page 32*
Special counseling • 6-8, *page 37*
Processing by medical treatment facility • 6-9, *page 38*
Physical evaluation board processing • 6-10, *page 38*
Headquarters, U.S. Army Physical Disability Agency action • 6-11, *page 38*
Action by approving authority • 6-12, *page 38*
Consideration for reclassification (enlisted) or branch transfer (officers) • 6-13, *page 39*
Medical reevaluation • 6-14, *page 39*

Contents—Continued

Chapter 7

Temporary Disability Retired List, page 39

Section I

Introduction, page 39

Overview • 7–1, page 39

Reasons for placement on the temporary disability retired list • 7–2, page 39

Information reflected on the temporary disability retired list • 7–3, page 39

Requirement for periodic medical examination and physical evaluation board evaluation • 7–4, page 40

Counseling • 7–5, page 40

Prompt processing • 7–6, page 40

Prompt removal from temporary disability retired list • 7–7, page 40

Section II

Administration, page 40

Individual temporary disability retired list file • 7–8, page 40

U.S. Army Physical Disability Agency's letter of instruction to the medical treatment facility commander on periodic medical examination • 7–9, page 40

U.S. Army Physical Disability Agency's letter of instruction to the Soldier • 7–10, page 41

Disposition of the temporary disability retired list Soldier • 7–11, page 41

Restoring eligibility • 7–12, page 42

Section III

Periodic Medical Examination, page 42

Responsible of the medical treatment facility • 7–13, page 42

Selection of examining facilities • 7–14, page 43

Medical records • 7–15, page 43

The medical treatment facility commander's duties in notifying the Soldier • 7–16, page 43

Examination of the Soldier • 7–17, page 43

Report of the medical examination • 7–18, page 43

Review and forwarding the report of the examination • 7–19, page 44

Section IV

Physical Disability Decision, page 44

Physical evaluation board processing • 7–20, page 44

Travel orders for formal hearing • 7–21, page 45

Review of the temporary disability retired list cases • 7–22, page 45

Chapter 8

Overview • 8–1, page 45

Eligibility • 8–2, page 45

Proximate result • 8–3, page 46

Hospitalization • 8–4, page 46

Duty and pay status • 8–5, page 46

Medical processing • 8–6, page 46

Continuation in an active Reserve status • 8–7, page 46

Physical evaluation board processing • 8–8, page 46

Disposition • 8–9, page 47

Appendixes

A. *References, page 48*

B. *Army Application of the Department of Veterans Affairs Schedule for Rating Disabilities, page 53*

C. *Counseling, page 57*

D. *Deleted., page 65*

E. *Personnel Processing Actions, page 65*

Contents—Continued

F. Internal Control Evaluation Checklist, *page 68*

Glossary

Chapter 1

Introduction

1–1. Purpose

This regulation establishes the Army Physical Disability Evaluation System (PDES) according to the provisions of Title 10, United States Code (USC), Chapter 61, (10 USC 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.

1–2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1–3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1–4. Responsibilities

Responsibilities are listed in chapter 2.

1–5. Ineligibility for processing

a. Title 10, United States Code, Section 1217 (10 USC 1217) excludes cadets of service academies from eligibility for disability benefits under 10 USC 61. However, U.S. Military Academy (USMA) cadets may be entitled to compensation administered by the Department of Veterans Affairs (VA). Title 38, United States Code, Section 101(21)(D), (38 USC 101(21)(D)) includes service as a cadet at the USMA within the definition of active duty for purposes of entitlement to VA compensation.

b. Reserve Officers' Training Corps cadets are not eligible for processing under this regulation. Senior Reserve Officers' Training Corps cadets may be eligible for VA disability benefits under 38 USC 101(22)(D) as explained above for USMA cadets.

Chapter 2

Responsibilities and Functions

Section I

Responsible Individuals

2–1. Secretary of the Army

The Secretary of the Army (SA) will prescribe regulations to carry out the provisions of 10 USC 61. Unless otherwise specified in this regulation, the SA reserves all powers, functions, and duties of the Army PDES.

2–2. Deputy Chief of Staff, G–1

The Deputy Chief of Staff, G–1 (DCS, G–1) has overall Army Staff responsibility for the Army PDES. Policy guidance will be provided by the Director of Military Personnel Management, Office of the Deputy Chief of Staff, G–1.

2–3. Commander, U.S. Army Human Resources Command

The commander, U.S. Army Human Resources Command (USAHRC) will—

- a. Operate the Army PDES under the general staff supervision of the DCS, G–1.
- b. Accomplish final administrative actions in processing physical disability cases; issue needed orders or other instructions for the SA, based on decisions of the Commanding General, U.S. Army Physical Disability Agency (CG, USAPDA) or higher authority (see chap 4 and app D).
- c. Notify the VA of all individuals being separated or retired from the Army for physical disability.
- d. Coordinate, control, and manage all Soldiers on the temporary disability retired list (TDRL).

2-4. Commanding General, U.S. Army Physical Disability Agency

The Commanding General (CG), U.S. Army Physical Disability Agency (USAPDA), under the operational control of the commander, USAHRC, will operate the Army PDES, to include—

- a.* Interpreting and implementing policies coming from higher authority.
- b.* Developing the policies, procedures, and programs of the system.
- c.* Coordinating with other military departments to ensure applicable laws, policies, and directives are interpreted uniformly. (A uniform interpretation is required to ensure that a Soldier of the Army will be granted substantially the same benefits as a member of another Service under similar conditions.)
- d.* Commanding and managing the subordinate elements of the USAPDA.
- e.* Reviewing physical evaluation board (PEB) proceedings to ensure that Soldiers are given uniform and fair consideration under applicable laws, policies, and directives.
- f.* Making the final decision whether a Soldier is unfit because of physical disability except when such decisions are reserved to higher authority. Included as higher authority are the Office of the Secretary of the Army (OSA) and the Office of the Secretary of Defense.
- g.* Determining percentage rating and disposition.

2-5. The Surgeon General

The Surgeon General will establish and interpret medical standards for retaining Soldiers on active duty (see AR 40-400 and AR 40-501).

2-6. The Judge Advocate General

The Judge Advocate General will—

- a.* Interpret laws and regulations governing the Army PDES.
- b.* Train and provide sufficient legal counsel to represent Soldiers appearing before a PEB.
- c.* Train Army attorneys in disability law.

2-7. Commanding General, U.S. Army Medical Command

The Commanding General, U.S. Army Medical Command will—

- a.* Ensure that Army medical treatment facilities (MTFs) under their control fulfill their responsibilities in connection with the Army PDES as outlined in AR 40-400 and this regulation.
- b.* Appoint MTFs responsible for accomplishing periodic medical evaluation for TDRL Servicemembers (chap 7).

2-8. Commander, medical treatment facility

The commander, MTF will—

- a.* Provide a thorough and prompt evaluation when a Soldier's medical condition becomes questionable in respect to physical ability to perform duty.
- b.* Appoint a physical evaluation board liaison officer (PEBLO) to counsel Soldiers undergoing physical disability processing.
- c.* Ensure medical evaluation board (MEB) proceedings referred to the PEB are complete, accurate, and fully documented as outlined in AR 40-400, chapter 7, and chapter 4, of this regulation.

2-9. Unit commander

The unit commander will—

- a.* Become thoroughly familiar with the purpose of the Army PDES.
- b.* Ensure that any physical defects impacting on a Soldier's performance of duty are reflected in the Soldier's evaluation report.
- c.* Refer a Soldier to the servicing MTF for medical evaluation when the Soldier is believed to be unable to perform the duties of his or her office, grade, rank, or rating.
- d.* Upon request of the MTF commander, provide the information, statements, and records on Soldiers of their command being processed for physical disability evaluation.
- e.* Ensure timely compliance with AR 600-8-4 to prevent delay in the disability processing of Soldiers under their command.

Section II

Related Boards

2-10. Board elements

- a.* The Army PDES consists of—
 - (1) Medical evaluation boards (a function of the Army Medical Department).

(2) Physical evaluation boards (elements of the USAPDA).

(3) Case reviews, when applicable, by USAPDA.

b. Certain Department of the Army (DA) boards, though not a part of the disability system, are closely related to disability evaluation because of their assigned function to review disability decisions upon request of the Soldier, former Soldier, or when otherwise required. These boards are described in paragraphs 2–11 through 2–13, below.

2–11. Army Physical Disability Appeal Board

The Army Physical Disability Appeal Board (APDAB) is a component of the Army Council of Review Boards (ACRB). APDAB was established to review disability evaluation cases forwarded by the CG, USAPDA as provided under the circumstances prescribed in chapter 4.

2–12. The Army Board for Correction of Military Records

The Army Board for Correction of Military Records (ABCMR) is a statutory board established within the OSA under the provisions of Title 10, United States Code, Section 1552, (10 USC 1552). The ABCMR provides a means for correcting an error or removing an injustice. Within 3 years of the first knowledge of an error or injustice, a Soldier, former Soldier, or individual acting on the Soldier's behalf may submit an application to the ABCMR according to AR 15–185 if the individual—

a. Believes that their military records reflect an error or an injustice.

b. Has exhausted all administrative remedies offered by existing laws and regulations.

2–13. Army Disability Rating Review Board

The Army Disability Rating Review Board (ADRRB) is a component of the ACRB. The ADRRB reviews disability percentage ratings on request of a Soldier who was retired because of physical disability (see chap 4, sec VI). Requests for review must be made within 5 years from the date of retirement.

Chapter 3 Policies

3–1. Standards of unfitness because of physical disability

The mere presences of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

a. *Objectives of standards.* To ensure all Soldiers are physically qualified to perform their duties in a reasonable manner, medical retention qualification standards have been established in AR 40–501, chapter 3. These standards include guidelines for applying them to fitness decisions in individual cases. These guidelines are used to refer Soldiers to a MEB. The major objective of these standards is to achieve uniform disposition of cases arising under the law. These retention standards and guidelines should not be interpreted to mean that possessing one or more of the listed conditions or physical defects signifies automatic disability retirement or separation from the Army. The fact that the Soldier has one or more defects sufficient to require referral for evaluation, or that these defects may be unfitting for Soldiers in a different office, grade, rank, or rating, does not justify a decision of physical unfitness.

b. *Considering the overall effect of disabilities.* The overall effect of all disabilities present in a Soldier whose physical fitness is under evaluation must be considered. The effect will be considered both from the standpoint of how the disabilities affect the Soldier's performance and the requirements imposed on the Army to maintain and protect him or her during future duty assignments. A Soldier may be unfit because of physical disability caused by a single impairment or physical disabilities resulting from the overall effect of two or more impairments even though each of them, alone, would not cause unfitness.

c. *Evaluating the Soldier's fitness to perform duties.* All relevant evidence must be considered in evaluating the fitness of a Soldier. Findings with respect to fitness or unfitness for military service will be made on the basis of the preponderance of the evidence. Thus, if the preponderance of evidence indicates unfitness, a finding to that effect will be made. For example, when a referral for physical evaluation immediately follows acute, grave illness or injury, the medical evaluation may have the greater weight. This is particularly true if medical evidence establishes the fact that continued service would be harmful to the Soldier's health or would prejudice the best interests of the Army. A Soldier may be referred for physical evaluation under other circumstances. If so, evaluations of the performance of duty by supervisors (letters, efficiency reports, or personal testimony) may provide better evidence than a clinical estimate by the Soldier's physician describing the physical ability to perform the duties of the office, grade, rank, or rating. Thus, if the evidence establishes the fact that the Soldier adequately performed the normal duties of his or her office, grade, rank, or rating until the time of referral for physical evaluation, the Soldier might be considered fit for duty. This is true even though medical evidence indicates the Soldier's physical ability to perform such duties may be questionable.

However, inadequate duty performance should not be considered as evidence of physical unfitness unless a cause and effect relationship exists between the inadequate duty performance and the presence of physical disabilities.

d. Deciding the Soldier's unfitness to perform duties. Initial enlistment, induction, or commissioning physical standards are not relevant to deciding unfitness for continued military service. Once a Soldier has been enlisted, inducted, or commissioned, the fact that the Soldier may later fall below initial entry physical standards does not, in itself, authorize separation or retirement unless it is also established that the Soldier is unfit because of physical disability as described above. Likewise, a lack of special skills in demand, inability to meet physical standards established for specialized duty such as flying, or transfer between components or branches within the Army, does not, in itself, establish eligibility for disability separation or retirement. Although the ability of a Soldier to reasonably perform his or her duties in all geographic locations under all conceivable circumstances is a key to maintaining an effective and fit force, this criterion (world-wide deployability) will not serve as the sole basis for a finding of unfitness.

e. Prior-service disabilities. Prior-service medical conditions are to be considered according to the following standards and limitations.

(1) Despite any other provisions of this regulation, after a Soldier has been enlisted, inducted, and appointed or commissioned, the Soldier will not be declared physically unfit for military service because of disabilities known to exist at the time of the Soldier's acceptance for military service that have remained essentially the same in degree since acceptance, and have not interfered with the Soldier's performance of effective military service.

(2) Notwithstanding the above, when a Soldier enters the military with a waiver for a medical condition or physical defect, and the condition represents a decided medical risk which would probably prejudice the best interests of the Government were the Soldier to remain in military service, separation without benefits may be appropriate, if initiated within 6 months of initial entry on active duty. Entry physical standards will be used in separating individuals with pre-existing medical conditions. Such cases will be referred to a PEB to determine if the pre-existing condition has been service-aggravated.

3-2. Presumptions

The following presumptions will apply to physical disability evaluation:

a. Before and during active service.

(1) A Soldier was in sound physical and mental condition upon entering active service except for physical disabilities noted and recorded at the time of entry.

(2) Any disease or injury discovered after a Soldier entered active service, with the exception of congenital and hereditary conditions, was not due to the Soldier's intentional misconduct or willful neglect and was incurred in line of duty (LD).

(3) If the foregoing presumptions are overcome by a preponderance of the evidence, any additional disability or death resulting from the preexisting injury or disease was caused by military service aggravation. (Only specific findings of "natural progression" of the preexisting disease or injury, based upon well-established medical principles are enough to overcome the presumption of military service aggravation.)

(4) Acute infections and sudden developments occurring while the Soldier is in military service will be regarded as service-incurred or service-aggravated. Acute infections are those such as pneumonia, active rheumatic fever (even though recurrent), acute pleurisy, or acute ear disease. Sudden developments are those such as hemoptysis, lung collapse, perforating ulcer, decompensating heart disease, coronary occlusion, thrombosis, or cerebral hemorrhage. This presumption may be overcome when a preponderance of the evidence shows that no permanent new or increased disability resulting from these causes occurred during active military service or that such conditions were the result of "natural progression" of preexisting injuries or diseases as in (3), above.

(5) The foregoing presumptions may be overcome only by a preponderance of the evidence, which differs from personal opinion, speculation, or conjecture. When reasonable doubt exists about a Soldier's condition, an attempt should be made to resolve the doubt by further clinical investigation and observation and by consideration of any other evidence that may apply. In the absence of such proof by the preponderance of the evidence, reasonable doubt should be resolved in favor of the Soldier.

b. Processing for separation or retirement from active service.

(1) Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

(2) When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit. An enlisted Soldier whose reenlistment has been approved before the end of his or her current enlistment, is not processing for separation; therefore, this rule does not apply. The presumption of fitness may be overcome if the evidence establishes that—

(a) The Soldier was, in fact, physically unable to perform adequately the duties of his or her office, grade, rank or

rating for a period of time because of disability. There must be a causative relationship between the less than adequate duty performance and the unfitting medical condition or conditions.

(b) An acute, grave illness or injury or other significant deterioration of the Soldier's physical condition occurred immediately prior to, or coincident with processing for separation or retirement for reasons other than physical disability and which rendered the Soldier unfit for further duty.

(3) A Soldier previously found unfit but approved for continuation on active duty (COAD) is evaluated according to chapter 6.

3-3. Conditions existing before active military service

a. According to accepted medical principles, certain abnormalities and residual conditions exist that, when discovered, lead to the conclusion that they must have existed or have started before the individual entered the military service.

(1) Examples of these conditions are as follows:

(a) Scars.

(b) Fibrosis of the lungs.

(c) Atrophy following disease of the central or peripheral nervous system.

(d) Healed fractures.

(e) Absent, displaced, or resected organs.

(f) Supernumerary parts.

(g) Congenital malformations and hereditary conditions.

(h) Similar conditions in which medical authorities are in such consistent and universal agreement as to their cause and time of origin that no additional confirmation is needed to support the conclusion that they existed prior to military service.

(2) Likewise, manifestation of lesions or symptoms of chronic disease from date of entry on active military service (or so close to that date of entry that the disease could not have started in so short a period) will be accepted as proof that the disease existed prior to entrance into active military service.

(3) Manifestations of communicable disease within less than the minimum incubation period after entry on active service will be accepted as proof of inception prior to military service.

b. Standard in-service medical and surgical treatment reducing the effect of the disease or other conditions incurred prior to entry into military service does not constitute service aggravation unless the treatment was required to relieve disability that had been aggravated by military service.

c. Unexpected adverse effects, over and above known hazards, directly attributable to treatment, anesthetic, or operation performed or administered for a disease or medical condition existing before entry on active duty, may be considered service aggravation.

d. For separation guidance on non-service aggravated existed prior to service (EPTS) conditions when a Soldier requests waiver of referral to a PEB, see chapter 5.

3-4. Line of duty decisions

a. Under the laws governing the Army PDES, Soldiers who sustain or aggravate physically unfitting disabilities must meet the following LD criteria to be eligible to receive retirement and severance pay benefits.

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training (IDT).

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

b. LD decisions are reached according to policies and procedures prescribed in AR 600-8-4. Copies of LD decision, DA Form 2173 (Statement of Medical Examination and Duty Status), or DD Form 261 (Report of Investigation—Line of Duty and Misconduct Status) must be included in the official records of the case. When a board or council has substantial evidence, however, showing that a prior decision may be incorrect for any reason, they must include such evidence in the case record and request U.S. Army Human Resources Command (AHRC-PDC-P), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5208 to review the LD determination before final disposition of disability processing at Headquarters, Department of the Army (HQDA) level (see para 4-19g).

c. In certain categories of activities, the deputy commander, PEB president, or alternate president have the authority to make findings of "in line of duty, not due to own misconduct" when no LD investigation has been completed and specific criteria have been met (para 4-19g).

3-5. Use of the Department of Veterans Affairs schedule for Rating Disabilities

a. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Under the provisions of 10 USC 61 these ratings are assigned from the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

b. Special guidance concerning Army use of the VASRD, as well as modifications and exceptions to it as prescribed by DODD 1332.18, are set forth in appendix B, of this regulation.

c. The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty.

d. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. Any non-ratable defects or conditions will be listed in item 8 of DA Form 199 (Physical Evaluation Board Proceedings), but will be annotated as non-ratable.

3-6. Length of hospitalization

Providing definitive medical care to active duty Soldiers requiring prolonged hospitalization who are unlikely to return to active duty is not within the DA mission. The time at which a Soldier should be processed for disability retirement or separation must be decided on an individual basis. The interest of both the Army and the Soldier must be considered. A Soldier may not be retained or separated solely to increase retirement or separation benefits. Soldiers who are medically unfit and not likely to return to duty should be processed for disability retirement or separation when it is decided that they have attained optimum hospital improvement.

3-7. Retaining Soldiers on active duty after scheduled nondisability retirement or discharge date

A Soldier whose normal scheduled date of nondisability retirement or separation occurs during the course of hospitalization or disability evaluation may, with his or her consent, be retained in the service until he or she has attained maximum hospital benefits and completion of disability evaluation if otherwise eligible for referral into the disability system.

a. Officers and warrant officers on extended active duty may be retained on active duty according to the provision of AR 600-8-24, chapter 1.

b. Enlisted Soldiers on extended active duty may be retained on active duty according to the provisions of AR 635-200, chapter 1.

c. Soldiers in the reserve components (RC) (other than active guard reserve (AGR)) may be retained according to the provisions of AR 135-381.

d. Reserve component Soldiers serving on AGR status will be retained on active duty as prescribed in AR 635-200.

3-8. Counseling provided to Soldier

a. *Physical evaluation board liaison officer counseling.* The appointed PEBLO at the MTF is responsible for counseling Soldiers (or the next-of-kin or legal guardian in appropriate cases) concerning their rights and privileges at each step in disability evaluation, beginning with the decision of the treating physician to refer the Soldier to a MEB and until final disposition is accomplished. For this purpose, the MTF commander will name an experienced, qualified officer, noncommissioned officer (NCO), or civilian employee as the PEBLO. At least one additional qualified officer, NCO, or civilian employee will be designated as alternate PEBLO. Only personnel whose duties will not conflict with their counseling responsibilities will be selected. The MTF commander will notify the recorder of the applicable PEB, of the name and telephone number of the PEBLO and alternate PEBLO. PEBLOs will use the Disability Counseling Guide (app C) to assist them in providing thorough counseling. Counseling will be documented (see para 4-20d). Counseling will cover as a minimum, the following areas:

- (1) Legal rights (including the sequence of and the nature of disability processing).
- (2) Effects and recommendations of MEB and PEB findings.
- (3) Estimated disability retired or severance pay (after receipt of PEB findings and recommendations).
- (4) Probable grade upon retirement.
- (5) Potential veteran's benefits.
- (6) Recourse to and preparation of rebuttals to PEB findings and recommendations.
- (7) Disabled Veterans Outreach Program (DVOP).
- (8) Post-retirement insurance programs and the Survivor Benefit Plan.

b. *Legal counseling.* Counseling by the appointed legal counsel is provided when the Soldier requests a formal hearing.

3-9. The temporary disability retired list

a. The TDRL is used in the nature of a "pending list". It provides a safeguard for the Government against permanently retiring a Soldier who can later fully recover, or nearly recover, from the disability causing him or her to be unfit. Conversely, the TDRL safeguards the Soldier from being permanently retired with a condition that may reasonably be expected to develop into a more serious permanent disability.

b. Requirements for placement on the TDRL are the same as for permanent retirement. The Soldier must be unfit to perform the duties of his or her office, grade, rank, or rating at the time of evaluation. The disability must be rated at a minimum of 30 percent or the Soldier must have 20 years of service computed under Title 10, United States Code, Section 1208, (10 USC 1208). In addition, the condition must be determined to be temporary or unstable.

c. A Soldier who is determined to be physically fit will not be placed on the TDRL regardless of the severity of the physical defects or the fact that they might become unfitting were the Soldier to remain on active duty for a period of time.

3–10. Continuation on active duty or continuation on active Reserve status of Soldiers determined unfit due to physical disability

As set forth in chapter 6 of this regulation, a Soldier determined unfit due to physical disability by the PDES may be deferred from disability separation or retirement when it is determined that the Soldier can still serve effectively with proper assignment limitations. The SA, or their designee, may direct an involuntary COAD or continuation on active Reserve status (COAR) when the Soldier's service obligation, or special skill and experience justify an involuntary continuation.

3–11. Limitation on appearance by Soldiers

A Soldier or his or her representative will not be permitted to appear before the informal PEB, USAPDA (during case review), the APDAB, or the ADRRB.

3–12. Findings and recommendations of agencies reviewing disability cases

Review and appeal activities are bound by the regulations under which adjudicative activities function. A rare and unusual case may occur to which current regulations do not apply. If so, refer the case through channels to the OSA with a recommendation for disposition.

3–13. Special rules applicable to general and medical corps officers

a. General officers and medical corps (MC) officers will not be found to be unfit by reason of physical disability if they can be expected to perform satisfactorily in an assignment appropriate to their grade, qualifications, and experience.

b. General officers and MC officers who are processing for retirement by reason of age or length of service may not be retired for physical disability unless the initial unfitness determination of the SA is approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense (Health Affairs) (ASD (HA)).

c. General officers and MC officers not processing for retirement by reason of length of service at the time of their referral into the disability system, may not be retired or separated for physical disability until a recommendation therefore by the SA is approved by the ASD (HA).

d. One copy of all retirement orders issued in the case of general officers retired because of physical disability will be submitted to ASD (HA).

3–14. Factors governing time of processing

The point in time for referral of a Soldier for disability separation or retirement is determined on an individual basis. Normally, Soldiers who are not likely to return to duty will be processed as soon as this probability is ascertained.

a. Separation or retirement should normally occur within 20 days of the date of the final determination of unfitness by the SA. However, Soldiers are entitled to use accrued leave in excess of that which cannot be sold back to the Government.

b. Soldiers having a prognosis of imminent death shall be evaluated and processed in a comparable manner and procedural sequence to that of all other Soldiers. No procedures will be circumvented or omitted, to include LD determination in the interest of timely processing.

Chapter 4 Procedures

Section I Eligibility for Disability Evaluation

4–1. Soldiers charged with an offense

a. *Uniform Code of Military Justice action.* The case of a Soldier charged with an offense under the Uniform Code of Military Justice (UCMJ) or who is under investigation for an offense chargeable under the UCMJ which could result in dismissal or punitive discharge, may not be referred for, or continue, disability processing unless—

- (1) The investigation ends without charges.

(2) The officer exercising proper court-martial jurisdiction dismisses the charges.

(3) The officer exercising proper court-martial jurisdiction refers the charge for trial to a court-martial that cannot adjudge such a sentence.

b. Civil court action. If civil criminal court action is pending and the Soldier is present for duty, disability processing continues provided any movement of the Soldier is cleared with responsible military and civilian authorities.

4-2. Soldiers with suspended sentences

A Soldier may not be referred for, or continue, disability processing if under sentence of dismissal or punitive discharge. If the sentence is suspended, the Soldier's case may then be referred for disability processing. A copy of the order suspending the sentence must be included in the Soldier's records. If action to vacate the suspension is started after the case is forwarded for disability processing, the PEB serving the area must be promptly notified to stop disability processing. Disability processing may resume if the commander decides not to vacate the suspension.

4-3. Enlisted Soldiers subject to administrative separation

a. Except as provided below, an enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions.

b. If the case comes within the limitations above, the commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation. This authority may not be delegated. A copy of the decision, signed by the General Court Martial Convening Authority (GCMCA), must be forwarded with the disability case file to the PEB. A case file may be referred in this way if the GCMCA finds the following:

(1) The disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

(2) Other circumstances warrant disability processing instead of alternate administrative separation.

c. A Soldier being considered for separation because of unsatisfactory performance (AR 635-200, chap 13), must be referred for disability processing upon approved recommendation of a MEB (AR 635-200, para 1-35a).

4-4. Commissioned or warrant officers who may be separated under other than honorable conditions

a. A commissioned or warrant officer will not be referred for disability processing instead of elimination action (administrative separation) that could result in separation under other than honorable conditions. Officers in this category who are believed to be unfit because of physical disability will be processed simultaneously for administrative separation and physical disability evaluation.

b. Commanders exercising general court-martial authority will ensure that the foregoing actions processed together are properly identified and cross-referenced. The administrative separation will be forwarded to Commander, U.S. Army Human Resources Command (AHRC-OPL-R), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5208.

c. The commander, USAHRC, will refer the entire file, including both courses of action, to the Office of the Secretary of the Army, ATTN: SAMR-RB, Washington DC 20310-3073 for necessary review. The SA will decide the proper disposition of the case.

4-5. Soldiers absent without leave

A Soldier may not be processed through the Army PDES unless he or she is under military control. The Soldier must be available to be notified of the findings of the PEB and to indicate concurrence or nonconcurrence with the PEB findings and recommendations. If absent without leave (AWOL), the Soldier's case file may not be sent to a PEB. If determined AWOL after the Soldier's case file has been referred, the PEB must be promptly notified in order to suspend processing. If the Soldier returns within 10 days, the PEB must be notified so that processing may resume. Any substantial change in the Soldier's condition during a period of AWOL must be recorded by an addendum to the original MEB or by a new MEB and furnished to the PEB.

Section II

Initiation of Medical Evaluation

4-6. Referral by headquarters

The commander, USAHRC, upon recommendation of The Surgeon General, may refer a Soldier to the responsible MTF for medical evaluation when a question arises as to the Soldier's ability to perform the duties of his or her office, grade, rank, or rating because of physical disability.

4-7. Referral by commanders of medical treatment facilities

Commanders of MTFs who are treating Soldiers in an assigned, attached, or outpatient status may initiate action to evaluate the Soldier's physical ability to perform the duties of their office, grade, rank, or rating.

4–8. Referral by commanders

When a commander believes that a Soldier of their command is unable to perform the duties of their office, grade, rank, or rating because of physical disability, the commander will refer the Soldier to the responsible MTF for evaluation. The request for evaluation will be in writing and will state the commander's reasons for believing that the Soldier is unable to perform his or her duties. DD Form 689 (Individual Sick Slip) may be used for such referral (AR 40–66). Commanders of Reserve units not on active duty will be guided by AR 40–501 and chapter 8, of this regulation.

Section III

Medical Processing Related to Disability Evaluation

4–9. Medical examination

The MTF commander having primary medical care responsibility will conduct an examination of a Soldier referred for evaluation. The commander will advise the Soldier's commanding officer of the results of the evaluation and the proposed disposition. If it appears the Soldier is not medically qualified to perform duty, the MTF commander will refer the Soldier to a MEB.

4–10. The medical evaluation board

The MEB are convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualification for retention based on the criteria in AR 40–501, chapter 3. If the MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB. For MEB's rules for documentation, recommendations, and disposition of the evaluated Soldier, see AR 40–400, chapter 7.

4–11. Narrative summary

The narrative summary (NARSUM) to the MEB is the heart of the disability evaluation system. Incomplete, inaccurate, misleading, or delayed NARSUMs may result in injustice to the Soldier or to the Army.

a. Physicians who prepare cases for the MEB and PEB should be familiar with the Department of Veterans Affairs physical examination worksheets to describe physical defects. This helps to ensure consistency in reporting similar conditions and assists the boards of the disability system in their review and evaluation process. (See AR 40–400, chap 7.)

b. In describing a Soldier's conditions, a medical diagnosis alone is not sufficient to establish that the individual is unfit for further military service. The history of the Soldier's illness, objective findings on examination, results of X-ray and laboratory tests, reports of consultations, response to therapy, and subjective conclusions with rationale must be addressed.

c. A correlation must be established between the Soldier's medical defects and physical capabilities. (This is important when a chronic condition is the basis for referral to a PEB and no change in severity of the condition has occurred or when referral of the case to a PEB appears controversial.)

d. The date of onset of a medical impairment may be questionable because of relatively short military service and the nature of the impairment, for example, a mental disease. If so, the NARSUM should address the results of inquiry into the pre-service background (family, relatives, medical, and community) of the Soldier in sufficient detail to overcome substantive question concerning the date of onset.

e. When a Soldier is diagnosed with a mental disorder, the NARSUM must include a statement indicating whether the Soldier is mentally competent for pay purposes and capable of understanding the nature of, and cooperating in, PEB proceedings.

f. NARSUMs will not reflect a conclusion of unfitness. Therefore, diagnoses must not be qualified by such terms as "unfitting", "disqualifying", "ratable", "not ratable".

g. When disclosure of medical information would adversely affect the Soldier's physical or mental health, the NARSUM should include a statement to that fact.

h. The NARSUM should include the date of the physical examination conducted for purposes of physical disability evaluation.

i. The MEB proceedings from other than Army MTF's must be forwarded through the designated Army facility (AR 40–400, chap 7).

4–12. Counseling Soldiers who have been evaluated by a medical evaluation board

a. The PEBLO will advise the Soldier of the results of the MEB. The Soldier will be given the opportunity to read and sign the MEB proceedings. If the Soldier does not agree with any item in the medical board report or NARSUM, he or she will be advised of appeal procedures.

b. The decisions below are exclusively within the province of adjudicative bodies. Neither the PEBLO nor the attending medical personnel will tell the Soldier that—

- (1) The Soldier is medically or physically unfit for further military service.
- (2) The Soldier will be discharged or retired from the Army because of physical disability.
- (3) A given percentage rating appears proper.
- (4) A LD decision is final (unless final approval has been obtained according to AR 600–8–4).

4–13. Referral to a physical evaluation board

a. The MEB will recommend referral to a PEB those Soldiers who do not meet medical retention standards. Those who apply for COAD under the provisions of chapter 6 will be included. Do not refer Soldiers to a PEB who request discharge under the provisions of chapter 5. A Soldier being processed for nondisability separation will not be referred to a PEB unless the Soldier has medical impairments that raise substantial doubt as to his or her ability to continue to perform the duties of his or her office, grade, rank, or rating. Soldiers previously found unfit and retained in limited assignment duty status under chapter 6, or a previous authority, will be referred to a PEB.

b. A Soldier may provide additional information to the MTF commander to forward to the PEB. The information may be from the unit commander, supervisor, or other persons who have knowledge regarding the effect the condition has on the Soldier's ability to perform the duties of the office, grade, rank, or rating.

c. Personnel processing actions for Soldiers referred to a PEB will be according to appendix E.

4–14. Psychiatric and spinal cord injury patients requiring continuing hospitalization

a. Army regulation 40–400 provides for transfer of psychiatric and spinal cord injury patients to a VA medical facility.

(1) Psychiatric patients requiring continuing hospitalization may be transferred after completion of MEB action. To ensure timely processing, the MEB proceedings must be referred to the PEB immediately after transfer of the patient.

(2) Spinal cord injury patients requiring continuing hospitalization will be expeditiously transferred to the VA Spinal Cord Injury Center, regardless of whether the MEB is completed. The MTF that has responsibility for patients in the particular VA Spinal Cord Injury Center will coordinate the completion and processing of the MEB.

b. The PEBLO of the MTF that has responsibility for the completion of the MEB will provide disability counseling to the Soldier or the Soldier's next-of-kin when the Soldier is mentally incompetent. The PEBLO will also notify the installation retirement services officer (RSO) of the Soldier's transfer to the VA hospital; and in cases of mental incompetence, provide the RSO the name and address of the next-of-kin in order to coordinate counseling on Survivor Benefit Plan, as required under 10 USC 1455.

4–15. Action following approval of a medical evaluation board report

The MTF commander will notify the unit commander of the planned referral of a Soldier to a PEB and obtain from the commander the written statement described in paragraph *e*, below. If further action is not barred, the original and two copies of the MEB proceedings and allied documents described below, as applicable, will be forwarded to the PEB.

a. DA Form 5889 (PEB Referral Transmittal Document). This document serves as the forwarding memorandum. It identifies the documents forwarded and provides unit and home addresses and telephone numbers for the PEB to contact the Soldier, as required.

b. Documents submitted by Soldier to accompany MEB as evidence of physical ability to adequately perform military duties (letters, efficiency reports, or personal statements).

c. DA Form 3947 (Medical Evaluation Board Proceedings) with SF Form 502 Narrative Summary (Clinical Resume) as enclosure 1 and DA Form 3349 (Physical Profile) as enclosure 2.

d. In cases where the Soldier has been determined mentally incompetent, a statement confirming the name, address, telephone number, and relationship of individual authorized to act in 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. 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 individual having authority to act for an incompetent Soldier, in the absence of a valid and pertinent power of attorney or a court order authorizing an individual to act for an 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. An individual is an adult upon reaching the age of majority under the state law of the individual'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 individual 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 individual has reached age of majority.
- (5) Adult brother and sisters in order of seniority.

- (6) Grandparents in order of seniority.
 - (7) Other relatives in order of relationship to the individual 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.
- e.* Statement from Soldier's commander confirming whether any adverse personnel action is being considered against the Soldier and describing the Soldier's current duty performance. The description of duty performance should address the following:
- (1) The Soldier's most recent performance of duty.
 - (2) Any special limitation of duty due to the Soldier's physical condition.
 - (3) The Soldier's ability to adequately perform the duties normally expected of an individual of the Soldier's office, grade, rank, or rating.
 - (4) The Soldier's current duty assignment, anticipated future assignments, branch, age, and career specialties.
- f.* A copy of the document reflecting the approved LD decision (AR 600–8–4) if the disability is the result of injury; the result of disease secondary to injury or due to misconduct; or the result of disease when the case is that of a Soldier performing duty for 30 days or less. Provide either a DD Form 261, DA Form 2173, or similar LD reports from the Navy or Air Force. If the documents are not available, the MTF commander will send a request for LD decision, well in advance of a preparation of the MEB report, to the Soldier's unit of assignment at the time of injury or disease. Include a copy of the request in the case file sent to the PEB and send a copy to USAHRC (AHRC–PDC–P). The request will provide the following information:
- (1) Name, grade, and social security number (SSN).
 - (2) Date and place of injury.
 - (3) Short summary of circumstances of injury, including the identity of MTF where the Soldier was treated.
 - (4) Unit of assignment when the Soldier was injured.
 - (5) Statement that the LD determination is required for disability processing.
- g.* Orders or training schedule under which the Soldier was performing active duty, active duty for training, or IDT when the Soldier is subject to disability processing under chapter 8. If the Soldier is retained for medical care beyond termination date of active duty for training, include a copy of the affidavit required by AR 135–381. If referral to a PEB occurs during rehospitalization for treatment of residuals of an injury, provide a copy of the authorization for rehospitalization required by AR 40–400, para 3–2d(2).
- h.* Copy of memorandum approving COAD/COAR when case is that of a Soldier previously continued on duty under the COAD program. If available, include a copy of the DA Form 199 or DA Form 199–1 (Formal Physical Evaluation Board Proceedings), as applicable, related to the previous COAD action.
- i.* Soldier's request for COAD/COAR under chapter 6 of this regulation.
- j.* Soldier's statement or statement of PEBLO when a Soldier has 18, but less than 20, years of active Federal service, or an RC Soldier has 18, but less than 20 years of qualifying service for nonregular retirement, declines to request COAD or COAR, as applicable.
- k.* Copy of decision by the GCMCA to waive administrative separation under AR 635–200, chapter 14 for referral of Soldier to a PEB. Requirement applies even if a general discharge is directed under AR 635–200, chapter 14. Requirement is not applicable to Soldiers pending separation under AR 635–200, chapter 13.
- l.* Statement from the custodian of the Soldier's personnel records confirming whether one of the circumstances below is applicable at the time the Soldier is referred to a PEB.
- (1) Voluntary or mandatory retirement processing.
 - (2) Expiration of term of service without reenlistment.
 - (3) Expiration of term of service with bar to reenlistment.
 - (4) Involuntary release from active duty due to DA board action.
 - (5) Qualitative management denial for reenlistment.
 - (6) Adverse personnel action.
- m.* Document authorizing Soldier's retention beyond scheduled separation or retirement date. (See AR 600–8–24 or AR 635–200.)
- n.* If available, DA Form 2 (Personnel Qualification Record—Part I) and DA Form 2–1 (Personnel Qualification Record—Part 2). If the documents are not available, use alternative sources to obtain the required personnel data if the information is reliable.
- o.* If available, a statement explaining the reason for reduction to the lower grade when the Soldier is serving in a grade below the highest grade held. When the information is available, include a statement explaining the circumstance precluding advancement to private or private first class under the provisions of AR 600–200 (NGR 600–200 or AR 140–158 for Soldiers in the RC) if—
- (1) The current grade is private (pay grade E–1), and the Soldier has completed more than 6 month's service.
 - (2) The current grade is private (pay grade E–2), and the Soldier has completed more than 12 months service.

- p. Copy of request for VA hospital bed designation, if applicable.
- q. Copy of orders moving patient to a VA hospital for continued hospitalization, if applicable.
- r. Copy of letter(s) to proper state authorities, as applicable.
- s. Copy of the request for Statement of Service when Soldier is a member of the RC (fig 4-1).
- t. Copy of Soldier's latest leave and earning statement (DFAS Form 702, Defense Finance and Accounting Service Military Leave and Earnings Statement (2002)).

4-16. Rehospitalization of disabled Soldier

A Soldier who is rehospitalized while undergoing disability evaluation or awaiting final disposition must be evaluated to decide if his or her condition may change the findings or recommendations of the PEB. If the Soldier's condition may change the findings and recommendations, the MTF commander will notify the PEB president. Further adjudicative and review action may be suspended pending resolution. When the Soldier has received optimum hospital improvement for disposition purposes, the hospital commander will prepare an addendum to the original medical board. The addendum will be forwarded to the PEB with any other pertinent records unless some other disposition is indicated. The PEB must be notified if other disposition terminates disability processing.

Section IV

Physical Disability Evaluation

4-17. Physical evaluation boards

a. *Purpose.* The PEBs are established to evaluate all cases of physical disability equitably for the Soldier and the Army. The PEB is not a statutory board. Its findings and recommendations may be revised. It is a fact-finding board for the following:

(1) Investigating the nature, cause, degree of severity, and probable permanency of the disability of Soldiers whose cases are referred to the board.

(2) Evaluating the physical condition of the Soldier against the physical requirements of the Soldier's particular office, grade, rank, or rating.

(3) Providing a full and fair hearing for the Soldier as required by under Title 10, United States, Section 1214, (10 USC 1214).

(4) Making findings and recommendations required by law to establish the eligibility of a Soldier to be separated or retired because of physical disability (10 USC 61).

b. *Composition.* Except as provided by para 4-17c, below, individual case adjudication (informal and formal) will be accomplished by a three-member panel of the PEB comprised of a Presiding Officer, Personnel Management Officer, and Medical Member. Members of a three-member panel will be experienced officers who have been trained on adjudication standards and procedures. The Presiding Officer acts as the PEB president for the case over which he or she presides. The CG, USAPDA, will appoint PEB members from assigned personnel for full-time duty. Part-time members may be appointed by the CG, USAPDA, with the consent of the commander having jurisdiction over the member. Part-time members supplement or temporarily replace full-time members, as needed, for the prompt processing of disability cases. The Presiding Officer and Personnel Management Officer for the panel will be either a DA Civilian Adjudication Officer assigned to the PEB or a field grade officer of any component, in any authorized duty or training status, and of any branch except the MC. The medical member for the panel will be a MC officer or DA civilian physician, preferably with uniformed service MC experience. The medical member must not have served in any capacity as the Soldier's physician or as a member of the Soldier's MEB.

c. *One-member informal physical evaluation board.* Under exigent circumstances, the CG, USAPDA, or their designee, may direct that informal PEBs be accomplished by a one-member PEB. The one-member, referred to as the Adjudication Officer, will normally be a permanent, nonmedical member of the PEB. A part-time, nonmedical member may serve as the Adjudication Officer if no permanent, nonmedical member is reasonably available. The medical member will serve as a nonvoting advisor and will provide a case opinion to the Adjudication Officer before informal adjudication is completed. All one-member adjudications not followed by a formal PEB will be reviewed by headquarters (HQ) USAPDA, unless exceptional circumstances preclude the review.

d. *President of the physical evaluation board.* The CG, USAPDA, will name as the president of the PEB an active duty, senior field grade officer. The president must be assigned for full time duty to USAPDA. The president may be of any branch except the MC. The PEB president is the administrator of the PEB, responsible for the leadership and management of day-to-day PEB affairs. The PEB president will ensure that all permanent and part-time members are trained before they adjudicate cases. The PEB president will ensure that members added to a panel to constitute a five-member board for purposes of providing requested female, minority, or enlisted representation are briefed on the standards applicable to physical disability adjudication prior to the convening of the board. The senior, nonmedical member who is on active duty will serve as president of the PEB when the president is absent. The PEB president may serve as the Presiding Officer for an informal or formal PEB panel.

e. Reserve Component member. When a Soldier of the RC is being evaluated, one of the PEB members must be a Reserve officer who is otherwise qualified for duty as a member of the PEB.

f. Disqualification. The PEB voting members must disqualify themselves if they have had a personal or professional relationship with the Soldier being evaluated.

g. Disability evaluation of the physical evaluation board members. When members of the PEB are referred into the physical disability system, they will be evaluated by other than the PEB to which assigned. After PEB evaluation such cases will be forwarded to USAPDA for review.

h. Female or minority representation.

(1) When requested, the PEB will substitute a female or minority Soldier of the same minority group for one of the regular members of the board, if the requested representation is reasonably available. Request for female or minority representation should be made in writing at the time of request for a formal hearing. The substitute must meet the qualifications for regular voting members. The PEB president will determine if the requested representation is reasonably available. The proceedings will include a statement of the request and whether the representation was or was not provided, that is, "Minority (or female) representation was requested and provided" or "Minority representation (or female) was requested and not reasonably available and, therefore, was not provided."

(2) When an enlisted Soldier is being evaluated, the PEB will upon written request of the Soldier, include enlisted representation if reasonably available. Request for enlisted representation should be in writing at the time of request for a formal hearing. The enlisted representation must be in the ranks of sergeants first class to sergeants major and senior to the Soldier being evaluated. The PEB president will determine if enlisted representation is reasonably available. The proceedings will include a statement of the request and whether the representation was or was not provided as described in paragraph(1), above. When enlisted representation is provided, the PEB will increase to five members, all of whom will have a vote. The fifth member may be enlisted or officer.

i. Counsel. An Army attorney will be appointed as counsel to represent Soldiers at formal PEB hearings. The attorney will not be a voting member of the PEB or an advisor to the PEB, but will represent the Soldier as required when the Soldier requests a formal hearing. The attorney will counsel the Soldier until formal disability proceedings are completed. The appointed counsel may also advise PEBLOs of MTFs that refer cases to the PEB.

j. Recorder. The appointing authority will assign a permanent recorder for the PEB. The recorder will be a commissioned officer, warrant officer, or civilian employee of equivalent grade of any branch or career field except those listed below.

(1) Medical corps.

(2) Dental corps.

(3) Army Nurse Corps.

(4) Army Medical Specialist Corps.

(5) The Judge Advocate General's Corps.

k. Reporter. The appointing authority will assign permanent qualified reporters to the PEB.

l. Support. A PEB is a tenant of the installation where located. The CG, USAPDA enters into agreements providing for administrative and logistical support with installation and MTF commanders.

4-18. Initial processing

a. Upon receipt of a case by the PEB, the case file will be reviewed to ensure it is complete. If documents are missing, action will be taken to complete the file. When the case file is complete, it may be referred to the board for evaluation.

b. The PEB may return a case to the MTF commander for additional information. However, efforts should be made to resolve all issues without returning the case. When circumstances permit resolution of the problem by discussion, a memorandum of the discussion must be included in the case file as an exhibit. When return of the case to the MTF is necessary, the reason for its return will be clearly stated in the letter of transmittal. Examples of reasons for which a case may be returned are as follows:

(1) Further physical examination, clarification, or preparation of additional records is required.

(2) Additional description and information by the medical board of the Soldier's defects and their effect on the Soldier's functional ability to perform duty are necessary for proper PEB evaluation of the case.

(3) Further observation, evaluation, and reconsideration by a medical board is required.

(4) Additional information from the command concerning the Soldier's ability to perform the duties of his or her office, grade, rank, or rating must be provided for proper PEB evaluation of the case.

(5) The Soldier has been AWOL for 10 days or more.

4-19. Physical evaluation board decisions—common criteria

a. Determinations. The voting members of a PEB make findings and recommendations in each case on the basis of the instructions set forth in paragraphs *b* thru *q*, below. The board decides all questions by majority vote. All findings

must be based on a preponderance of the evidence. Recommendations must be supported by the findings. In summary, the board determines the following:

- (1) Whether the Soldier is physically fit or unfit to perform the duties of the Soldier's office, grade, rank, or rating.
- (2) Whether the disability is of a permanent nature.
- (3) Whether the disability meets the criteria established by law for compensation. This determination considers the following questions:

(a) Was the disability incurred or aggravated while the Soldier was entitled to basic pay (when the Soldier is on active duty for more than 30 days)?

(b) Was the disability the result of misconduct or willful neglect or incurred during a period of unauthorized absence?

(c) Was the disability incurred in LD during a time of war or national emergency or incurred in LD after 14 September 1978?

(d) In the case of a Soldier ordered to active duty for 30 days or less or ordered to duty under Title 10, United States Code, Section 10148(a) (10 USC 10148(a)), was the disability the proximate result of performing active duty or IDT? If the disability results from a disease, was it incurred prior to or after 15 November 1986 (chap 8).

(3) Whether the disability meets the criteria for exemption of disability retired or severance pay from gross Federal income.

(4) Whether the disability meets the criteria for Civil Service preference eligible status and exemption from the Dual Compensation Act.

b. Limitations of physical evaluation board approval authority. The PEB may approve for the SA all but the following cases:

(1) General and MC officers found unfit.

(2) Informal proceedings when the Soldier nonconcurs, waives a formal hearing, and submits within the required time frame a statement explaining his or her reasons for disagreement. The PEB will forward the proceedings to USAPDA for review when its consideration of the rebuttal does not result in a change of the PEB findings and recommendations.

(3) Formal proceedings when the Soldier nonconcurs with any finding or recommendation, submits within the required time frame a statement explaining his reasons for disagreement, and the PEB does not modify its decision as requested by the Soldier.

(4) All cases in which a minority report is submitted.

(5) Cases of members assigned to a PEB.

(6) Any case previously forwarded to USAPDA for review and approval, which was returned to the PEB for reconsideration or rehearing.

c. Additional documents. Any member of the PEB, the Soldier, or counsel acting in the Soldier's behalf may request additional documents. The PEB president will determine if the requested information is required for proper adjudication of the case. If it is determined that the additional information is required, the PEB president will suspend consideration of the case until an effort has been made to obtain the requested information. If requested documents cannot be obtained, a memorandum for record will be included in the case file reflecting all efforts made to obtain the information. The case will then be adjudicated on the basis of the available evidence.

d. Decision on fitness.

(1) The first and most important determination made by the PEB is whether the Soldier is physically fit or unfit to perform the duties of the Soldier's office, grade, rank, or rating. All other actions are directly or indirectly tied to this one finding.

(2) The determination of physical fitness will be made by relating the nature and degree of physical disability of the Soldier to the requirements and duties that the Soldier may reasonably be expected to perform in their primary military occupational specialty (MOS).

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

e. Conditions which existed prior to entry in service.

(1) *Unchanged physical defects.* A Soldier will not be found unfit because of physical defects that—

(a) Were known to exist at the time of acceptance for military service,

(b) Have remained essentially unchanged since acceptance,

(c) Have not interfered with performance of effective military service.

(2) *Application of accepted medical principles.* After a Soldier is accepted for active duty, discovery of an impairment causing physical disability is not conclusive evidence that the condition was incurred after acceptance. Consideration must also be given to accepted medical principles in deciding whether a medical impairment was the result of, or aggravated by, military service while the Soldier was entitled to basic pay; or in the case of a Reservist on active duty for 30 days or less, whether the disability was the proximate result of performing active duty or IDT.

Accepted medical principles may not be excluded in making these decisions even when there is no other evidence indicating the impairment was present before the Soldier's entry on active duty. The Soldier's length of service must be considered when determining service aggravation. When a decision or recommendation of a PEB is based primarily on accepted medical principles, the principle must be cited as part of the rationale.

(3) *Service aggravation.*

(a) The PEB may decide that a Soldier's physical defect EPTS, or inactive duty for training, or resulted from a nonservice connected condition (not in LD). If so, the board must further consider whether military service aggravated the unfitting defect.

(b) If the Soldier's military service makes the condition worse or hastens the natural progression of the condition beyond the normal or anticipated rate had he or she not been exposed to such service, a finding of aggravation must be considered. AR 600-8-4, contains guidance on service aggravation. When the PEB decides that a condition has been aggravated by service, the PEB will consider the degree of disability that is in excess of the degree existing at the time of entrance into service. (See app B.)

(4) *Conditions not aggravated by service.* Soldiers who are unfit by reason of physical disability neither incurred nor aggravated during any period of service while entitled to basic pay, or as the proximate result of performing active duty or IDT, but which effects duty performance, will be separated for physical disability without entitlement to benefits.

(a) Enlisted Soldiers who are eligible for discharge under chapter 5, may be processed under the provisions of that chapter upon their application.

(b) Soldiers who meet the criteria and apply for COAD as set forth in chapter 6 will be processed under the provisions of that chapter.

(c) RC Soldiers may request transfer to the Retired Reserve if eligible.

f. *Entitlements to benefits.* The following rules apply when deciding whether a Soldier is entitled to Army disability retired or severance pay.

(1) Title 10, United States Code, Sections 1201 through 1203, (10 USC 1201 through 1203) establish the criteria for compensation for Soldiers of the regular Army (RA) or Soldiers of the RC ordered to active duty for more than 30 days (other than for training under 10 USC 10148(a). These criteria include the following:

(a) Disability was incurred while the Soldier was entitled to basic pay.

(b) The disability is not the result of the Soldier's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and either the Soldier has at least eight years of active Federal service for retirement; the disability is the proximate result of performing active duty; the disability was incurred in the LD in time of war or national emergency; or the disability was incurred in LD after September 14, 1978.

(2) Title 10, United States Code, Sections 1204 through 1206, (10 USC 1204 through 1206) establish the criteria for entitlements for Soldiers of the RC ordered to active duty for 30 days or less or under 10 USC 270(b) (see chap 8).

(3) Decision of the Comptroller General of the United States, B-205953, dated 18 June 1982, has ruled that a member in excess leave status is not entitled to basic pay and, therefore, is not entitled to any disability benefits under the provisions of 10 USC 61.

(4) When a finding of unfitness depends on the combined effect of two or more disabilities, each disability must meet the above eligibility requirements to qualify the Soldier for disability retirement or severance pay. If one of the combined disabilities that, in combination, renders the Soldier unfit does not meet the requirements for entitlement to benefits, the Soldier is not eligible for disability benefits from the Army. For example, a Soldier may be found unfit because of a disability determined to be EPTS. That Soldier may also have a disability that alone is not unfitting but when considered with the EPTS disability would be unfitting. Such a Soldier may not be found unfit because of the first disability (EPTS) and thereafter rated for the second disability (which is only unfitting in combination with the first disability).

(5) If the Soldier is entitled to disability benefits, the PEB decides the rating for each compensable disability from the VASRD, as modified by appendix B.

(6) When a Soldier is eligible for disability benefits, any other disability is compensable if—

(a) The criteria in (1) and (2), above are met.

(b) The disability, in itself, is unfitting or contributes to the unfitting condition.

g. *Application of line of duty policy.*

(1) Normally PEBs accept the validity of informal and formal LD investigations and reports. However, the PEB may question the validity of a favorable LD determination. If so, the PEB will conditionally adjudicate the case as if a favorable LD decision is correct. Unless the case is subject to review by USAPDA, the PEB will forward the case to USAHRC (AHRC-PDC-P), requesting a review of the LD determination. The following comment will be made in the remarks section of the DA Form 199: "This PEB questions the validity of the LD decision rendered in your case. Your case has been processed assuming the decision is valid. Should an unfavorable LD determination result, you will not be eligible for entitlement to benefits under the Army disability system." The Soldier will be informed of the conditional processing and advised that final disposition by HQDA will be held in abeyance until the LD decision is resolved.

(2) It is not intended that PEBs act as hearing authorities for Soldiers' appeal of LD determinations. AR 600-8-4

sets out LD appeal procedures. However, if during a formal hearing, the Soldier or his or her counsel presents evidence of error in the LD finding, the PEB shall consider such evidence. If the PEB believes the evidence warrants reconsideration of the LD finding, a referral of the case to USAHRC (AHRC-PDC-P) for review of the LD determination by TAG is authorized. When forwarding a case for such review, the PEB will explain in the forwarding memorandum its rationale for determining that the new evidence raises a question as to the correctness of the LD determination. The Soldier and their counsel will be advised of the referral and that the case has been conditionally adjudicated as if a favorable LD decision has been made. If the PEB determines that the evidence does not provide reason to question the LD determination, the PEB will inform the Soldier and the counsel of this fact and that the case was adjudicated based upon the approved LD determination.

(3) The deputy commander, PEB president, or alternate PEB president have the authority to make a finding of “in line of duty—not due to own misconduct” in the following categories below when an LD determination has not been made at the time a case is referred to a PEB. This authority may only be used when the PEB is convinced no further investigation is required and the weight of the evidence in the case indicates that the injury was not due to misconduct or willful negligence, was not incurred during a period of unauthorized absence, and that the use of alcohol or drugs was not involved.

- (a) Training accidents to include maneuvers and physical training.
- (b) Unit organized sports and recreational activities.
- (c) Individual jogging and sports activities.
- (d) Household accidents.
- (e) Slip-and-fall injuries.
- (f) Injuries incurred in Vietnam, Cambodia, and in other geographical areas where U.S. Army Soldiers are not longer present.

(4) If the case is lacking an LD determination and it does not fall into one of the above categories, the PEB will conditionally adjudicate the case as if a favorable decision has been made. The applicable advisory statement described in para 4-19I(2), will be included on the Form 199. The Soldier will be informed of the conditional processing and advised that final disposition by HQDA will be held in abeyance until the LD decision is resolved.

h. Deciding permanency of disability.

(1) Based on accepted medical principles, a disability is “permanent”, and a Soldier who is otherwise qualified will be permanently retired, if—

(a) The defect has become stable so that, with reasonable expectation, the compensable percentage rating will remain unchanged during the following 5-year period.

(b) The compensable percentage rating is 80 percent or more and the disability will probably not improve so as to be ratable at less than 80 percent during the following 5 years.

(2) A Soldier is placed on the TDRL if fully qualified for permanent retirement except that the disability “may be permanent.” The Soldier may not be placed on the TDRL for any other reason. Based on accepted medical principles, a disability will be considered as “may be permanent” if it has not stabilized, and one of the following occurs:

- (a) The Soldier may recover so as to be fit for duty.
- (b) The defect is expected to change in severity within the next 5 years so as to change the compensable percentage rating.

i. Percent of disability. After establishing the fact that a Soldier is unfit because of physical disability, and that the Soldier is entitled to benefits, the PEB must decide the percentage rating for each unfitting compensable disability using the VASRD. See appendix B for additional guidance on the VASRD.

j. Armed conflict—instrumentality of war. Certain advantages accrue to Soldiers who are retired for physical disability and later return to work for the Federal Government when it is determined that the disability for which retired was incurred under specific circumstances. These advantages concern preference eligible status within the Civil Service system (Title 5, United States Code, Section 3501, (5 USC 3501)).

(1) The disability resulted from injury or disease received in LD as a direct result of armed conflict and which itself renders the Soldier unfit. A disability may be considered a direct result of armed conflict if—

(a) The disability was incurred while the Soldier was engaged in armed conflict, or in an operation or incident involving armed conflict or the likelihood of armed conflict; while the Soldier was interned as a prisoner of war or detained against his will in the custody of a hostile or belligerent force; or while the Soldier was escaping or attempting to escape from such prisoner of war or detained status.

(b) A direct causal relationship exists between the armed conflict or the incident or operation, and the disability.

(2) The disability is unfitting, was caused by an instrumentality of war, and was incurred in LD during a period of war as defined by law. The periods of war as defined in 38 USC 101 and 301 are shown below: (The statute does not include the action in Grenada).

(a) *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.

(b) *Korea*. The period beginning 27 June 1950 and ending 31 January 1955.
(c) *Vietnam*. The period beginning 5 August 1964 and ending 7 May 1975. (The “Dominican Intervention” occurred during this period.)

k. Disability compensation excluded from gross income.

(1) *The Tax Reform Act of 1976*. Prior to the enactment of Tax Reform Act of 1976 (TRA 76) (Title 26, United States Code, Section 104, (26 USC 104)), military disability retired pay or disability severance pay was excluded from gross income for Federal tax purposes. (Disability retired pay is that portion of retired pay based on a person’s disability percentage rating. Disability severance pay is a lump sum payment based on years of service.) With the passage of TRA 76, one of two conditions listed below must be satisfied for military disability retired or severance pay to be exempt from Federal taxation.

(a) On 24 September 1975, the individual was a member (including RC membership) of the armed forces of any country, the National Oceanic and Atmospheric Administration (NOAA) (formerly the Coast and Geodetic Survey), the U.S. Public Health Service (USPHS), or was under binding written agreement to become such a member. (Soldiers retired or separated by reason of disability on or before the cited date are not affected by TRA 76.)

(b) The disability pay is awarded by reason of a combat-related injury. Within the meaning of 26 USC 104, combat-related injuries cover those disabilities attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict.

1. A Soldier may be performing extra hazardous service even if not directly engaged in combat. Extra hazardous service includes but is not limited to the following activities: Aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

2. Conditions simulating war include, but are not limited to, the following activities: performance of tactical exercises such as the squad or platoon in the assault; airborne operations; leadership reaction courses; grenade and live fire weapons practice; bayonet training; hand-to-hand combat training; repelling; and negotiation of combat confidence and obstacle courses.

3. Unlike the provisions for Civil Service retention preference (5 USC 3501), the injury resulting from an instrumentality of war need not have occurred during a period of war as defined by law.

(2) *Entries on DA Form 199*. The entries made on DA Form 199, blocks 10B and 10C, concern disability compensation excludable from gross income.

(a) If the PEB can establish the fact (from available records) that the Soldier was or was not a member or obligated to become a member of one of the designated organizations on 24 September 1975, the board will make the proper entry in block 10B. If such a decision cannot be made, the PEB will enter a statement after the last entry in block 8 to reflect that fact and leave block 10B blank.

(b) In block 10C, the board will record its determination of whether the injury was combat-related as defined by 26 USC 104.

(3) *Department of Veterans Affairs compensation*. VA compensation is exempt from income tax. An individual may waive disability retired pay to receive VA compensation, or receive a combination of the two, or receive military retired pay and exclude from their gross income an amount equal to the VA entitlement. The Army does not make the determination as to the probable VA disability compensation. The individual must apply to the VA and receive a disability rating.

l. Recording of rationale and advisory statements.

(1) *Rationale*. The PEB will include the rationale for its findings and recommendations on the DA Form 199 and DA Form 199–1, as applicable. The rationale will support the finding that the Soldier was, or was not, capable of performing the duties of his or her office, grade, rank, or rating. The rationale will also explain significant variance between the disability as described in the MEB proceedings and that documented on the pertinent DA Form 199.

(2) *Advisory statements*. The DA Form 199 will inform the Soldier of legal or administrative requirements that impact on the Soldier’s disability benefits in the situations described below.

(a) When the recommendation of the PEB is placement or retention on the TDRL: “Failure to report for a scheduled periodic examination or to inform USAHRC of a change in address will result in the suspension of retired pay. Address changes must be reported to: Commander, Headquarters, U.S. Army Physical Disability Agency (AHRC–DO), 2530 Crystal Drive, Arlington, VA 22202–3934.”

(b) When a case has been adjudicated pending completion of a LD: “Your case has been conditionally adjudicated pending the receipt of a favorable LD determination. Should an unfavorable LD determination result, you will not be eligible for benefits under the Army disability system.”

(c) When a Soldier has a rating of less than 30 percent and has at least 20 qualifying years for retirement for non-regular service: “You have the option of accepting discharge with disability severance pay and forfeiting retirement for non-regular service; or you may request transfer to the Retired Reserve and receive retired pay at age 60. According to Title 10, United States Codes, Sections 1209 and 1213, (10 USC 1209 and 1213), you will forfeit all rights to retired pay if you accept severance pay instead of transfer to the Retired Reserve.”

m. Minority reports. If a voting member of the PEB disagrees with the findings and recommendation of the other members, that member may prepare a minority report explaining wherein and why he or she differs with the other

members. The minority report will be included in the record of the proceedings and referenced in the remarks section of DA Form 199. A copy will be provided to the Soldier and his or her counsel.

n. Continuances. A PEB may continue a hearing upon its own motion, at the request of the recorder, or at the request of the Soldier or the Soldier's counsel, if the board determines a continuance is needed for a full and fair hearing. Examples of proper reasons for continuance are the need for further medical evaluation and the need to obtain additional records, reports, or statements as evidenced in the case. When a continuance is granted, only one DA Form 199 will be used. Data such as the date, fact, and time of recess and reconvening, and changes in membership will be recorded. If a change of membership is involved, the record will show the reason for the change and that the new member became familiar with the case before proceeding with the hearing.

o. Record of proceedings. The proceedings of the informal PEB are recorded on DA Form 199. The proceedings of the formal PEB are recorded on DA Form 199-1. These forms are controlled and are electronically generated by the PEB (see paras 4-20b and 4-21r(3)).

p. Reconvened and improperly constituted boards.

(1) *Reconvened board.* Before final action on a case, the proceedings of a properly constituted PEB may be returned to the same board for further consideration of findings, correction of errors, or other reasons. When proceedings are returned, the reconvened board will include as many members of the original PEB as possible. However, proceedings may be conducted properly even though no members of the original board are available. The board must be otherwise properly constituted. The new members must have acquainted themselves with the records of the case before reconvening the board. When reconvening the board with the same members would be prejudicial to the Soldier, a new board with all new members will be convened. The case may be transferred to another PEB for this purpose. Proceedings will be the same (formal or informal) as were used at the original hearing and any transcript of the prior hearing will be included with the original and USAPDA copy of the case. If a formal hearing is held, the Soldier (his or her next-of-kin or legal guardian if he or she represents the Soldier's interests) will be notified of the new hearing date. Should the PEB reconsider the case and change its findings or recommendations, a new DA Form 199 or DA Form 199-1, as applicable, will be prepared and referred to the Soldier for his or her election. Despite the procedures employed, the Soldier (next-of-kin or legal guardian) will be notified of the results if a change is made in the disposition or benefits from those originally recommended. The Soldier will be afforded the opportunity to consult with counsel and to rebut any change. When new findings are made by the PEB, they become the only findings on which later action will be taken. If the reconsideration results in no change, a new record of proceedings will not be prepared. The fact that the case was reconsidered will be documented in section X of the DA Form 199 or section XI of the DA Form 199-1, as applicable.

(2) *Improperly constituted boards.* Proceedings of an improperly constituted PEB are null and void. Whenever a hearing is discovered to have been conducted by an improperly constituted PEB, the MEB proceedings and accompanying allied documents less the DA Form 199 (or DA Form 199-1) will be forwarded for the new hearing by a properly constituted board.

q. Action when Soldier is absent without leave or dies during disability processing.

(1) If a PEB receives information that a Soldier whose case is in the disability system is AWOL, case processing will be suspended. If the Soldier returns to military control within 10 days, processing may be resumed. Processing will include consideration of any new or increased disability incurred during the period of AWOL. Should the Soldier not return to military control within 10 days, the case file will be returned to the MTF. If information that a Soldier is AWOL is received after the case file has been forwarded for disposition, the PEB will promptly notify the USAPDA.

(2) If information is received that a Soldier being processed for physical disability has died, disability processing will be discontinued and the case file will be returned to the MTF.

r. Deleted.

4-20. Informal board

a. Procedure. Each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. The rapid processing intended by the use of informal boards must not override the fundamental requirement for detailed and uniform evaluation of each case. All evidence in the case file must be closely examined and additional evidence obtained if required. The PEB will consider each case using the policies of chapter 3 and the criteria provided in paragraph 4-19.

b. DA Form 199. The findings and recommendations of the informal PEB are recorded on DA Form 199.

c. Soldier's election. The Soldier records his or her election to the informal PEB findings and recommendations on DA Form 199, section IX. The Soldier has 10 calendar days from the date of receiving the informal PEB determinations to make his or her elections.

d. Physical evaluation board liaison officer. The PEBLO should consult with, and obtain advice, as needed, from the servicing legal office. Upon receipt of the informal findings, the PEBLO will accomplish the following actions:

(1) Inform the Soldier of the findings and recommendations of the PEB and explain to the Soldier the result of the findings and recommendations. As needed, the PEBLO should consult with the local finance office and the installation

RSO when providing information on benefits. Provide the DA Form 5892 (PEBLO Estimated Disability Compensation Worksheet) to the Soldier as an estimate only of disability compensation.

(2) After the PEBLO completes section VIII, the Soldier makes his or her election in section IX. If the Soldier (or Soldier's next-of-kin or guardian, as the case may be) fails or declines to make an election, the PEBLO will prepare a brief statement describing the circumstances, indicating the date the Soldier was informed of the informal PEB findings and recommendations. The PEBLO will attach the statement to the case file.

(3) In deleterious-type cases or others involving mental incompetence, the PEBLO will contact the next-of-kin or legal guardian (if one has been appointed) and request that person to act in behalf of the Soldier. If one cannot be located, the PEBLO will prepare a statement reflecting all actions taken to identify and contact a responsible person to act on behalf of the Soldier and forward the statement for inclusion with the case. (See para 4-15a for guidance on establishing the next-of-kin.)

(4) If Soldier elects a formal hearing, forward Soldier's medical records to the PEB, if they were not submitted with MEB proceedings for the informal PEB.

(5) Complete DA Form 5893 (Soldier's Medical Evaluation Board/Physical Evaluation Board Counseling Checklist).

e. Disposition by the physical evaluation board. Upon receipt of the Soldier's completed DA Form 199 from the PEBLO, the PEB will take the following actions, as applicable:

(1) If the Soldier accepts the findings and recommendations of the informal PEB, the recorder will assemble the records. The proceedings will be approved for the SA and forwarded to USAHRC for final disposition.

(2) If the Soldier nonconcurs with the findings without submitting a rebuttal, the PEB will approve the proceedings for the SA and forward the case to USAHRC for final disposition.

(3) If the Soldier fails or declines to make an election within the prescribed time and the PEB has not received from the PEBLO the statement described in paragraph d(2), above, the PEB will contact the PEBLO to confirm the status of the Soldier's election. When the PEBLO confirms the Soldier has been informed of the findings and recommendations but has not made an election, the PEB will proceed as if the Soldier has accepted the findings and recommendations. The proceedings will be forwarded to USAHRC for final disposition. The forwarding memorandum will document the circumstances resulting in the waiver of election. The PEB will forward a copy of the memorandum to the Soldier through the PEBLO.

(4) In deleterious-type cases or those involving mental incompetence in which the next-of-kin or guardian fails to make an election on behalf of the Soldier, the PEB will appoint legal counsel to act on behalf of the Soldier. The counsel will prepare a memorandum documenting the results of his or her action.

(5) If the Soldier nonconcurs and submits a statement or rebuttal to the recommended findings without asking for a formal hearing, the PEB president will respond in writing to the Soldier, normally within 3 days. When the Soldier's rebuttal does not result in a change to the PEB's findings, the response will acknowledge receipt of the rebuttal and explain the PEB's decision to adhere to the earlier findings. The Soldier will be advised that the rebuttal will be included in the case file and considered in the review action by USAPDA. A copy of the PEB president's letter will be included in the case file.

(6) If the Soldier nonconcurs with the findings and recommendations with a statement of rebuttal and demands a formal hearing, the PEB may reconsider their findings and recommendations in the light of the Soldier's statement of rebuttal. Should the PEB agree with the Soldier and modify their findings and recommendations, the PEB will initiate a new DA Form 199 informing the Soldier through the MTF commander of the results. If the Soldier accepts them, the case will be processed as in paragraph (1), above. Otherwise, the case will be scheduled for a formal hearing. The PEB will inform the appointed legal counsel of the pending action. If the Soldier (in demanding a formal hearing) has elected to be represented by individual counsel, the appointed PEB counsel in coordination with the PEB president will make arrangements for the hearing with the individual counsel. If the Soldier is at some location other than that of the PEB, the commanding officer will promptly issue necessary temporary duty (TDY) orders for travel of the Soldier using locally available funds.

(7) Whenever more than one hearing (including a reconsideration) is held on a case, a copy of the DA Form 199 for each hearing will be attached to the final DA Form 199 to reflect and explain the multiple considerations. For example, a copy of an informal board's DA Form 199 attached to the copy of the formal board's DA Form 199 will record the Soldier's demand for a formal hearing without further comment or explanation.

f. Rebuttals. Rebuttals received after the allotted time or after initial election of concurrence.

(1) In those instances when a rebuttal from a Soldier is received after the allotted time for submission of a rebuttal, or after a Soldier has initially agreed with the findings and recommendations of the PEB and the case has been approved for the SA and forwarded to USAHRC for final disposition, the PEB will respond to the Soldier as set forth below.

(a) If the rebuttal does not result in a change to the findings and recommendations, the PEB will advise the Soldier in writing that no change is warranted and the rebuttal, together with the reply, has been forwarded to USAHRC for inclusion in the case proceedings. The Soldier retains the right to one formal hearing prior to final disposition by USAHRC if the Soldier is otherwise entitled and requests the hearing.

(b) When the rebuttal results in a change to the PEB's findings or recommendations, the PEB will recall the case and effect the necessary changes by preparing a new DA Form 199. The new findings will be furnished to the Soldier. Normal processing procedures apply.

(2) Notwithstanding the above, when additional medical evidence or an addendum to the MEB is received after the PEB has forwarded the case and the PEB determines that such evidence would change any finding or recommendation, the case will be recalled by the PEB and a new DA Form 199 issued. Normal procedures apply following the preparation of a new DA Form 199.

4-21. Formal board

a. Formal hearing. A Soldier is entitled to a formal hearing if requested after informal consideration by a PEB. The Soldier may waive this right by concurring in the findings and recommendations of the informal board. If the Soldier is incompetent, the right to waive a formal hearing may be exercised by next-of-kin or legal counsel. After demanding a formal hearing, a Soldier may later withdraw the demand and accept the informal board's decision, in which case, the counsel will inform the PEB. The case will be forwarded to USAHRC. The Soldier must be counseled on the right to demand a formal board. If the Soldier demands a formal hearing, he or she is entitled to counsel as provided in paragraph 3-10*d* and *h*, below. A formal board will be convened when—

(1) A Soldier (next-of-kin or legal guardian) demands it after electing not to accept the findings and recommendations of an informal board.

(2) The case file has been forwarded to USAHRC for issuance of retirement or separation instructions and the Soldier demands a formal hearing before USAHRC action is final.

(3) After an informal board, the president of the PEB decides that a formal hearing is in the best interest of the Soldier or the Army.

b. Formal board membership. A formal hearing will normally be conducted before a board composed of the same members who considered the Soldier's case informally. The purpose of a formal hearing is to afford the Soldier the opportunity to present views, testimony, and new evidence. The board members must consider these matters with open minds despite their earlier decisions. For this reason the challenge of a voting member, solely because the member took part in the informal board, ordinarily should be denied. If the Soldier is able to establish that a member of the formal board is not impartial, that board member will be replaced. If a replacement for the successfully challenged member is not available, the CG, USAPDA will appoint another member to the PEB panel for the formal hearing. If an original voting member of the informal board is not available for the formal hearing, that member may be replaced with another who is qualified to sit. The new member must become thoroughly acquainted with all pertinent records before the formal hearing is convened.

c. Hearing room. Locally available space will dictate the arrangement of the hearing room. The minimum requirement gives room for three board members, the recorder, the Soldier whose case is to be heard, counsel for the Soldier, and the reporter. Proper decorum consistent with the purpose of the hearing is important; however, every effort should be made to maintain a relaxed and courteous environment. Avoid any implication of adversary proceedings in the case.

d. Scheduling hearing. The president of the PEB will establish the date, time, and place of the hearing subject to the following:

(1) The Soldier (next-of-kin or legal guardian) will be allowed a minimum of 3 working days to prepare for the hearing.

(2) The Soldier may waive the 3-day period or any portion of it.

(3) If more time is required to prepare the case, the Soldier will forward a written request for an extension to the president of the PEB. The president, in turn, will endorse the request to the Soldier indicating approval or disapproval and forward a copy of the response to the Soldier's counsel. In deciding whether to approve the request, the president must consider whether the Soldier would be unable to receive a full and fair consideration of his case if a delay were not granted. The date and time of any rescheduled hearing will be specified in the endorsement. If, in the judgment of the PEB president, the Soldier or counsel are attempting to delay the hearing without valid reasons, the formal hearing will be held with or without the presence of the Soldier and selected counsel.

(4) Ample travel time will be allowed if the Soldier will be represented by his or her next-of-kin or legal guardian in those cases where the member is mentally incompetent or the physician determines that divulging information to the Soldier would be harmful to his or her well being. Funded travel is authorized under the provisions of C6000 of the Joint Federal Travel Regulation. The MTF will issue invitational travel orders authorizing travel for one person.

(5) The PEB will—

(a) Notify the Soldier (or next-of-kin or legal guardian, as applicable) of the scheduled hearing. The DA Form 5890 (Acknowledgment of Notification of Formal Physical Evaluation Board) will be included with the notification.

(b) Notify the board members, witnesses, counsel, reporter, and interpreter (if needed) of the date, time, and place of the hearing.

(c) Arrange for the attendance of all available military witnesses or, under appropriate circumstances, obtain depositions and other evidence.

(d) Ensure that the Soldier's records are furnished to medical witnesses for review before hearing.

(e) Present all available evidence and witnesses to the board.

e. Soldier's rights.

(1) Certain rights accrue to a Soldier whose case is under evaluation by a PEB. A counsel must be aware of these rights. When communicating with the Soldier (next-of-kin or legal guardian), counsel must ensure the Soldier knows and understands the rights that apply to the circumstances of the Soldier's case. Although certain rights apply in all cases, some are particularly applicable during formal hearings, especially when the Soldier is present at the hearing. These rights are described below:

(a) The Privacy Act of 1974 applies to information of a personal nature requested of the Soldier during a formal hearing.

(b) The Soldier may testify as a witness under oath in his or her own behalf, in which case the Soldier may be cross-examined as any other witness.

(c) The Soldier or the Soldier's counsel may introduce witnesses, depositions, documents, or other evidence in his or her own behalf, and cross-examine witnesses who have been examined by the PEB including witnesses who have specific knowledge of the Soldier's case and whose conversations have been summarized for the record.

(d) The Soldier or Soldier's counsel may make unsworn statements, orally, or in writing, or both, without being subject to cross-examination.

(e) The Soldier may remain silent. The choice not to make a statement or answer questions is not to be considered adverse to the Soldier's interests.

(2) Appointed counsel will use DA Form 5891 (Acknowledgment of Counseling on Legal/Procedural Rights) to counsel the Soldier on his or her procedural rights and to provide a record of such counseling. DA Form 5891 informs the Soldier of the rights described above and requests acknowledgment by Soldier's signature. A copy will be included in the record of formal proceedings and provided to the Soldier.

f. Failure to appear. If a Soldier who has elected to appear at a formal hearing fails to do so, the president of the PEB will take the following actions:

(1) Suspend the hearing and determine the reason for the Soldier's absence. Subject to the provisions of (2) below, if no reasonable excuse is apparent for the Soldier's absence, the hearing may proceed. The president will include in the record a statement of circumstances. Should the Soldier later appear before the hearing has been concluded, the president may recess the hearing. He may permit the counsel to brief the Soldier on proceedings up to that point. The hearing will then proceed.

(2) A formal hearing may not proceed if the Soldier's individually selected counsel (if the Soldier has one and who has been determined to be available to represent the Soldier) is absent, unless the appointed counsel is present in open session.

g. Waiver of appearance. A Soldier may waive, in writing, his or her appearance at a formal hearing. In such a case, the appointed counsel (or individually selected counsel if the Soldier has one) must be present. The counsel will represent the Soldier during all open sessions of the hearing, and perform the duties required of counsel during post-hearing actions.

h. Counsel. For formal hearings at which the Soldier will be present, each Soldier will be represented by counsel unless representation is specifically declined in writing.

(1) *Representation.* The appointed PEB counsel, other military counsel if reasonably available and released by the counsel's command for this purpose, or civilian counsel of the Soldier's choice will represent the Soldier. A Soldier may arrange for civilian counsel of the Soldier's own choice at no expense to the Government. The Soldier may present his or her case without counsel, in which case the Soldier must conform to all procedural rules. The Soldier must sign a statement specifically excusing appointed PEB counsel. The statement will be made a part of the record. The PEB president will require appointed counsel to remain in the hearing room even if counsel is released by the Soldier in writing, except when counsel of choice is present. Appointed counsel will act as co-counsel when the Soldier chooses another counsel unless excused by the Soldier.

(2) *Duties.* The counsel safeguards the legal rights of the Soldier. He or she remains in attendance at all open sessions of the board unless excused, in writing, by the Soldier. Counsel's duties are to—

(a) Confer with the Soldier and advise the Soldier of his or her rights.

(b) Prepare the Soldier's case for presentation to the board.

(c) Request the PEB arrange for the attendance of available witnesses or obtain their depositions or other specifically desired evidence in support of the Soldier's position.

(d) Examine and cross-examine witnesses and otherwise assist the Soldier in presenting their case.

(e) Submit oral or written arguments.

(f) Counsel the Soldier on the board's findings.

(g) Upon request, assist in the preparation of the rebuttal.

(3) Mentally incompetent and deleterious-type cases. The appointed legal counsel will serve as counsel when the next-of-kin (or legal guardian) acts for the Soldier in a case of this type unless replaced by special counsel. Funded travel is authorized as described in paragraph d(4), above. In the absence of the next-of-kin, the PEB counsel must be

present, even though special counsel is representing the Soldier, unless excused by the next-of-kin or special counsel in writing.

i. Records review by Soldier. All records assembled for use during the hearing, including those furnished by HQDA and by other official sources, will be made available to the Soldier and his or her counsel for review. The assembled records will include memoranda of conversations with individuals who have specific knowledge of the Soldier's case, including, but not limited to, the Soldier's chain of command or treating physician. In cases involving mental incompetence or deleterious-type cases, only the counsel and, if present, the next-of-kin or legal guardian may examine the records. The Soldier (next-of-kin or legal guardian) and counsel may make notes from the records to prepare the Soldier's case properly. However, the PEB president may withhold from civilian counsel, next-of-kin, or legal guardian, any security information.

j. Challenges.

(1) The recorder will announce the names and grades of the members of the board present. Any member of the board or counsel who is aware of any facts that the member believes to be grounds for challenge against himself or any other member, including the president of the board, will state such facts. If it appears a member is subject to challenge for cause, and the fact is not disputed, the member will be excused and replaced. The recorder is not subject to challenge.

(2) The statutory right to a full and fair hearing includes the right to challenge for cause. Grounds for challenge may be made by a statement of any fact indicating any member should not sit as a member of the board in the interest of having the hearing and later proceedings free from substantial doubt as to legality, fairness, and impartiality. Not more than one member will be challenged at one time. Later challenges may be made against other members of the board after a ruling is made on a previous challenge.

(3) A challenge may be withdrawn at any time. If a challenge is not withdrawn, the board will give the Soldier the opportunity to introduce evidence, examine the challenged member under oath, and make an argument as to why the challenge should be granted. The PEB will decide if the challenge should be granted by majority vote of the remaining members following discussion in closed deliberation. If the challenged member is the president of the board, the next senior nonmedical board member will preside in the case. A tie vote will sustain the challenge. Upon reopening the board, the president of the board will announce whether the challenge has been sustained. This announcement will be reflected in the record. If the challenge is sustained, the proceedings will be suspended until a replacement for the challenged member is provided.

k. Verifying Soldier's rights. When the hearing begins, the PEB president will assure himself or herself that the Soldier has been informed of his or her rights. If it appears the Soldier has not been so informed, the PEB president will recess the hearing and allow the counsel time to advise the Soldier.

l. Proof of facts.

(1) *General.* Facts and circumstances relevant to the matter under investigation are most often proved or disproved, either directly or through inferences, by real (tangible) evidence, documentary evidence, testimony or statements of witnesses, and matters of which official notice may be taken without proof.

(2) *Real evidence.* A tangible object (for example, brace, crutch) which is material and relevant to the subject of the inquiry is real evidence. Whenever an item of real evidence would aid in establishing the existence or nonexistence of a fact, that item, or a photograph, description, or other suitable reproduction of it, should be included in the report of proceedings, together with any statement of witnesses necessary to identify the item and verify the accuracy of the reproduction. Board members should not overlook their own observations respecting real evidence. If a board member observes an item and gains impressions not adequately portrayed by a photograph, chart, or other representation, he or she should ensure that an appropriate description of the item is made and included in the report.

(3) *Documentary evidence.* Documentary evidence consists of records, reports, letters, and other written, printed, or graphic materials which indicate the existence or nonexistence of a fact. Boards should be alert to discover all such evidence relevant to the matter under inquiry and to include the originals or copies in the record.

(4) *Testimony or statements of witnesses.* Oral or written accounts of matters within the personal knowledge of individuals usually constitute an indispensable part of the evidence considered by a board. Because, unlike real or documentary evidence, such evidence is not fixed as to form or substance, obtaining a witness' testimony or statement requires careful advance analysis of relevant matters of which the witness is expected to have knowledge and preparation of questions to elicit that knowledge without distorting its substance. A preliminary interview of the witness to clarify what information can be elicited is often appropriate, especially by the Soldier's counsel and the recorder. Voting members, however, may not conduct separate interviews of witnesses.

(5) *Official notice.* Some facts are of such common knowledge that there is no need to obtain specific evidence to prove them (for example, general facts and laws of nature; general facts of history; location of major elements of the Army; organization of the Department of Defense and its components).

m. Rules of evidence.

(1) *General.* Proceedings of the PEB are administrative and not judicial in nature; therefore, a board is not bound by the rules of evidence prescribed for trials by court-martial or for court proceedings generally. Accordingly, except as

limited in (3), below, anything which in the opinions of reasonable persons is relevant and material to an issue, may be accepted as evidence. All evidence will be given such weight as is warranted under the circumstances.

(2) *Best evidence.* A board is not precluded from considering any evidence merely because there may be better evidence available to prove the same fact. Generally, however, an effort should be made to obtain the best evidence reasonably available, considering factors such as time, importance, and expense as well as the availability and reliability of substitute evidence. Although hearsay evidence may always be accepted, the personal statement or recent deposition of a witness is usually better evidence than an earlier written statement by that witness or having someone else state what the witness said.

(3) *Limitations.* Administrative proceedings governed by this regulation generally are not subject to exclusionary rules precluding the use of relevant evidence. However, the following does apply with regard to evidence which may be accepted and considered in a board.

(a) *Privileged communications.* The rules concerning privileged communications between client-attorney, and penitent-clergyman, apply to PEBs.

(b) *"Off the record" statements.* Findings and recommendations of the board must be supported by evidence contained in the record. Accordingly, witnesses should not be allowed to make statements "off the record" to board members in formal proceedings.

(c) *Statements regarding disease or injury.* Title 10, United States Code, Section (10 USC 1219) provides that a Soldier may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that the Soldier has suffered. Before any signed, written statement against the Soldier's interest may be considered, it must be determined that such a statement was made voluntarily. Any statement signed after the Soldier has been advised of the right not to make a statement is presumed to be voluntary and is valid for consideration. (This restriction does not include oral testimony.)

(d) *Self-incrimination.* Military witnesses will not be compelled to incriminate themselves, or to answer any question to which the answer might tend to incriminate them, or to make a statement or produce evidence if the statement or evidence is not material to the issue and might tend to degrade them (Article 31, Uniform Code of Military Justice (UCMJ, Art. 31)). Any witness not subject to the UCMJ, will not be required to make a statement or produce evidence which would deprive them of their rights under the Fifth Amendment of the United States Constitution.

n. *Administering oaths.* Voting members of a PEB, the recorder, counsel, and others who regularly take part in PEB evaluations and have no vested interest in the outcome of cases considered need not be sworn before performing their duties. Officers are required in their oath of office to "carefully and diligently discharge the duties of the office to which appointed." Civilian employees are sworn to perform their duties faithfully. A high standard of performance is to be expected, therefore, of individuals assigned to these duties.

(1) A Soldier appearing in his or her own behalf is not sworn unless the Soldier elects to testify under oath. If the Soldier chooses to be sworn, the oath or affirmation prescribed in (2), below, will be used.

(2) Witnesses will sometimes have a vested interest in a case, often adverse to the Soldier's or the Army's interest. Because this partiality is not evident initially, any person who is to testify will first be sworn. In deleterious-type cases or those involving mental incompetence, the next-of-kin or guardian will be sworn. If the witness desires to affirm rather than swear, the words "so help you God" will be omitted. The recorder will administer the following oath:

"Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be truth, the whole truth, and nothing but the truth? (So help you God)?"

o. *Attendance of witnesses.* The board will summon available witnesses needed for the hearing. Either the Soldier or the PEB may request attendance of a witness. Whether a witness is available depends on the conditions described below.

(1) Members and employees of the armed Services located at the same installation as the PEB are usually available. If available, the commander or supervisor will ensure that they appear.

(2) Members and employees of the armed Services located at other installations may be available. The PEB president will decide whether the presence of such witnesses is required for a full and fair hearing. If the PEB president decides the testimony of such a witness is needed and that alternative forms of evidence cannot be substituted for the personal presence of the witness, the commander or supervisor must ensure the witness is present.

(3) The Soldier is responsible for arranging for the attendance of witnesses who are not members or employees of the armed forces. Such witnesses attend hearings at no expense to the Government. Additionally, the Soldier is entitled to present the testimony of any other Soldier or employee of the Army, or other armed Services, whom the Soldier obtains at no expense to the Government, and whom is given leave to attend.

(4) Witnesses summoned by the PEB who are members or employees of the armed Services are entitled to travel expenses and per diem allowances authorized by Joint Federal Travel Regulations (JFTR). 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 still considers personal testimony by the witness essential, funds available to the PEB may be used to pay the costs.

(5) The PEB president may decide that the witness need not appear in person to testify. If so, he or she may authorize the Soldier's military counsel to take the deposition at the witness' location. The counsel may take the deposition either personally or by arranging with the Soldier's representative to do so. If the counsel is to take the deposition in person and TDY is involved, the counsel will provide the PEB president a summary of the information he or she expects to discover and how it relates to the case. If the PEB president approves the TDY, the PEB will pay costs from travel funds available to the PEB. The deponent may be at a distance so that the military counsel is unable to take the deposition in person. If so, the Soldier's counsel may request assistance from the Staff Judge Advocate nearest the deponent's location. Should expenditure of per diem or travel funds be involved, the counsel will make his or her request through the PEB president who is considering the case. A summary of the information to be discovered will be included. If no expenditure of public funds is involved, the receiving PEB president will approve the request and refer it for action to the appropriate Staff Judge Advocate. If the requested action involves payment of TDY costs, expenses will be paid from funds available to the PEB president requesting the deposition. A counsel may believe that a deposition is required and it cannot be obtained as described above. If so, the counsel may make a request to the officer exercising GCMCA over the installation at which the PEB is located. If the GCMCA approves taking the deposition, he or she will refer the request to the GCMCA in the area in which the deponent is located for action. The deponent will return the deposition through the referring GCMCA. Depositions may be taken on oral or written questions. Depositions will be prepared as provided in rule 703, Military Rules of Evidence, Manual for Courts-Martial (MCM), United States, 2005.

p. Procedural objections. The Soldier (the Soldier's next-of-kin, legal guardian, or counsel) may object to any actions taken or proposed to be taken by the board or to the admission of evidence. When an objection is made, it will be recorded as part of the record. The president of the board will rule on objections. If any board member dissents from the president's ruling, however, the board will be closed for deliberation and the objection will be ruled upon by majority vote. Upon reopening of the board, the ruling of the board will be announced in open session and recorded as part of the record.

q. Closed deliberations. Upon completing an open hearing, the board is closed for deliberation. The voting members decide the findings and recommendations according to policies stated in chapter 3 and criteria in this chapter.

r. Findings and recommendations.

(1) The board, upon completion of deliberations, will reopen and inform the Soldier of the findings and recommendations. (In cases of mental incompetence or in deleterious-type cases, the board will inform the Soldier's counsel, next-of-kin, or legal guardian.) If the Soldier (Soldier's next-of-kin or legal guardian) is not present at the hearing, notice of the findings and recommendations will be provided to them, in writing.

(2) The PEB may change, modify, or correct its findings and recommendations at any time before the record of proceedings is delivered to the CG, USAPDA or commander, USAHRC. When such changes are made in previously announced findings or recommendations, the PEB will inform the Soldier (Soldier's next-of-kin, counsel, or legal guardian), in writing, of the proposed change. The PEB will afford the Soldier the opportunity to accept or rebut the proposed change.

(3) The findings and recommendations of the formal PEB are recorded on DA Form 199-1. When the Soldier personally appears before the board, the DA Form 199-1 will be prepared immediately following the conclusion of the hearing and a copy provided to the Soldier and his or her counsel or representative. The Soldier will be afforded the opportunity to make an election at this time but may choose to take the full time period for reaching a decision.

s. Soldier's election. DA Form 199-1, section X, records the Soldier's election options to formal findings and recommendations.

(1) The DA Form 199-1 and the letter of rebuttal must be received at the PEB within 10 days from the Soldier's receipt of the formal findings unless the president of the PEB approves a request for an extension of time. A request for an extension must be received within 10 days of the Soldier's receipt of the DA Form 199-1. If the request for extension is denied, the original time frame remains applicable. A copy of the PEB's decision on the request for extension will be sent to the Soldier's counsel.

(2) If the Soldier's statement of election or a request for an extension of time is not received within the required time, the PEB will deem that the Soldier has waived the right to an election. The proceedings will be forwarded to USAPDA for final disposition. The forwarding memorandum will document the circumstances resulting in the waiver of election. The PEB will forward a copy of the memorandum to the Soldier through the PEBLO.

(3) A Soldier who fails to make an election or to submit a statement of rebuttal to formal proceedings within the allotted time if he or she is in disagreement with the findings and recommendations, will forfeit the opportunity for USAPDA review of his or her case (see para 4-21f, below).

t. Rebuttals. Letters of rebuttal to the findings and recommendation of formal proceedings (to include the recommended disability percentage) must be prepared and processed according to the following guidance.

(1) A rebuttal may only be based upon one or more of the issues listed below and must provide rationale in support of the issue.

- (a) The decision of the PEB was based upon fraud, collusion, or mistake of law.
- (b) The Soldier did not receive a full and fair hearing.
- (c) Substantial new evidence exists and is submitted which, by due diligence, could not have been presented before disposition of the case by the PEB.

(2) If a letter of rebuttal is received within the required time frame, the PEB will respond to the Soldier, or his representative, normally within 3 days confirming that the rebuttal has been received and considered. If consideration of the rebuttal does not affect the outcome of any portion of the PEB decision, the response will include the reasons why the rebuttal does not support a change to the findings and recommendations. The Soldier will be informed that the rebuttal will be forwarded with the case file to USAPDA for review (based on the Soldier's election of nonconcurrence with submission of a rebuttal). The response by the PEB president will be included in the case file and a copy will be furnished to the Soldier's legal counsel or other representative.

(3) If a Soldier submits a letter of rebuttal after having initially made an election of concurrence and the rebuttal is submitted within the required time frame, the procedures of paragraph (2), above, apply. If the case has been forwarded to USAPDA for final disposition based upon the Soldier's initial concurrence, the PEB will recall the case. If the letter of rebuttal is received after the required time frame, the procedures of paragraph (4), below, apply.

(4) If a letter of rebuttal is received by the PEB after the Soldier's case has been forwarded to USAPDA for final disposition (based upon the Soldier's failure to make an election within the required time frame or nonconcurrence without submission of a rebuttal) the PEB will consider the rebuttal as set forth below.

(a) If consideration of the rebuttal does not result in a change to the findings and recommendations, the PEB will advise the Soldier, in writing, that no change is warranted and the rebuttal, together with the reply, has been forwarded to USAPDA for inclusion in the case proceedings. A copy of the reply will be forwarded to the Soldier's legal counsel or other representative. Review of proceedings by USAPDA is not required.

(b) When the consideration of the rebuttal results in a change to the PEB's findings and recommendations, the PEB will recall the case and effect the necessary changes by preparing a new DA Form 199-1. The new DA Form 199-1 will be furnished to the Soldier according to normal processing procedures.

(5) Notwithstanding the above, when additional medical evidence or an addendum to the MEB is received after the PEB has forwarded the case to USAPDA and the PEB determines that such evidence would change any finding or recommendation, the case will be recalled by the PEB and a new DA Form 199-1 issued. Normal procedures apply following the preparation of a new DA Form 199-1.

u. Mental incompetency. Formal proceedings of cases involving mental incompetency or nonappearance because of the MTF commander's decision that it would be detrimental for the Soldier's well being to appear, will be processed as follows:

(1) The DA Form 199-1 with all exhibits will be forwarded by certified mail, return receipt requested, to the Soldier's guardian or next-of-kin. A copy of the forwarding letter will be provided to the Soldier's legal counsel or representative.

(2) The transmittal letter will advise the individual of the following:

(a) The right to make elections on behalf of the Soldier, which elections are set forth on DA Form 199-1, section X.

(b) The election and any rebuttal must be received at the PEB by the 10th day from the date the individual signed the return receipt, unless within the 10-day period, the president of the PEB approved a request for extension.

(c) The PEB must consider rebuttals submitted within the required time frame and notify the individual of its determination.

(d) Failure of the individual to submit an election within the 10-day time period will result in the PEB forwarding the case to USAPDA for final disposition.

(3) *Deleted.*

Section V

Review and Confirmation of Physical Evaluation Board Action

4-22. Review by the U.S. Army Physical Disability Agency

a. Required review. The USAPDA will review the following cases:

(1) General and MC officers found unfit.

(2) Informal proceedings when the Soldier nonconcurs with the PEB findings and recommendations, waives a formal hearing, submits a statement of rebuttal within the required time frame, and consideration of the rebuttal by the PEB does not result in a change to its findings and recommendations.

(3) Formal proceedings when the Soldier nonconcurs with the PEB findings and recommendations, submits a statement of rebuttal within the required time frame, and consideration of the rebuttal by the PEB does not result in a change to its findings and recommendation.

(4) Cases in which a voting member of the PEB submits a minority report.

- (5) Any case previously forwarded to USAPDA for review and approval and which has been returned to the PEB for reconsideration or rehearing.
- (6) Cases designated by the CG, USAPDA for review.
- (7) Cases of Soldiers assigned to USAPDA.
- b. Purpose of review.* The review will be confined to the case records and proceedings and related evidence. The review will ensure that the following criteria have been satisfied.
- (1) The Soldier received a full and fair hearing.
- (2) The proceedings of the MEB and the PEB were conducted according to governing regulations.
- (3) The findings and recommendations of the MEB and PEB were just, equitable, consistent with the facts, and in keeping with the provisions of law and regulations.
- (4) Due consideration was given the facts and requests contained in any rebuttal to the PEB findings and recommendations submitted by, or for, the Soldier being evaluated.
- (5) Records of the case are accurate and complete.
- c. Determinations.* Based upon review of the PEB proceedings, USAPDA may take the following actions:
- (1) Concur with the findings and recommendations of the PEB or make minor changes or corrections that do not affect the recommended disposition of the Soldier or lower the combined percentage rating.
- (2) Return the case to the PEB for reconsideration, clarification, further investigation, a formal hearing, or other action when the case records show such action is in the best interests of the Soldier or the Army. A detailed explanation for the reasons for return of the case will be provided to the PEB.
- (3) Issue revised findings providing for a change in disposition of the Soldier or change in the Soldier's disability rating.
- (4) Refer the case to the APDAB.
- d. Revised findings.* USAPDA, will take the following actions when modifying PEB findings and recommendations.
- (1) Furnish the Soldier (next-of-kin or legal guardian) a copy of the revision by certified mail, return receipt requested. The letter of transmittal will state the reason for the change. Information copies will be provided to the PEBLO and to the Soldier's counsel.
- (2) Advise the Soldier (next-of-kin or legal guardian) that his or her election or rebuttal to the revision must be received by USAPDA within 10 days from the Soldier's receipt of the revised findings unless a request for extension is received and approved within the same time frame.
- (3) Return the case records to the PEB if the Soldier is eligible for and requests a formal hearing or if one is directed under the provisions of paragraph *c*(2), above. Processing will be according to paragraph 4–21.
- (4) Record the revised findings on DA Form 199–2 (U.S. Army Physical Disability Agency (USAPDA) Revised Physical Evaluation Board (PEB) Proceedings).
- e. Consideration of rebuttal.*
- (1) After considering the Soldier's rebuttal to the revised findings, USAPDA will make one of the following determinations:
- (a) Accept the rebuttal; issue new findings and recommendations according to the rebuttal; and forward the case to USAHRC for final action.
- (b) Concur with the original recommendations of the PEB; forward the case to USAHRC for final action.
- (c) Adhere to the revised findings and recommendations and forward the case to APDAB.
- (2) The USAPDA will inform the Soldier in writing of the results of its consideration of the rebuttal.
- f. Soldier's election to revised findings.* The Soldier records his or her election to revised findings on DA Form 199–2, section X. If the Soldier fails to submit an election within the allotted time, USAPDA will deem that the Soldier has waived his or her right to file a rebuttal and take final action on the case.
- g. The U.S. Army Physical Disability Agency disposition.*
- (1) The proceedings of general and MC officers found physically unfit will be forwarded to the ASD (HA) for review prior to disposition by USAHRC. This is not required if the finding is fit.
- (2) If the case file is to be forwarded to APDAB for appeal action, USAPDA will prepare a cover letter explaining the reasons for referral and note that final decision is deferred to the APDAB. If the APDAB's decision is unfit, and if the Soldier has requested COAD under chapter 6, APDAB will forward the file to the appropriate office for COAD review. When the case is that of a general or MC officer, APDAB will return the case to USAPDA for forwarding to ASD (HA). If the general or MC officer has requested COAD, USAPDA will forward the case for COAD review upon confirmation of unfit determination by ASD (HA).
- (3) When proper authority (AR 600–8–4) has made an unfavorable LD determination on the Soldier's unfitting condition, USAPDA will modify the PEB findings and recommendations. USAPDA will notify the Soldier that the modification resulted from a final LD decision by HQDA and that neither USAPDA nor APDAB are the approving authority for an appeal of the LD decision. LD appeal are governed by AR 600–8–4. This does not preclude an appeal of the determination of physical unfitness. Nor does it preclude the right to a formal PEB hearing if the Soldier has not

had a formal hearing (see para 4–19g(2)). If the case file is forwarded to USAHRC (AHRC–PDC–P) to await a final LD decision, USAPDA will reflect in the cover letter the result of review subject to the final LD decision.

(4) If notice is received that a Soldier whose case is in the disability system is AWOL, USAPDA will suspend further action on the case. If the Soldier has been AWOL for 10 days or more, USAPDA will verify the fact of AWOL and return the case file, less PEB proceedings, to the MTF to which the Soldier belongs. USAPDA will cancel PEB proceedings and notify the PEB and applicable MTF. If the case file has been forwarded to USAHRC, USAPDA will recall the case for return to the MTF.

(5) With the exception of those cases noted above, USAPDA will approve revised findings for the SA and forward the case to USAHRC for disposition.

4–23. Disposition of medical records

If the medical records were included in the case proceedings, they will be disposed of as follows:

a. If further review or appeal of the case is not involved, USAPDA will withdraw the medical records from the case file and will return them to the MTF that referred the case file to a PEB.

b. If the case is to be reviewed by APDAB or ASD (HA) and if the medical records are not included in the case, they will be requested and forwarded with the case file for the required review or appeal action. The review or appeal action may result in return of the case file to the CG, USAPDA, for final action. If so, the medical records will be disposed as indicated in paragraph *a*, above.

Section VI

Disposition Subsequent to Adjudication

4–24. Disposition by the U.S. Army Physical Disability Agency

The USAPDA will dispose of the case by publishing orders or issuing proper instructions to subordinate headquarters, or return any disability evaluation case to PEB for clarification or reconsideration when newly discovered evidence becomes available and is not reflected in the findings and recommendations.

a. Actions based upon modification by Army disability appeal board. When APDAB changes the disposition of the Soldier or lowers the disability rating, USAPDA will—

(1) Notify the Soldier (or next-of-kin, counsel, or guardian) of the changes by certified mail, return receipt.

(2) Furnish a copy of the notification to the PEB and the PEBLO of the MTF concerned.

(3) Advise the Soldier that his or her concurrence or rebuttal to the findings by the APDAB must be received by USAPDA within 10 days of the receipt of the notification letter (based upon date of the certified return receipt) unless USAPDA has approved an extension of time. Failure to respond within the allotted time will result in waiver of right to file a rebuttal to the new findings.

(4) If timely rebuttal is received, forward it and the proceedings to APDAB for reconsideration.

b. Final disposition. Based upon the final decision of USAPDA or APDAB, USAPDA will issue retirement orders or other disposition instructions as follows:

(1) Permanent retirement for physical disability (see 10 USC 1201 or 1204).

(2) Placement on the TDRL (see 10 USC 1202 or 1205).

(3) Separation for physical disability with severance pay (10 USC 1203 or 1206).

(4) Separation for physical disability without severance pay (Title 10, United States Code, Sections 630, 12681, 1165, or 1169, (10 USC 630, 12681, 1165, or 1169)).

(5) Transfer of a Soldier who has completed at least 20 qualifying years of Reserve service, and otherwise qualifies for transfer as described in paragraph 8–9, to the Inactive Reserve on the Soldier's request (section 1209, title 10, United States Code (10 USC 1209)).

(6) Separation for physical disability without severance pay when the disability was incurred as a result of intentional misconduct, willful neglect, or during a period of unauthorized absence (Title 10, United States Code, 1207).

(7) Release from active duty and return to retired status of retired Soldiers serving on active duty who are found physically unfit.

(8) Return of the Soldier to duty when he or she is determined physically fit.

(9) Provide to ASD (HA) one copy of all retirement orders issued in the case of each general officer (O–7 or higher).

c. Absent without leave. The USAPDA will take the following actions when notified that a Soldier in the disability system is AWOL.

(1) Suspend disposition action.

(2) If the Soldier has been AWOL for 10 days or more, or upon expiration of 10 days in AWOL status, verify with the unit commander the fact of AWOL.

(3) If AWOL status is confirmed, void the proposed disposition.

- (4) Notify the Soldier's commander and the PEBLO of the revoked disposition.
- (5) Return the case file to PEB.

d. Medical records. Upon completion of disposition processing, USAPDA will remove medical records from the proceedings and return them to the MTF that referred the Soldier to a PEB.

4-25. The Army Physical Disability Appeal Board

The APDAB is a component of the ACRB. It reviews cases forwarded by the CG, USAPDA as provided in paragraph 4-22f(2), above.

a. Determinations. The APDAB will determine if—

- (1) The Soldier received a full and fair hearing.
- (2) The evaluation proceedings conformed to current laws and governing regulations.
- (3) Findings and recommendations of the PEB, as changed or modified by the CG, USAPDA are supported by the evidence.

b. Actions. The APDAB will take one of the following actions and forward the case to USAHRC (or to USAPDA if the case is that of a general officer or medical doctor).

- (1) Concur with the decision of the CG, USAPDA.
- (2) Concur with the recommendations of the PEB.
- (3) Adopt the recommendations of the minority member of the PEB when PEB recommendations were not unanimous.
- (4) Concur with the requests contained in the rebuttal submitted by the Soldier being evaluated.
- (5) Specify new findings and recommendations or other proper actions.
- (6) Records the decisions of the APDAB on DA Form 199-2.

c. Limitations. APDAB does not have appellate review authority over modifications resulting from ASD (HA) decisions or adverse LD determinations by HQDA.

4-26. Army Disability Rating Review Board

The ADRRB is a component of the ACRB. The ADRRB reviews disability percentage ratings on request of a Soldier who was retired because of physical disability.

a. Determinations. The ADRRB may notify or amend a fully executed retirement order of a Soldier based upon the following criteria:

- (1) The original order was based on fraud or mistake of law.
- (2) The Soldier was not granted a full and fair hearing when the Soldier had made timely demand for such a hearing.
- (3) Substantial new evidence exists which, by due diligence, could not have been presented before disposition was accomplished, and the evidence would have warranted a higher percentage of disability if presented before disposition.

b. Petition procedures.

(1) The person concerned, legal representative, or any informed DA authority may request relief on the grounds set forth above.

(2) The request for relief must be filed within 5 years from the effective date of the disposition complaint.

(3) Request for relief is addressed to the ADRRB. No special form is required. However, the petition must state the reason for requesting relief and the relief desired.

(4) If the petition is based on evidence that is not on DA records, forward the evidence as an enclosure to the petition.

(5) The filing of a petition for relief will not affect the directed disposition unless the SA or authority acting for the SA so directs. If operation of the directed disposition is suspended by proper authority, the suspension does not extend the time limit within which an application for review must be submitted to a statutory board.

c. Review procedures.

(1) The ADRRB will consider all petitions submitted according to the criteria of paragraph *b*, above.

(2) If the person concerned (or his or her legal representative) did not submit the petition, the ADRRB will give the retiree (or his or her legal representative) reasonable notice of the matter presented by the petition and the opportunity to submit a statement or other evidence in rebuttal.

(3) The Director, ACRB may act for the SA on petitions submitted if the recommendation of the ADRRB is unanimous. Other cases are referred to the SA for action. (The authority herein conferred is permissive only. It will not prevent referral of a case to the SA for action.) In acting on a petition, the Director, ACRB, may—

(a) Deny relief, set aside the final disposition or placement on the TDRL directed in a case and direct further retirement proceedings.

(b) Direct such action as is needed to effect the relief requested or any other action thought proper.

Table 4-1. Deleted.
Table 4-2. Deleted.
Figure 4-1. Deleted.
Figure 4-2. Deleted.
Figure 4-3. Deleted.
Figure 4-4. Deleted.
Figure 4-5. Deleted.
Figure 4-6. Deleted.
Figure 4-7. Deleted.
Figure 4-8. Deleted.

Chapter 5

Separation for Non-Service Aggravated, Existed Prior to Service Conditions upon Soldier's Waiver of Physical Evaluation Board Evaluation

5-1. General

- a.* This chapter provides for separation of an enlisted Soldier for non-service aggravated EPTS conditions when Soldier requests waiver of PEB evaluation.
- b.* This chapter is applicable to enlisted Soldiers on active duty for more than 30 days.
- c.* Separation under the authority of this chapter is not to be confused with separation under the provisions of AR 635-200, chapter 5. The latter provides for involuntary separation within the first 6 months of entry onto active duty for failure to meet procurement fitness standards. If the time period exceeds 6 months or if the condition is disqualifying under AR 40-501, chapter 3, a Soldier is entitled to evaluation by a PEB or may waive evaluation under this chapter.

5-2. Criteria

Case must meet the conditions, set forth below:

- a.* Soldier is eligible for referral into the disability system (see chap 4, sec I).
- b.* The Soldier does not meet medical retention standards as determined by the MEB.
- c.* The disqualifying defect or condition existed prior to entry on current period of duty and has not been aggravated by such duty.
- d.* The Soldier is mentally competent.
- e.* Knowledge of information about his or her medical condition would not be harmful to the Soldier's well being.
- f.* Further hospitalization or institutional care is not required.
- g.* After being advised of the right to a full and fair hearing, the Soldier still desires to waive PEB action.
- h.* Soldier has been advised that a PEB evaluation is required for receipt of Army disability benefits, but waiver of the PEB will not prevent applying for VA benefits.

5-3. Actions by physical evaluation board liaison officer

- a.* The PEBLO will inform the Soldier of the rights and conditions outlined above. If the Soldier declines the opportunity to apply for discharge, the PEBLO will notify the commander in writing. Such notice will state that the Soldier has been fully informed of the provisions of this chapter and that the Soldier has declined to apply for discharge.
- b.* If the Soldier requests to apply for discharge, the PEBLO will assist the Soldier in preparing a Request for Discharge for Physical Disability using figure 5-1 as a guide.
- c.* The PEBLO will forward the request and four copies of the MEB report to the Soldier's immediate commander for separation processing. The separation authority will be advised of any pending disciplinary or other action that may affect the Soldier's disposition.

5-4. Authority to order discharge

Commanders with special court-martial convening authority may approve or disapprove discharge of a Soldier of his or her command processed under this chapter if no adverse administrative or disciplinary action is pending against the Soldier. This authority may not be further delegated. (See chap 4 if administrative or disciplinary action is pending.)

5-5. Action by commander authorized to effect discharge

- a.* Commanders authorized to effect the discharge of Soldiers under provisions of this chapter will effect such discharge expeditiously. As part of the outprocessing procedure, commanders will ensure that Soldiers complete VA Form 21-526 (Veteran's Application for Compensation or Pension) prior to separation. No medical examination will

be accomplished during separation processing unless there is reason to believe that material change has occurred in the Soldier's physical or mental condition since his or her appearance before the MEB.

b. Unless otherwise indicated, the Soldier will be issued DD Form 256A (Honorable Discharge Certificate). DD Form 214 (Certificate of Release or Discharge from Active Duty) will be prepared in each case. If the Soldier is in entry level status at the time of processing, DD Form 214 may describe service as uncharacterized (see AR 635-200, chap 3).

c. The Soldier will be furnished one copy of the approved report of medical board proceedings (with copy of the report of the medical examination). One copy will be filed in the military personnel records jacket.

d. One copy of each of the documents listed below will be sent through the commander of the MTF providing primary medical care for the headquarters discharging the Soldier to the Commander, U.S. Army Recruiting Command, ATTN: USARCAO-M, Fort Sheridan, Illinois 60037-6000.

(1) DA Form 3947 (Medical Evaluation Board Proceedings) and SF Form 502.

(2) DD Form 2808 (Report of Medical Examination) and DD Form 2807-2 (Medical Prescreen of Medical History Report) prepared for the separation action.

(3) DD Form 2808 and DD Form 2807-2 pertaining to entry (pre-induction, induction, enlistment, or call to active duty) examination.

e. A cover letter will cite this regulation as authority for the action. The letter will furnish the following information:

(1) The date on which the Soldier was discharged.

(2) The date of the Soldier's entry on active duty.

(3) The name and location of the medical facility that conducted the Soldier's medical examination before the Soldier's enlistment or induction.

MEMORANDUM FOR Commander, B 2/4 Inf, Fort Knox, KY 40121-5529

SUBJECT: Request for Separation Under Provision of AR 635-40, Chapter 5.

1. I request discharge for physical disability under the provisions of AR 635-40, chapter 5. A medical evaluation board has determined that I do not meet medical retention standards due to a medical condition that was determined to have existed prior to my entry into active Service and has not been aggravated by my military Service.

2. I have been fully informed and understand that I am entitled to the same consideration and processing as any other soldier of the Army separated for physical disability. I understand this includes the consideration of my case by a physical evaluation board. However, I elect not to exercise this right. I also understand that Veterans Affairs (VA) will determine entitlement to VA benefits.

3. If this application is approved, I understand that I will be separated by reason of physical disability existing prior to service. I also understand that I will receive a discharge in keeping with the character of my service as decided by the officer designated to effect my separation.

John E. Doe
SSG
B 2/4 Inf

Figure 5-1. Sample format for request for separation with waiver of PEB evaluation

Chapter 6

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

6-1. General

a. This chapter prescribes the criteria and procedures under which Soldiers who have been determined unfit by the PDES may be COAD or in active reserve status (COAR) as an exception to policy. (This provision is referred to as “permanent limited duty” in DODD 1332.18 and DOD Instruction 1332.38.)

b. With the exception of this subparagraph, this chapter does not pertain to RC Soldiers in a nonactive duty status who have been medically disqualified for medical impairments incurred in a nonduty status. (An example of this situation is a Troop Unit Program (TPU) Soldier injured on his or her civilian job to the degree that the Soldier falls below medical retention standards of AR 40-501, chap 3.). These Soldiers may request continuation under the provisions of AR 40-501, paras 9-10b (U.S. Army Reserve (USAR)) or 10-26 (Army National Guard of the United States (ARNGUS)) upon notification of medical disqualification. If the Soldier defers such a request pending the outcome of his or her voluntary referral to a nonduty-related PEB, and the PEB determines that the Soldier is unfit, the Soldier’s application should cite the provisions of DODD 1332.18, para 3.12, in addition to the applicable para of AR 40-501 and include the findings of the PEB with the documentation required by AR 40-501.

6-2. Objective

a. The primary objective of this program is to conserve manpower by effective use of needed skills or experience. A Soldier who is physically unqualified for further military service has no inherent or vested right to continuation.

b. Continuation in a military status is generally subject to the Soldier’s consent. However, the SA, or their designee, may involuntarily continue Soldiers determined unfit by the PDES in consideration of their service obligation or special skill and experience.

6-3. Duty statuses eligible for continuation on active duty and continuation on active Reserve status

a. The COAD applies to—

- (1) Officers on the active duty list.
- (2) Regular Army enlisted Soldiers.
- (3) Soldiers in the AGR or on full-time National Guard duty (FTNGD) requesting continuation as AGR or FTNGD.

b. The COAR applies to—

(1) The AGR Soldiers requesting to continue as members of the individual ready reserve (IRR) or as TPU member. (The approving authority will coordinate the request with the AGR manager.)

(2) The FTNGD Soldiers requesting to continue as traditional (drilling) unit members. (The approving authority will coordinate the request with the State Joint Forces Headquarters Human Resources Officer).

(3) Army National Guard (ARNG) unit members, USAR TPU members, IRR members, and individual mobilization augmentees. These Soldiers may request COAR in any of these statuses.

c. RC Soldiers determined unfit while mobilized may only request continuation in their pre-mobilization status or in the IRR. They are ineligible for COAD, or otherwise being accessed onto the active duty list as a COAD. The Soldier may return to a mobilized status subject to mobilization policy.

6-4. The period for which continuation on active duty and continuation active Reserve status may be approved

a. Normally, a COAD will be for any period of time up to the last day of the month in which the Soldier attains 20 years of active Federal service for purposes of qualifying for length of service retirement under Title 10, United States Code, Section 3911 or 3914 (10 USC 3911 or 3914). Normally, a COAR will be for any length of time up to the minimum time required for the Soldier to be issued and receive the 20-year letter of qualifying service for purposes of qualifying for nonregular retirement under Title 10, United States Code, Section 12731 (10 USC 12731).

b. A Soldier who was approved for COAD/COAR for a period less than that described in subparagraph a, above, may reapply for another period of COAD/COAR when found unfit by the follow-on PDES evaluation related to the current COAD/COAR.

c. Normally, a Soldier who was COAD/COAR to the applicable 20-year period described in paragraph a, above, and who is found unfit upon referral to the PDES, will not be approved for another period of continuation. Any request for further continuation must include endorsement from the Soldier’s command or organization at no less than the 0-6 level. The request must fully justify the organization’s continued need for the Soldier’s experience and skills.

6-5. Precedence of continuation on active duty and continuation on active Reserve status to enlistment contracts or other obligated service

a. Soldiers approved for COAD or COAR are authorized retention. Soldiers not serving on an indefinite reenlistment are required to reenlist and/or extend to meet the approved COAD or COAR end date. Soldiers serving on an indefinite reenlistment commitment require no additional action. Soldiers are authorized to serve to contractual ETS, unless separated earlier. A Soldier found fit during the final disability evaluation upon expiration of COAD/COAR period may continue to serve to contractual ETS or reenlist if otherwise qualified.

b. For purposes of any required reenlistment during the COAD/COAR period, the Soldier is not required to meet medical retention standards for the disabilities for which he or she was continued. However, if these disabilities have worsened to the degree to make further service questionable, or if the member is diagnosed with new conditions which fall below the medical retention standards of AR 40-501, chapter 3, the Soldier may be denied reenlistment. If reenlistment is denied, the Soldier must be referred to the PDES.

6-6. Referral to the physical disability evaluation system prior to expiration of continuation period

a. Generally, Soldiers approved for a COAD of greater than six months will be referred to the PDES before expiration of the COAD. Final PDES evaluation may be waived for retirement for length of service. The Soldier must sign a waiver statement acknowledging that by foregoing final disability processing he or she is forgoing a potential disability retirement and the potential benefits related thereto (such as greater retired pay, or tax advantages, or certain benefits pertaining to employment under Federal Civil Service, depending upon the individual case circumstances). This waiver must be made a part of the Soldier's military health record.

b. Generally, a Soldier approved for a COAD of 6 months or less to attain eligibility for active service retirement will not be referred to the PDES. The Soldier will be retired for physical disability upon the expiration of COAD. However, if the Soldier consents to referral and the Soldier has incurred a new, acute, grave illness or injury, or has suffered grave deterioration of the condition for which the Soldier was continued, the Soldier will be referred to the PDES.

c. The final PDES 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 his or her primary MOS or specialty code duties in other than a limited duty status, the Soldier may be found fit. The ability to perform duties with prosthetics, however, does not constitute a healing or improvement of a Soldier's medical condition for purposes of a fit finding at the time of final PDES evaluation.

(2) If the disability has remained unchanged or increased in severity, the PEB will find the Soldier unfit because of physical disability.

(3) The PEB may not make a finding of unfit or determine the disability rating based on how the disability may impact on the Soldier's future ability to perform his or her PMOS or specialty code duties. The determinations must be based on the Soldier's current ability to perform these duties.

(4) The presumption of fitness rule will not be applied to the disabilities for which the Soldier was continued, since unfitness was established by the earlier disability evaluation. Other diagnoses are subject to the rule.

d. Generally, RC Soldiers approved for COAR under this chapter will be referred to the PDES prior to the expiration of the COAR.

(1) When expiration of the COAR period provides the Soldier with 20 qualifying years of service for nonregular retirement, the Soldier may waive final referral to the PDES and be transferred to the Retired Reserve by the component. To waive final referral, the Soldier must execute a written waiver acknowledging that transfer to the Retired Reserve without final PDES evaluation will result in not electing the provisions of 10 USC 1209 or could result in loss of an immediate disability retirement if the outcome of the waived PDES evaluation were a finding of unfit and the member would be awarded a disability rating of at least 30 percent or the member has 20 years of service as computed under 10 USC 1208. The waiver must be provided to AHRC with the member's request to transfer to the Retired Reserve without final PDES evaluation.

(2) For COAR cases which complete final disability evaluation, any increase in the disability rating may be denied if a preponderance of evidence reflects that the worsening of the severity of the RC Soldier's unfitting condition resulted from intervening events between periods of active duty and IDT. The presumption of fitness rule will not be applied to the disabilities for which the Soldier was continued but will be applied to any other diagnoses.

6-7. Qualification and process for continuation on active duty and continuation on active Reserve status

a. To be considered for COAD or COAR, a Soldier must be—

(1) Determined unfit by the PDES for a disability that was not the result of intentional misconduct nor willful neglect, nor incurred during a period of unauthorized absence.

(2) Basically stable or have a disability that is of slow progression according to accepted by medical principles. It must not be deleterious to the Soldier's health or prejudicial to the best interest of the Soldier or the Army. For

example, the disability must not require undue loss of time from duty for medical treatment. It must not pose a risk to the health or safety of other Soldiers.

(3) Physically capable of performing useful duty in an MOS for which currently qualified or potentially trainable (to include re-classification).

(4) Eligible under one or more of the criteria listed below:

(a) For COAD, have 15 but less than 20 years of active Federal service. For COAR, have a total of 15, but less than 20 years of qualifying service for nonregular retirement.

(b) Qualified in a critical skill or shortage MOS. Such qualification must be confirmed in writing by the applicable personnel office and attached to the request; or

(c) Disability resulted from combat or terrorism.

b. The application must be forwarded with either the MEB or with the Soldier's election to the informal findings within the prescribed election time frame. (See fig 6-1 for COAD and fig 6-2 for COAR.)

8 August 20011

MEMORANDUM FOR Commander, U.S. Army Human Resources Command (AHRC-EPO-A),
1600 Spearhead Division Avenue, Fort Knox, KY 40122-5208

Subject: Request for Continuation on Active Duty (COAD)

1. If I am determined unfit because of physical disability, I hereby apply for continuation on active duty. I apply for assignment to duties that I am able to perform within the limitations imposed by my physical disabilities. I request continuation instead of retirement or separation.

2. I meet at least one or more of the criteria below as designated by my checkmark.

_____ I have 15, but less than 20 years of active Federal Service.

_____ I am qualified in a shortage MOS, as verified by the attached document from my military personnel office.

_____ My disability resulted from combat or an act of terrorism.

3. Subject to retention management policy, I request reclassification to one of the following PMOS in the order listed if my disability precludes continuation in a limited duty status in my current PMOS.

_____ a.

_____ b.

_____ c.

4. I understand that:

a. I must be able to maintain myself in a military environment without the environment adversely affecting my health or my disability requiring extensive medical care.

b. My disabilities will be periodically reevaluated to decide whether further continuation on active duty would be deleterious to my health or prejudicial to the best interests of myself or the Army.

c. Should I later incur a service obligation, I remain liable to complete such obligation up to the expiration of my COAD agreement. Only when my disabilities progress to a point that I am no longer able to perform duty with proper limitations am I no longer liable to complete such obligation.

Figure 6-1. Sample format to request COAD

MCAT-WTB

SUBJECT: Request for Continuation on Active Duty (COAD)

d. If I am continued for a period of greater than 6 months, I will be referred to the PDES before expiration of my COAD, unless I am eligible for length of service retirement and execute a written waiver of final referral. I will be evaluated under the standards for fitness and rating in effect at that time. I may be found physically fit. Reclassification into another PMOS may result in a fit finding if the final PDES evaluation determines that I have reasonably performed the duties of that PMOS. However, the presumption of fitness rule does not apply to the final disability evaluation of those disabilities for which I was originally determined unfit. The rule will be applied to all other medical impairments.

e. If the period for which my COAD was approved extends beyond my contractual enlistment, I will be required to re-enlist. I will not be required to meet medical retention standards for the disabilities for which I was continued. However, I may be denied re-enlistment if those disabilities have worsened or if I have incurred new medical impairments which fall below the medical retention standards of AR 40-501, chapter 3. If denied re-enlistment, I will be referred to the PDES.

John E. Doe
SSG, 76P30

Figure 6-1. Sample format to request COAD—continued



DEPARTMENT OF THE ARMY
HEADQUARTERS, WARRIOR TRANSITION BRIGADE
6900 GEORGIA AVENUE, N.W.
1 WASHINGTON DC 20307-5001

MCAT-WTB

8 August 20011

MEMORANDUM FOR Commander, U.S. Army Human Resources Command (AHRC-SG),
1600 Spearhead Division Avenue, Fort Knox, KY 40122-5208

Subject: Request for Continuation on Active Reserve Status (COAR)

1. If I am determined unfit because of physical disability, I request continuation on active Reserve status (COAR) as a troop program unit member. I apply for assignment to duties that I am able to perform within the limitations imposed by my physical disabilities. I request continuation instead of retirement or separation.

2. I meet at least one or more of the criteria below as designated by my checkmark.

_____ I have 15, but less than 20, qualifying years of service for nonregular retirement.

_____ I am qualified in a shortage MOS, as verified by the attached document from my military personnel office.

_____ My disability resulted from combat or an act of terrorism.

3. Subject to retention management policy, I request reclassification to one of the following PMOS in the order listed if my disability precludes continuation in a limited duty status in my current PMOS.

_____ a.

_____ b.

_____ c.

4. I understand that:

a. I must be able to maintain myself in a military environment without the environment adversely affecting my health or my disability requiring extensive medical care.

b. My disabilities will be periodically reevaluated to decide whether further continuation on active duty would be deleterious to my health or prejudicial to the best interests of myself or the Army.

c. Should I later incur a service obligation, I remain liable to complete such obligation up to the expiration of my COAR agreement. Only when my disabilities progress to a point that I am no longer able to perform duty with proper limitations am I no longer liable to complete such obligation.

Figure 6-2. Sample format to request COAR

MCAT-WTB
SUBJECT: Request for Continuation on Active Reserve Status (COAR)

d. If I am continued for a period of greater than 6 months, I will be referred to the PDES before expiration of my COAR, unless I am eligible for transfer to the Retired Reserve based on 20 qualifying years of service and execute a written waiver of final referral to the PDES. I will be evaluated under the standards for fitness and rating in effect at that time. I may be found physically fit. If my unfitting condition has worsened, I may not be entitled to a higher disability rating if the preponderance of evidence establishes that the worsening was due to intervening incidents between my periods of active duty or IDT. Reclassification into another PMOS may result in a fit finding if the final PDES evaluation determines that I have reasonably performed the duties of that PMOS. However, the presumption of fitness rule does not apply to the final disability evaluation of those disabilities for which I was originally determined unfit. The rule will be applied to all other medical impairments.

e. If the period for which my COAR was approved extends beyond my contractual enlistment, I will be required to re-enlist. I will not be required to meet medical retention standards for the disabilities for which I was authorized continuation. I may be denied re-enlistment if those disabilities have worsened or if I have incurred new medical impairments which fall below the medical retention standards of AR 40-501, chapter 3. If denied re-enlistment, I will be referred to the PDES.

John E. Doe
SSG, 76P30

Figure 6-2. Sample format to request COAR—continued

6-8. Special counseling

a. Application. Before the Soldier completes an application for COAD or COAR, the PEBLO will counsel the Soldier according to appendix C. The PEBLO will specifically inform the Soldier of the following:

(1) Before a COAD or COAR application is forwarded to the approval authority, the PEB will process the case to completion, to include the following:

- (a) Convening a formal hearing, if requested.
- (b) Determining a percentage rating.
- (c) Recommending a disposition that will apply if application for continuation is disapproved.

(2) Of the eligibility criteria for requesting continuation.

(3) That if continuation is approved, the Soldier must be referred to the PDES before expiration of the continuation period unless Soldier waives in writing the final referral.

(4) That the final PDES evaluation could result in a fit finding under the guidance at paragraph 6-6 above.

(5) That if the request for continuation is disapproved, the approval authority will notify the MTF and HQ

USAPDA. The HQ USAPDA will notify the applicable Transition Center that the Soldier is to be separated or retired for disability, as applicable. If the case is that of a Ready Reserve not on active duty, HQ USAPDA will prepare the orders.

b. Soldiers with 18 active or qualifying years of service. When the PEBLO has a case of an active Army Soldier with 18 years but less than 20 years of active service, or an RC Soldier with 18 but less than 20 years of qualifying service, a declination to request a COAD or COAR, as applicable, should be in writing and attached to the MEB proceeding. If the Soldier refuses to indicate in writing his declination of COAD or COAR, the PEBLO will prepare and sign a statement that he or she counseled the Soldier on continuation, and the Soldier declined to request continuation.

6-9. Processing by medical treatment facility

The MTF commander should ensure that—

- a.* Item 16 of DA Form 3947 is completed indicating whether COAD or COAR is medically advisable.
- b.* Item 3 of DA Form 3349 documents the assignment limitations.
- c.* The required documents per paragraph 4-15 are attached. The commander's statement should include a recommendation for or against approval of continuation.

6-10. Physical evaluation board processing

a. Policy. The fact that a Soldier has or has not applied for COAD/COAR will not influence the determination of fitness or percentage of the disability rating.

b. DA Form 199. If the Soldier is found physically unfit, the following statement will be added in block 8. "Soldier has applied for COAD or COAR. The recommended disposition in block 9 applies if Soldier's application for continuation is denied. "

6-11. Headquarters, U.S. Army Physical Disability Agency action

a. The HQ USAPDA will forward the case file to the applicable approving authority listed in paragraph 6-12 below upon completion of review of the PEB proceedings, as required. A suspense file will be maintained.

b. When the case concerns a finding of unfit for a General or MC officer subject to the provisions of 10 USC 1216, HQ USAPDA will obtain review by OASD (HA) prior to forwarding the case file for consideration of continuation.

6-12. Action by approving authority

a. The approving authority listed in paragraphs (1) through (6), below, will act on the Soldier's request for continuation. However, the DCS, G-1, is the disapproval authority for applications from Soldiers tracked by the Army Wounded Warrior program, formerly known as the Disabled Soldier Support System.

(1) *Regular Army enlisted.* Commander, U.S. Army Human Resources Command (AHRC-EPO-A), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5208.

(2) *Regular Army officers and U.S. Army Reserve officers on the active duty list.* Commander, U.S. Army Human Resources Command (AHRC-OPL-R), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5208. The applications of AMEDD officers will be coordinated with Headquarters, Department of the Army, Office of the Surgeon General (DASG-PTZ), 5109 Leesburg Pike, Falls Church, VA 22041-3258.

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

(4) *Judge Advocate General's Corp Officers (Active Army).* Headquarters, Department of the Army, Office of the Judge Advocate General (DAJA-PT), 2200 Army Pentagon, Washington, DC 20310-2000.

(5) *Active Status U.S. Army Reserve officers and enlisted, to include U.S. Army Reserve Soldiers in the Active Guard Reserve program.* Commander, U.S. Army Human Resources Command (AHRC-SG), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5208.

(6) *Army National Guard of the United States officers and enlisted, to include Army National Guard of the United States Soldiers in the Army Guard Reserve Program (Title 10 and Title 32).* Chief, National Guard Bureau, Army National Guard Readiness Center (ARNG-HRP), 111 S. George Mason Drive, Arlington, VA 22204-1382.

b. If the Soldier's application is approved, the approving authority will—

- (1) Notify the MTF commander of the action and furnish assignment orders or instructions, if appropriate.
- (2) Provide a copy of the Soldier's DA Form 3349 to the servicing Personnel Service Center. DA Form 3349 will be used as the source document to show—

(a) The profile serial (AR 40-501, table 7-1) and COAD profile code X (AR 40-501, table 7-2) to be entered into the Electronic Military Personnel Office Readiness Module. This will update the enlisted and officer records brief section IV.

(b) That the assignment limitations detailed on DA Form 3349 must be followed.

(3) Furnish an information copy of the action to HQ USAPDA, and for Active Army Soldiers to HRC.

c. If the Soldier's application is disapproved, the disapproving office will notify the MTF commander promptly so

that the Soldier may be informed. The disapproving office will furnish HQ USAPDA with information copies of the letter of disapproval. The disapproving office will forward the original DA Form 199 and enclosures, less medical records, without delay to Commander, U.S. Army Physical Disability Agency (AHRC-DPD-B), WRAMC, Bldg 7, 6900 Georgia Avenue, NW, Washington DC 20307-5001. HQ USAPDA will take appropriate separation action.

6-13. Consideration for reclassification (enlisted) or branch transfer (officers)

A Soldier approved for COAD or COAR may be considered for reclassification or branch transfer subject to reclassification and retention management policy in effect at the time of his or her request. Accordingly, the enlisted Soldier's request for continuation should list in order of preference three MOSs for reclassification consideration. The officer's request for continuation should list three specialty/functional areas for consideration. Reclassification or branch transfer or award of new specialty could result in a finding of fit at time of final PDES evaluation. (See para 6-6.)

6-14. Medical reevaluation

a. Periodic medical evaluation. Commanders of Soldiers with approved COAD/COAR will refer the Soldier for a physical no less than every 2 years to confirm whether the Soldier's disability has worsened to the degree that the continuation would be deleterious to the Soldier's health or prejudicial to the best interests of the Soldier or the Army. Earlier evaluation is warranted when any one of the following criteria is met.

- (1) The condition causing the Soldier's physical unfitness is such that more frequent examination is indicated.
- (2) The Soldier has been rehospitalized because of worsening of the unfitting condition.
- (3) The Soldier has been rehospitalized because of some other condition impacting on the Soldier's ability to perform duty.

b. Responsibilities of the managing physician. The managing physician must give special attention to the stability of the Soldier's unfitting condition. The physician will—

- (1) If severity increases, estimate the impact on the Soldier's ability to perform duty.
- (2) If degradation of the Soldier's condition occurs so as to further impair performance of duty, note such findings and conclusions on the DD Form 2808.
- (3) Notify the Soldier's commander.

c. Referral to physical evaluation board. If the managing physician believes it is necessary, or the Soldier's commander requests it, the Soldier will be referred to a MEB and PEB.

Chapter 7

Temporary Disability Retired List

Section I

Introduction

7-1. Overview

This chapter outlines procedures for administration and processing of Soldiers whose names are on the TDRL.

7-2. Reasons for placement on the temporary disability retired list

a. A Soldier's name may be placed on the TDRL when it is determined that the Soldier is qualified for disability retirement under 10 USC 1201 but for the fact that his or her disability is determined not to be of a permanent nature and stable.

b. A Soldier with a hereditary or congenital condition that is unfitting and known to be progressive will not be placed on the TDRL unless there is unstabilized service aggravation and the Soldier is qualified as described above. If upon removal from the TDRL, there is no evidence of residual aggravation, the Soldier may be found to be ineligible for disability benefits.

c. The TDRL will not be used for convalescence. When a Soldier's correct rating is less than 30 percent, a rating will not be increased to 30 percent solely for the purpose of making a Soldier eligible for TDRL.

7-3. Information reflected on the temporary disability retired list

The TDRL will list names of all Soldiers temporarily retired. The list, as a minimum, will reflect—

- a.* The identity of the Soldier.
- b.* The date the Soldier was placed on the TDRL.
- c.* The month and year in which the next medical examination is required.
- d.* Current address and phone number.

7-4. Requirement for periodic medical examination and physical evaluation board evaluation

A Soldier on the TDRL must undergo a periodic medical examination and PEB evaluation at least once every 18 months to decide whether a change has occurred in the disability for which the Soldier was temporarily retired.

a. Soldiers who have waived retired pay to receive compensation from the VA, continue to be retired Army Soldiers. These Soldiers must undergo examinations when ordered by Commander, USAPDA, acting on behalf of the SA.

b. Soldiers recalled to active duty while still on the TDRL must also undergo a periodic examination when ordered by the Commander, USAPDA.

c. Soldiers who fail to complete a physical examination when ordered will have their disability retired pay suspended.

d. Soldiers on the TDRL will send notification of their change of address to U.S. Army Physical Disability Agency (AHRC-DO), Operations, 2530 Crystal Drive, Arlington, VA 22202-3934.

7-5. Counseling

The PEBLO is responsible for counseling the Soldier until the informal PEB is completed. The Soldier may demand a formal hearing. If so, the regularly appointed PEB counsel is responsible for the counseling unless the Soldier elects a different counsel. Counseling will be according to appendix C. Soldiers on the TDRL are more difficult to counsel because they are not as readily available to the counselor as are Soldiers on active duty. Nevertheless, they must be counseled to the same extent required for active duty Soldiers.

7-6. Prompt processing

To prevent the Soldier suffering severe financial and other hardships, processing delays will be avoided. All portions of the medical examination will be conducted on a priority basis. All involved agencies and personnel will ensure that cases of Soldiers nearing expiration of 5-year TDRL tenure are identified and given priority processing.

7-7. Prompt removal from temporary disability retired list

Medical examiners and adjudicative bodies will carefully evaluate each case. They will recommend removal of the Soldier's name from the TDRL as soon as the Soldier's condition permits. Placement on the TDRL confers no inherent right to remain for the entire 5-year period allowed under Title 10, United States Code, Section 1210 (10 USC 1210).

Section II

Administration

7-8. Individual temporary disability retired list file

Commanding General, USAPDA will maintain an active file for each Soldier on the TDRL. The file will contain the following:

a. Complete identification, grade, and a statement of total active service when placed on the TDRL; orders placing the Soldier on the TDRL; the Soldier's current mailing address.

b. Original copy of PEB proceedings with exhibits, less medical and health records; original reports of periodic medical examinations and evaluations.

c. Record of current location of clinical, medical, and health records to make the next periodic medical examination easier.

d. Significant correspondence with the former Soldier and MTF in order to support suspension of pay for failure to report for scheduled reexaminations or to show that reasonable efforts were made to notify the Soldier.

7-9. U.S. Army Physical Disability Agency's letter of instruction to the medical treatment facility commander on periodic medical examination

a. Procedural instructions. USAPDA will issue a letter of instructions to the MTF commander responsible for the medical examination. The letter will include—

(1) Name and address of the Soldier requiring examination.

(2) A statement that the periodic medical examination is required during the month prescribed.

(3) Location of medical records, if known (the MTF commander will obtain all medical records).

(4) Instructions on completing the enclosed travel order as to the exact place and date of the examination.

(5) Authority for the MTF commander to arrange for the examination to be conducted. Another U.S. Government MTF, a civilian medical facility, or civilian physician(s), including medical consultants, may conduct the examination. The examination will be conducted as close to the Soldier's home as circumstances and requirements of the case permit.

(6) Specific guidance governing conduct of the examination needed.

b. Preparation of orders. The USAPDA will prepare travel orders to accompany the letter of instructions. The travel

orders permit payment for TDY only for the period needed to complete the TDRL examination. These orders do not provide for periods of medical treatment after the examination.

c. Supporting documents. The following documents will accompany the letter of instructions:

- (1) Proceedings of the PEB and supporting documents that placed the Soldier on the TDRL.
- (2) A copy of the letter notifying the Soldier of the examination.

d. Final temporary disability retired list examination. The USAPDA will initiate processing action no later than 6 months before the fifth anniversary date of the Soldier being placed on the TDRL. The MTF commander and the Soldier will be advised that the final examination must be expedited to ensure removal from the TDRL before the Soldier's completion of 5 years on the list.

7-10. U.S. Army Physical Disability Agency's letter of instruction to the Soldier

The USAPDA will notify the Soldier of the forthcoming medical examination. The letter will include the information below:

- a.* Name, address, and telephone number of the appointed MTF closest to the Soldier's home.
- b.* Name and telephone number of the PEBLO who will assist the Soldier during and after the medical examination.
- c.* The Soldier may telephone the MTF collect to resolve any problems.
- d.* The MTF will arrange for and schedule the medical examination. Every effort will be made to schedule the examination for the Soldier's convenience; however, the medical examination must be carried out within the month prescribed.
- e.* At the discretion of USAPDA an escort may accompany a Soldier who is unable to travel alone to the place of examination. One person may travel with the Soldier upon request when the record clearly shows that the Soldier is not physically or mentally able to travel without help. The attendant is entitled to file a claim for expenses according to JFTR, volume I, chapter 7, part I. If a private conveyance is used for travel, only the retired Soldier may be reimbursed for transportation cost. Request for attendant must be approved by USAPDA in advance of travel.
- f.* The MTF will forward the following:
 - (1) Travel orders issued by USAPDA, if needed.
 - (2) Facts for obtaining transportation request and collection of approved travel expense.
 - (3) Per diem allowance, if applicable.
- g.* Failure to make or follow through with arrangements with the hospital for carrying out the medical examination during the required month may result in the suspension of disability retirement pay.
- h.* The Soldier must inform the MTF of visits to civilian or military physicians or other Federal medical facilities for treatment while on the TDRL and give permission to obtain records of such visits if available.

7-11. Disposition of the temporary disability retired list Soldier

a. Action following periodic PEB evaluation or on fifth anniversary. The USAPDA will remove a Soldier from the TDRL as described below on the fifth anniversary of the date the Soldier's name was placed on the list, or sooner on the approved recommendation of a PEB.

(1) *Permanent retirement.* If the Soldier meets the criteria below, the Soldier will be removed from the TDRL, permanently retired for physical disability, and entitled to receive disability retired pay:

- (a)* The Soldier is unfit.
- (b)* The disability causing the Soldier's name to be placed on the TDRL has become permanent.
- (c)* The disability is rated at 30 percent or more under the VASRD, or the Soldier has at least 20 years of active Federal service.

(2) *Separation.* A Soldier will be removed from the TDRL and separated with severance pay if the Soldier—

- (a)* Has less than 20 years of service.

(b) Is unfit because of the disability for which the Soldier was placed on the TDRL; and either the disability has stabilized at less than 30 percent; or the disability, although not stabilized, has improved so as to be ratable at less than 30 percent. A former RA enlisted Soldier who would be separated under this authority may request a waiver to reenlist. (See AR 601-210, chap 4.)

(3) *Fit for duty.* If a Soldier is determined physically fit to perform the duties of their office, grade, rank or rating (and is otherwise administratively qualified), the following procedures apply:

(a) Former RA officers and warrant officers, subject to their consent, will be recalled to active duty. Action will be started to effect reappointment to the active list in the regular grade held when placed on the TDRL, or the next higher grade. If the officer does not consent to be called to active duty, TDRL status and disability pay will be ended as soon as possible.

(b) Former RA enlisted Soldiers, subject to their consent, will be reenlisted in their regular component in the grade held on the day before the date placed on the TDRL, or in the next higher grade. If the Soldier does not consent to reenlistment, TDRL status and disability pay will be ended as soon as possible.

(c) Former Soldiers of the U.S. Army Reserve (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, or in the next higher grade or transferred to the Retired Reserve, if eligible. They may request active duty, under USAR regulations.

(d) Former 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. They may request active duty. If the Soldier cannot be reappointed or reenlisted in the ARNG, and subject to the Soldier's consent, he or she will be reappointed or reenlisted in the USAR or transferred to the Retired Reserve, if eligible.

(e) If the Soldier in paragraphs (a) through (d), above, has completed 20 years of active service when placed on TDRL, and does not consent to return to active duty upon being found fit for duty, the Soldier may request voluntary retirement by reason of length of service upon removal from the TDRL.

(f) If the Soldier in paragraphs (c) and (d), above, has completed at least 20 qualifying years of service computed under Title 10, United States Code, Section 12732, (10 USC 12732), the Soldier may request if otherwise eligible transfer to the Retired Reserve under section 10 USC 10146.

(4) *Unfit—not in line of duty disability.*

(a) A Soldier may recover from the disability resulting in placement on the TDRL. If while on the TDRL, the Soldier incurs another unfitting disability, the Soldier may be separated without benefits.

(b) If the Soldier mentioned in paragraph (a), above, was RA and had completed 20 years or more of active service when placed on the TDRL, the Soldier may request voluntary retirement.

(c) If the Soldier mentioned in paragraph (a), above, was USAR and had completed at least 20 qualifying years of service computed under Title 10, United States Code, Section 12732 (10 USC 12732) when placed on the TDRL, the Soldier may request transfer to the Retired Reserve or retirement if qualified under 10 USC 3911.

b. Periodic examination not performed. The USAPDA will take the actions described below when a periodic examination cannot be carried out.

(1) *Soldier's failure to report or reply.* If a Soldier fails to respond to correspondence concerning the medical examination or fails or refuses to complete a medical examination, USAPDA will make an effort to discover the reason. If such action cannot be justified and the fifth anniversary of placement on the TDRL has not been reached, USAPDA will notify the Soldier and the Chief, Retired Pay Operations, Defense Finance and Accounting Service, Cleveland, Ohio; to suspend retired pay. USAPDA will keep the Soldier's name on the TDRL until the fifth anniversary unless it is removed sooner by other action.

(2) *Unable to locate Soldier.* When reasonable efforts to locate the Soldier are unsuccessful, USAPDA will take the action prescribed in paragraph (1), above.

(3) *Soldier imprisoned by civil authorities.* A report by the responsible MTF commander may indicate that examination of a Soldier is not possible because the Soldier is imprisoned and civil authorities will not permit the examination. If so, USAPDA will take the action prescribed in paragraph (1), above.

(4) *Removal on fifth anniversary.* Soldiers on the TDRL shall not be entitled to permanent retirement or separation with severance pay without a current acceptable medical examination, unless just cause is shown for failure to complete the examination. Six months before the fifth anniversary of placement on the TDRL, USAPDA will make a final attempt to contact the Soldier (paras (1) and (2), above) or proper civil authorities (para (3), above) and arrange a final examination. If this fails and the Soldier does not undergo a physical examination, USAPDA will administratively remove him or her from the TDRL on the fifth anniversary of placement on the list without entitlement to any of the benefits provided by 10 USC 61.

7-12. Restoring eligibility

The USAPDA may restore the Soldier's eligibility to receive disability retirement pay if, after failure to report for and complete the required periodic examination, the Soldier later satisfactorily meets the examination requirements. The USAPDA will notify the Chief, Retired Pay Division, Defense Finance and Accounting Service, Cleveland, Ohio; to restore disability retired pay retroactive to the date the Soldier undergoes the examination provided the Soldier is still qualified for retention on the TDRL. The Soldier's eligibility to receive retired pay may be made retroactive, not to exceed 1 year, if the Soldier can show just cause for failure to respond to official notice or orders. A Soldier's name may have been removed from the list as provided in paragraph 7-11b(4). If so, the Soldier may take application to the ABCMR.

Section III

Periodic Medical Examination

7-13. Responsible of the medical treatment facility

The commander of the MTF, notified as provided in paragraph 7-9, is responsible for reexamining the Soldier. If the MTF was obviously or apparently incorrectly selected, the commander will promptly notify USAPDA to transfer the case file to another MTF.

7-14. Selection of examining facilities

a. Other locations. Upon review of the medical records, the MTF commander or his or her designee will arrange to have the portions of the examination that cannot be accomplished at the Army MTF conducted at one of the locations below. These locations are listed in the order of preference.

- (1) Another uniformed service MTF.
- (2) Other Federal medical facility at, or near, the Soldier's home.
- (3) Civilian-operated clinic or hospital at, or near, the Soldier's home.

b. Hospitalization. Examination of a Soldier on an out-patient basis is preferred. When hospitalization is foreseen, however, or when extensive tests or observations require hospitalization, the Soldier will be ordered to report to the MTF designated, or if more appropriate, to a Federal MTF near the Soldier's home. If the Soldier is hospitalized at the time the examination is scheduled, a NARSUM from the hospital facility providing his or her care may suffice to meet the needs of a report of periodic examination.

c. Costs. The cost of medical examinations carried out at Government MTFs, including consultations from civilian sources, are payable from funds available to operate MTFs. Costs of medical examinations carried out at civilian MTFs or by civilian physicians at, or near, the Soldier's home will be handled according to AR 40-400.

7-15. Medical records

The commander of the MTF responsible for the medical examination will promptly initiate a request for the Soldier's medical records from information provided by USAPDA or by the Soldier. The commander will ensure that the medical records are available to the examining physician before the periodic medical examination. The examining physician must return all records furnished with the report of medical examination to the MTF commander for forwarding to the proper PEB.

7-16. The medical treatment facility commander's duties in notifying the Soldier

The MTF commander will provide to the Soldier the information specified in paragraph 7-10. Confirmation of the date of examination should be made by certified mail, return receipt, restricted delivery. If the notification is returned as undelivered or Soldier fails to report as directed, the MTF commander will notify USAPDA.

7-17. Examination of the Soldier

a. Purpose of medical examination. The purpose of the TDRL periodic medical examination is to—

- (1) Determine the Soldier's condition at the time of the examination.
- (2) Decide if a change has occurred in the disability for which the Soldier was placed on the TDRL.
- (3) Decide if the disability has become stable enough to permit removal from the TDRL.
- (4) Identify any new disabilities while the Soldier has been on the TDRL.

b. Extent of the examination. The medical examination must be objective and complete. One or more physicians will conduct the examination. Proceedings of previous PEB actions and all medical records will be made available to the examiner. Diagnostic, laboratory, and radiological procedures, including photographs, should be used to the extent needed to establish and describe the Soldier's current physical condition accurately. Detailed requirements for medical examinations for disability evaluations are contained in the Department of Veterans Affairs physical examination worksheets and the VASRD. (See AR 40-400.)

c. Consultants. Advice of professional consultants may be obtained whenever needed during periodic medical examinations.

d. Soldiers physically unable to travel or mentally incompetent. When the responsible hospital commander determines that a Soldier is physically unable to travel (for example, bedridden) or is mentally incompetent, the commander will make all reasonable efforts to have the Soldier examined. Bringing the Soldier to the hospital by ambulance or arranging for a visit by a physician to the Soldier's residence is included when the effort is in the best interests of the Government. If the Soldier is under medical treatment, current medical records from the MTF, or the physician treating the Soldier, may provide adequate clinical data for the report of periodic examination.

e. Soldiers imprisoned by civil authorities. When a Soldier is found to be imprisoned by civil authorities, the appointed MTF commander will request the confinement facility, or other proper authority, to have the Soldier medically examined and to provide a report of the Soldier's current medical state. The report will be processed in the normal manner upon receipt and forwarded to the PEB for adjudication. If an examination is impossible or no report is received, the MTF commander will return the medical records to USAPDA with a summary of efforts to obtain adequate information. The USAPDA will take action prescribed in paragraph 7-11b.

7-18. Report of the medical examination

a. The report of periodic medical examination may be prepared using a letter or SF Form 502. The guidance in paragraph 4-11 applies. In addition, the following information will be provided:

- (1) An estimate of change since the previous examination.
- (2) A medical appraisal of all defects incurred, or discovered, after the Soldier was placed on the TDRL. The report

must clearly show the etiology of defects found during the examination so a decision can be made as to whether they relate to a condition that existed or was incurred while the Soldier was on active duty, or was incurred while the Soldier was on the TDRL.

(3) An opinion on whether the conditions have become stable. If not stable, provide an opinion as to the progress of the disability and a suggested time frame (not to exceed 18 months) for the next examination.

b. The report requires only the signature of the medical officer or physician appointed to conduct the medical examination. Forward the report to the commander of the MTF for review and approval.

7-19. Review and forwarding the report of the examination

a. The MTF commander, or designee, will ensure the completed report clearly describes the Soldier's present condition and functional impairments. MEBs are not required for TDRL periodic physical examinations; however, the MTF commander may refer a TDRL examination to a MEB, especially one presenting a problem or dispute.

b. The MTF commander will give the Soldier the opportunity to review and comment on the report of examination before forwarding it to the PEB. The Soldier will sign the report of examination acknowledging receipt. If the Soldier 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 Soldier will be attached to the medical examination report.

c. The MTF commander or his designee will approve and forward the report to the servicing PEB.

d. The Soldier's correct mailing address, area code, and telephone number will be confirmed to the PEB. A copy of the transmittal document will be provided to USAPDA.

Section IV

Physical Disability Decision

7-20. Physical evaluation board processing

a. *Deficiencies in report of examination.* The PEB will resolve deficiencies in a report of periodic examination to the extent possible with MTF commander. A case file will not be returned to USAPDA because of deficiencies or need for further information except through USAPDA.

b. *Changes in a Soldier's condition while on the temporary disability retired list.* The combined percentage rating approved at the time the Soldier was placed on the TDRL cannot be changed by the PEB throughout the period the Soldier is on the TDRL. Adjustment will be made at the time of removal from the TDRL to reflect the degree of severity of those conditions rated at the time of placement on the TDRL and any ratable conditions identified since placement on the TDRL. An EPTS factor may be added, modified, or eliminated at this time if additional evidence is obtained that was not previously available or apparent during the initial evaluation; or placement on the TDRL was due to fraud, mistake of law, or mathematical miscalculation.

c. *Retention on the temporary disability retired list.* A Soldier may be retained on the TDRL if disabilities causing placement on the TDRL have not become stable, and either of the following occurs:

(1) The combined rating at the time of re-evaluation is at least 30 percent.

(2) The Soldier has at least 20 years of service if the combined rating is less than 30 percent.

d. *Entries on DA Form 199.* Entries on DA Form 199 will reflect the Soldier's condition at the time of the most recent periodic examination. When the Soldier is recommended for retention, the DA Form 199 will record any new conditions but will not list a disability rating. When a Soldier is recommended for permanent retirement, entries must be made for all conditions present whether or not previously recorded. The DA Form 199 will include the reason for variation between the original action (findings, recommendations, or ratings) causing the Soldier's placement on the TDRL and current action removing him or her from the list. Explanations need not be lengthy, but must be understandable. Procedures for administrative relief pertaining to a correction or adjustment of the percentage of physical disability while a Soldier is on the TDRL are contained in paragraphs 4-25 and 4-26.

e. *Notice to Soldier.*

(1) If the PEB recommends removal from the TDRL, the PEB will forward to the Soldier DA Form 199 and letter of explanation by certified mail, restricted delivery, return receipt requested. The letter will inform the Soldier of his or her rights and responsibilities. It will provide the name, location, and telephone number of the PEBLO. The Soldier will sign the original copy of the DA Form 199 and return it after giving his or her choice of options. The copy of the DA Form 199 is the Soldier's copy.

(a) If the certified mail receipt is not returned, or if the correspondence is returned undelivered, the PEB will try to verify the Soldier's address by contacting USAPDA; the MTF; the Defense Finance and Accounting Service, Cleveland, Ohio; or the VA regional office. If a new address is obtained, the PEB will try to deliver the notice. If not, a memorandum waiving the Soldier's right of election will be prepared.

(b) If the receipt is returned but no election is received, the PEB president will prepare a memorandum waiving the Soldier's right of election for failure to respond. The certified mail receipt will be included in the case file as proof that the Soldier was notified.

(c) The PEB president will forward the case file to USAPDA for final disposition.

(2) If the PEB recommends retention on the TDRL, the PEB will forward the DA Form 199 and a letter advising that there will be no change in the Soldier's status or retired pay as long as the Soldier remains on the TDRL. Notification will be by ordinary mail. The DA Form 199 will include a statement that failing to notify USAPDA of the current mailing address will result in the suspension of disability retired pay if the Army is prevented from properly notifying the retiree of a scheduled examination.

(3) The PEBLO of the MTF responsible for the periodic medical examination is responsible for counseling the Soldier. Therefore, the PEB will provide the PEBLO a copy of the letter and DA Form 199 (with enclosures).

7-21. Travel orders for formal hearing

a. When the Soldier elects to appear in person at the hearing, the recorder of the PEB will endorse the original travel orders according to AR 600-8-105. If a new fiscal year starts between the time the Soldier completes the TDRL medical examination and the scheduled formal hearing, the PEB will endorse the orders using the new fiscal year fund cite. The new fiscal year fund cite can be obtained from USAPDA. The PEB will inform the Soldier in writing of the date, time, and place of the hearing, to include building and room number. If Soldier lives in an area from which travel to the PEB is "local", as defined by the JFTR chapter 3, part F, orders are not required.

b. The PEB will provide one copy of the endorsed travel order to USAPDA. USAPDA will commit the funds. The endorsement of orders and the commitment of funds must occur in advance of the Soldier's travel for reimbursement of travel expense to be approved.

c. An attendant may accompany a Soldier who is unable to travel alone to the formal hearing. The attendant is entitled to file a claim for expenses according to JFTR, volume I, chapter 3, part I. If a private conveyance is used for travel, only the retired Soldier may be reimbursed for transportation cost. The Soldier must contact the PEB in advance of travel to request travel orders for the attendant. If orders were issued for an attendant in connection with travel to the periodic exam, the PEB will endorse the orders and forward one copy to USAPDA. If no previous orders were issued or a different individual is serving as attendant, the PEB will contact USAPDA for approval and fund cite. The PEB will forward one copy of the orders to USAPDA.

7-22. Review of the temporary disability retired list cases

When a PEB completes its action, the case file will be disposed of as prescribed in chapter 4.

Figure 7-1. Deleted.

Figure 7-2. Deleted.

Figure 7-3. Deleted.

Figure 7-4. Deleted.

Chapter 8

Reserve Components

8-1. Overview

a. This chapter outlines—

(1) The rules for processing through the disability system Soldiers of the RC who are on active duty for a period of less than 30 days or on IDT.

(2) The criteria under which Soldiers of the RC, whether or not on extended active duty, apply for continuance in the Active Reserve.

b. Title 10, United States Code, Sections 1204, 1205, and 1206 establish the criteria for entitlement to disability benefits for Soldiers of the RC performing duty for 30 days or less.

8-2. Eligibility

a. *Disability from injury.* Soldiers of the RC eligible for processing under this paragraph are those who incur a disability from an injury determined to be the proximate result of performing—

(1) Annual Training, active duty special work, active duty for training with or without pay, or temporary tour of active duty under a call or order that specifies a period of 30 days or less, to include full-time training duty under 32 USC 502f, 503, 504, and 505.

(2) Inactive duty training including IDT without pay under competent orders. While enroute to or from IDT, a Soldier of the RC is not performing duty. Therefore, Reservists who incur injuries while in a travel status to IDT are not eligible for referral into the disability system. However, in exceptional cases, where there is evidence that the Soldier may actually be performing duty while in a travel status, the case should be referred to the PEB for consideration of eligibility.

(3) Active duty for training under 10 USC 10148(a). (This is usually a 45-day tour required by law because of failure on the part of the Reserve Component Soldier to perform other required training duty.)

b. Disability from disease incurred while performing duty prior to 15 November 1986. If the disabling condition is the result of a disease rather than an injury, the Soldier is ineligible for disability processing unless a medical authority has decided that the disease is the result of a service-connected injury incurred as described in paragraph a, above.

c. Disability from disease incurred while performing duty on or after 15 November 1986. Section 604, Public Law 99-661 (604 PL 99-661), 14 November 1986 revised the provisions of 10 USC 1204, 1205, and 1206 to provide for disability processing of Soldiers who incur or aggravate an injury or disease in the LD while performing inactive or active duty training during any of the periods referred to in a(1), (2), and (3). Referral for processing does not mean an automatic entitlement to disability compensation. Once referred, a determination must be made whether the disease was the proximate result of performing duty (para 8-3).

8-3. Proximate result

a. In order for Soldiers of the RC to be compensated for disabilities incurred while performing duty for 30 days or less, to include IDT, there must be a determination by the PEB that the unfitting condition was the proximate result of performing duty. This determination is different from a LD determination which establishes whether the Soldier was in a duty status at the time the disability was incurred and whether misconduct or gross negligence was involved. Proximate result establishes a casual relationship between the disability and the required military duty.

b. An injury incurred in LD while the Soldier is hospitalized may be determined to be proximate result of performing active duty. The injury must be incurred before the termination date of the Soldier's initial period of active duty for 30 days or less as reflected by official orders, unless a direct causal relationship exists between the original proximate result injury and the subsequent injury. Decisions on cases where it is not certain that a direct causal relationship exists must be submitted to USAPDA for review.

c. A myocardial infraction may be determined to be the proximate result of performing duty if precipitated by unusual physical stress occurring during the performance of extraordinary and particularly stressful military duties.

8-4. Hospitalization

AR 40-400, chapter 3, sets out the circumstances when an RC Soldier who is not on extended active duty may be entitled to medical care, including hospitalization for evaluation of physical defects of conditions incurred as a result of performing authorized military duty.

8-5. Duty and pay status

According to AR 40-400, chapter 4, and AR 135-381, chapter 2, orders of RC Soldiers who incur a disability while performing IDT or AD for 30 days or less will not be revoked, amended or extended past the date specified in the orders directing such active duty for the sole purpose of processing under this regulation. However, the Soldier may be eligible to receive medical care and evaluation. The Soldier may also be entitled to receive incapacitation pay until final disposition is made.

8-6. Medical processing

a. When a commander or other proper authority believes that a Soldier not on extended active duty is unable to perform the duties of their office, grade, rank, or rating because of physical disability, the commander will refer the Soldier for medical evaluation according to AR 40-501 or NGR 40-3.

b. Conduct of MEB and referral of case to a PEB will be according to the procedures of chapter 4, section III. If the Soldier is not eligible for referral to a PEB, the MTF will forward the MEB to the Soldier's unit commander for disposition under applicable regulations.

c. If eligible for referral to a PEB, the Soldier may remain, with his or her consent, under control of the MTF during disability processing. If the PEB finds the Soldier unfit, the Soldier will remain under administrative control of the MTF pending receipt of the final decision. If determined fit, the Soldier will be returned to his or her duty station unless the training period has expired. If expired, the Soldier will be permitted to return home. The MTF commander where the MEB is held will notify the RC unit of the disposition of the Soldier's case (see AR 40-400).

8-7. Continuation in an active Reserve status

RC Soldiers referred into the PDES with a MEB and who are determined unfit by the PEB may request COAR under the provisions of chapter 6 of this regulation. RC Soldiers in the Ready Reserve not on active duty who request a PEB determination of fitness upon being medically disqualified by the appropriate RC medical authority, and who are determined unfit by the PEB, may request continuation under the provisions of AR 40-501, para 9-10b (USAR) or 10-26 (ARNG). (Also see para 6-1 of AR 635-40.)

8-8. Physical evaluation board processing

The PEB must be convinced of the following:

a. The Soldier's status and entitlement to processing have been documented in the file.

b. The Soldier's LD has been decided (see para 3–4).

(1) If the LD decision is pending, the PEB will process the case as if a favorable decision has been made. The DA Form 199 will include a statement that the case has been processed in the absence of a favorable LD decision and that benefits are not payable until a favorable decision is made.

(2) For disabilities resulting from sudden onset of disease, such as myocardial infraction, the LD will document the circumstances surrounding the disabling event (see AR 600–8–4).

c. Each disability listed on DA Form 199 resulted from an injury, illness, or disease incurred as the proximate result of performing duty as specified in paragraph 8–2.

8–9. Disposition

a. A Soldier not on extended active duty who is unfit because of physical disability—

(1) May be permanently retired or have his or her name placed on the TDRL, if—

(a) He or she has at least 20 years of service as defined in section 1208, title 10, United States Code (10 USC 1208). (RC Soldiers not on extended AD use under Title 10, United States Code, Section 12733, (10 USC 12733) for computations).

(b) Their disability is rated at 30 percent or more.

(c) His or her disability occurred in the LD, and is the proximate result of performing active duty or IDT.

(2) May be separated with severance pay if—

(a) His or her disability is rated at less than 30 percent.

(b) He or she has less than 20 years of service as defined in 10 USC 1208. (RC Soldiers not on extended AD under 10 USC 12733 for computations).

(c) Their disability occurred in the LD, and is the proximate result of performing active duty or IDT.

(3) May forfeit severance pay; be transferred to the Retired Reserve; and receive under the provisions of Title 10, United States Code, Section 12731, (10 USC 12731) nondisability retired pay at age 60, if at least 20 qualifying years of service for retirement have been completed and transfer to the Retired Reserve is requested. According to the provisions of 10 USC 1209 and 1213 all rights to receive retired pay at age 60 are forfeited if disability severance pay is accepted instead of transfer to the Retired Reserve. Disability severance pay (unlike readjustment and separation pay) cannot be repaid for the purposes of receiving retired pay.

(4) Will be separated without benefits in the following situations:

(a) The unfitting condition results from injury which is due to intentional misconduct or willful neglect.

(b) The disability was incurred during a period of unauthorized absence.

(c) The disability was not incurred or aggravated as the proximate result of performing duty as specified in paragraph 8–2.

b. The USAHRC (AHRC–PDB) will notify Soldiers processing for disability under this regulation of their options and of the conditions contained in a(3), above. The letter will provide sufficient detail (verified years of active service for severance pay and Reserve years of service for retirement) to assist the Soldier to reach an informed decision. An election once made is final and conclusive and may not be changed. USAHRC will permit the Soldier seven days plus mailing time to make a decision. If the Soldier does not respond, USAHRC will separate the Soldier with severance pay. A statement will be placed in the Soldier's case file recording that the Soldier was notified and failed to respond.

Table 8–1. Deleted.

Figure 8–1. Deleted.

Appendix A References

Section I Required Publications

AR 40-400

Patient Administration (Cited in paras 2-5, 2-7a, 2-8c, 4-10, 4-11a, 4-11i, 4-14a, 4-15g, 7-14c, 7-17b, 8-4, 8-5, 8-6c and C-5b.)

AR 40-501

Standards of Medical Fitness (Cited in paras 2-5, 3-1a, 4-8, 4-10, 5-1c, 6-1b, 6-5b, 6-12b(2)(a), 6-13, 8-6a, 8-7, C-5c and C-7b(1)(a).)

AR 135-381

Incapacitation of Reserve Component Soldier (Cited in paras 3-7c, 4-15g, and 8-5.)

AR 600-8-105

Military Orders (Cited in para 7-21a.)

AR 600-8-4

Line of Duty Policy, Procedures, and Investigations (Cited in paras 2-9e, 3-4b, 4-12b(4), 4-15f, 4-19e(3)(b), 4-19g(2), 4-22g(3), 8-8b(2), and C-5d.)

DODD 1332.18

Separation from the Military Service by Reason of Physical Disability (Available at <http://www.dtic.mil/whs/directives/index.html>) (Cited in paras 1-1, 3-5b, 6-1a, and 6-1b.)

DODI 1332.38

Physical Disability Evaluation (Available at <http://www.dtic.mil/whs/directives/index.html>) (Cited in para 6-1a.)

DOD Memorandum, May 3, 2007

Policy Guidance for the Disability Evaluation System and Establishment of Recurring Directive-Type Memoranda (Available at <http://prhome.defense.gov/WWCTP/Reports.aspx>.) (Cited on summary of change page.)

DOD Memorandum, December 19, 2007

Directive Type Memoranda (DTM) on Standards for Determining Unfitness Due to Medical Impairment (Deployability) (Available at <http://prhome.defense.gov/WWCTP/Reports.aspx>.) (Cited on summary of change page.)

DOD Memorandum, March 13, 2008

Directive-Type Memorandum (DTM) on Implementing Disability-Related Provisions of the National Defense Authorization Act of 2008 (PL 110-181) (Available at <http://prhome.defense.gov/WWCTP/Reports.aspx>.) (Cited on summary of change page.)

DOD Memorandum, October 14, 2008

Policy Memorandum on Implementing Disability-Related Provisions of the National Defense Authorization Act of 2008 (PL 110-181) (Available at <http://prhome.defense.gov/WWCTP/Reports.aspx>.) (Cited on summary of change page.)

DOD Memorandum, January 6, 2009

Expedited DES Process for Members with Catastrophic Conditions and Combat-Related Cases (Available at <http://prhome.defense.gov/WWCTP/Reports.aspx>.) (Cited on summary of change page.)

DOD Memorandum, December 19, 2011

Directive-Type Memorandum (DTM) 11-015 on Integrated Disability Evaluation System (IDES) (available at <http://www.dtic.mil/whs/directives/corres/dir3.html>) (Cited on summary of change page.)

NGR 40-3

Medical Care for Army National Guard Members (Available at <http://www.ngbpdc.ngb.army.mil/>) (Cited in para 8-6a, D-2a(4), and D-8.)

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. Unless otherwise stated, all publications are available at: <http://www.apd.army.mil/>. All U.S. Codes are available at <http://www.gpoaccess.gov/uscode/index.html/>.

AR 15–185

Army Board for Correction of Military Records

AR 40–66

Medical Record and Administrative Health Care Documentation

AR 140–158

Enlisted Personnel Classification, Promotion, and Reduction

AR 600–8–2

Suspension of Favorable Personnel Actions (FLAGS)

AR 600–20

Army Command Policy

AR 600–50

Standards of Conduct for Department of the Army Personnel

AR 601–210

Active And Reserve Components Enlistment Program

AR 608–8–7

Retirement Services Program

AR 614–200

Enlisted Assignments and Utilization Management

AR 600–8–24

Officer Transfers and Discharges

AR 630–10

Absence without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings

AR 635–5

Separation Documents

AR 635–10

Processing Personnel for Separation

AR 635–200

Active Duty Enlisted Administrative Separations

AR 735–5

Policies and Procedures for Property Accountability

DA Pam 360–539

SBP Survivor Benefit Plan for the Uniformed Services - The Simple Facts

DA Pam 600–5

Handbook on Retirement Services for Army Personnel and Their Families

Department of Veterans Affairs Physician Examination Worksheets

(Available at <http://www.vba.va.gov/bln/21/benefits/exams/index.htm>. Physicians who prepare MEBs should be familiar with these worksheets.)

Department of Veterans Affairs Schedule for Rating Disabilities

(Available for PEBs assigned to this agency.)

Joint Federal Travel Regulations, VOL I and II

Travel Regulations

MCM, 2005

Manual for Court-Martial (See cited text.)

NGR 600–200

Enlisted Personnel Management System (Available at <http://www.ngbpdc.ngb.army.mil/publications.htm>)

Veterans Affairs Pamphlet 21–00–1

A Summary of VA Benefits, 2009 (Available at <http://www.vba.va.gov/VBA/benefits/brochures.asp>.)

Veterans Affairs Pamphlet, 2011

Federal Benefits for Veterans and Dependents (Available at http://www.va.gov/opa/publications/benefits_book.asp.)

5 USC 3501

Definitions; application

10 USC 61

Retirement or Separation for Physical Disability

10 USC 630

Discharge of commissioned officers with less than five years of active duty

10 USC 1201

Regulars and members on active duty for more than 30 days: retirement

10 USC 1202

Regulars and members on active duty for more than 30 days: temporary disability retired list

10 USC 1203

Regulars and members on active duty for more than 30 days: separation

10 USC 1204

Members on inactive duty for 30 days or less or on inactive-duty training: retirement

10 USC 1205

Members on inactive duty for 30 days or less; temporary disability retirement list

10 USC 1206

Members on inactive duty for 30 days or less or on inactive-duty training: separation

10 USC 1207

Disability from intentional misconduct or willful neglect: separation

10 USC 1208

Computation of service

10 USC 1209

Transfer to inactive status list instead of separation

10 USC 1210

Members on temporary disability retired list: periodic physical examination; final determination of status

10 USC 1213

Effect of separation on benefits and claims

10 USC 1214

Right to full and fair hearing

10 USC 1219

Statement of origin of disease or injury; limitations

10 USC 1455

Regulations

10 USC 1552

Correction of military records: claims incident thereto

10 USC 1165

Regular warrant officers: separation during three-year probationary period

10 USC 1169

Regular enlisted members: limitations on discharge

10 USC 3911

Twenty years or more: regular or reserve commissioned officers

10 USC 3914

Twenty to thirty years: enlisted members

10 USC 10148

Ready Reserve: failure to satisfactorily perform prescribed training

10 USC 12681

Reserves: discharges authority

10 USC 12731

Age and service requirements

10 USC 12732

Entitlement to retired pay, computation of years of service

10 USC 12733

Computation of retired pay: computation of years of service

26 USC 104

Compensation for injuries or sickness

32 USC 502

Required drills and field exercises

32 USC 503

Participation in field exercises

32 USC 504

National Guard schools and small arms competitions

32 USC 505

Army and Air Force schools and field exercises

38 USC 101 (21)d

Service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or a midshipman

Section III

Prescribed Forms

Unless otherwise indicated, Department of Army forms can be downloaded at the Army Publishing Directorate's (APD) Web site (<http://www.apd.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

Physical Evaluation Board Proceedings (Prescribed in paras 3–5*d*, 4–15*h*, 4–19, 4–20, 6–10*b*, 6–12*c*, 7–20, 8–8, C–7*c*(1), C–8*b*(1), and C–8*e*.)

DA Form 199–1

Formal Physical Evaluation Board Proceedings (Prescribed in paras 4–19*l*(1), 4–19*o*, 4–19*p*(1), 4–21*r*, 4–21*t*, and 4–21*u*.)

DA Form 199–2

U.S. Army Physical Disability Agency (USAPDA) Revised Physical Evaluation Board (PEB) Proceedings (Prescribed in paras 4–22*d*(4), 4–22*f*, and 4–25*b*(6).)

DA Form 5889

PEB Referral Transmittal Document (Prescribed in para 4–15*a*.)

DA Form 5890

Acknowledgment of Notification of Formal Physical Evaluation Board Hearing (Prescribed in para 4–21*d*(5)(a).)

DA Form 5891

Acknowledgment of Counseling on Legal/Procedural Rights (Prescribed in para 4–21*e*(2).)

DA Form 5892

PEBLO Estimated Disability Compensation Worksheet (Prescribed in paras 4–20*d*(1) and C–12.)

DA Form 5893

Soldier's Medical Evaluation Board/Physical Evaluation Board Counseling Checklist (Prescribed in para C–16.)

Section IV

Referenced Forms

Unless otherwise indicated, Department of Army forms can be downloaded at the Army Publishing Directorate's (APD) Web site (<http://www.apd.army.mil/>). The Department of Defense (DOD) Forms can be downloaded from the DOD Forms Management Program Web site (<http://www.dtic.mil/whs/directives/infomgt/forms/index.htm>). Veterans Affairs (VA) Forms can be downloaded from the Department of Veterans Affairs Forms Web site (<http://www.va.gov/vaforms/>).

DA Form 2

Personnel Qualification Record—Part I

DA Form 2–1

Personnel Qualification Record—Part II

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

DA Form 3947

Medical Evaluation Board Proceedings

DD Form 2S (RET)

United States Uniformed Services Identification Card (Retired) (Blue)

DD Form 214

Certificate of Release or Discharge from Active Duty

DD Form 256A

Honorable Discharge Certificate

DD Form 261

Report of Investigation—Line of Duty and Misconduct Status

DD Form 689

Individual Sick Slip

DD Form 1173

Uniformed Services Identification and Privilege Card

DD Form 2807–2

Medical Prescreen of Medical History Report

DD Form 2808

Report of Medical Examination

DFAS Form 702

Defense Finance and Accounting Service Military Leave and Earnings Statement (2002)

SF Form 502

Narrative Summary (Clinical Resume)

VA Form 21–526

Veteran's Application for Compensation and/or Pension

Appendix B**Army Application of the Department of Veterans Affairs Schedule for Rating Disabilities****Section I****General Rating Policies****B–1. Purpose of the Department of Veterans Affairs Schedule for Rating Disabilities**

a. Congress established the VASRD as the standard under which percentage rating decisions are to be made for disabled military personnel. Such decisions are to be made according to Title IV of the Career Compensation Act of 1949 (Title IV is now mainly codified in 10 USC 61.)

b. Percentage ratings in the VASRD represent the average loss in earning capacity resulting from these diseases and injuries. The ratings also represent the residual effects of these health impairments on civil occupations.

B–2. Policy application

Not all of the general policy provisions of the VASRD apply to the Army. Section I replaces or modifies paragraph 1–31 of the VASRD, which pertain to VA determination of service-connected disabilities, internal VA procedures or practices, and other paragraphs that do not apply to the Army. Rating policies that apply to the Army but are not made clear by the VASRD are addressed.

B–3. Essentials of rating disabilities

a. Application of the Veterans Affairs Schedule for Rating Disabilities. The VASRD is primarily used as a guide for evaluating disabilities resulting from all types of diseases and injuries encountered as a result of, or incident to, military service. Because of differences between Army and VA applications of rating policies, differences in ratings may result. Unlike the VA, the Army must first determine whether or not a Soldier is fit to reasonably perform the duties of his office, grade, rank, or rating. Once a Soldier is determined to be physically unfit for further military service, percentage

ratings are applied to the unfitting conditions from the VASRD. These percentages are applied based on the severity of the condition.

b. Medical treatment at the time of voluntary or mandatory separation or retirement. Many medical and surgical procedures are performed when a Soldier is nearing the end of their military career. These are intended to improve a Soldier's health, not to render him unfit. The principles of paragraphs 3–3*b* and *c* must be considered at the termination of service as well as for EPTS conditions. Corrective treatment and convalescence will not be considered as a valid contribution to disability unless unexpected adverse effects occur that are disabling or contribute to disability and are ratable.

c. Failure to comply with prescribed treatment.

(1) There are many conditions, such as neuropsychiatric disorders, asthma, hypertension, epilepsy, diabetes, 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 or therapy, or 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 it is clearly demonstrated that—

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

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

(2) Notwithstanding the above guidance, MTF's should not forward MEB's involving refusal to submit to medical care unless a determination has been made by Office of the Surgeon General that the Soldier's refusal was reasonable according to the procedures set forth in AR 600–20, paragraph 5–4*c*. PEB's may return cases to MTF's for compliance with AR 600–20.

d. Objective medical findings and disability ratings. Physical examination, laboratory tests, x-rays, and other findings are not, in themselves, ratable. A rating for a disability must be based on demonstrable impairment of function unless otherwise provided for in this regulation.

e. Elective surgery or treatment. Soldiers who, after being told by competent military medical authority that a treatment option is unwarranted for a given medical condition, elect to have such treatment done at their own expense, will not be eligible for compensation under the provisions of this regulation for any adverse residuals resulting from the elected treatment, unless it can be shown that such election resulted from impaired judgment or lack of insight that is part of their condition.

f. Disabilities not unfitting for military service. Conditions which do not render a Soldier unfit for military service will not be considered in determining the compensable disability rating unless they contribute to the finding of unfitness.

B–4. Higher of two evaluations

In a number of a typical instances, it is not expected that all cases will show all the findings specified in the VASRD. Where there is question as to which of two percentage evaluations shall be applied, the higher evaluation will be assigned if the Soldier's disability more nearly approximates the criteria for that rating. Otherwise, the lower rating will be assigned. When, after careful consideration of all reasonably procurable and assembled data, there remains a reasonable doubt as to which rating shall be applied, such doubt will be resolved in favor of the Soldier.

B–5. Pyramiding

Pyramiding is the term used to describe the application of more than one rating to any area or system of the body when the total functional impairment of that area or system can be reflected under a single code. All diagnoses that contribute to total functional impairment of any area or system of the body will be merged with the principal diagnosis, for rating purposes, unless the VASRD states otherwise.

B–6. Total disability ratings

Total disability will be considered to exist when the Soldier's impairment is sufficient to render it impossible for the average person to follow a substantially gainful occupation. Accordingly, in cases in which the VASRD does not provide a 100 percent rating under the appropriate (or analogous) code, a Soldier may be assigned a disability rating of 100 percent if his impairment is sufficient to render it impossible for him or her to follow a substantially gainful occupation. When such an extra-schedule rating is proposed, review and approval must be obtained from USAPDA.

B–7. Convalescent ratings

Under certain diagnostic codes, the VASRD provides for convalescent ratings to be awarded for specified periods of time without regard to the actual degree of impairment of function. Such ratings do not apply to the Military Departments since the purpose of convalescent ratings is accomplished by other means under disability laws. Convalescence will ordinarily have been completed by the time optimum hospital improvement (for disposition purposes) has

been attained. The ratings for observation periods, as distinguished from convalescence, such as those “for 1 year” following treatment for a malignant neoplasm, are not affected by this policy.

B-8. Analogous ratings

When an unlisted condition is encountered, it is rated under a closely related disease or injury in which not only the functional, but the anatomical localization and symptomatology are closely analogous. Conjectural analogies, as well as the use of analogous ratings for conditions of doubtful diagnosis, or those not fully supported by clinical and laboratory findings, are to be avoided. The ratings for organic diseases and injuries are not to be assigned by analogy to conditions of psychological origin (VASRD Codes 9000-9511).

B-9. Extra-schedule ratings in exceptional cases

The requirement to use the VASRD in rating disabilities vests in the SA the same administrative power to assign ratings in unusual cases not covered by the VASRD as that exercised by the Central Office of the Veterans Administration. Therefore, in exceptional cases where the VASRD evaluations are found to be inadequate, extra-schedule ratings due exclusively to service-connected disability may be assigned. In such cases, the recommending PEB must fully document the basis of the conclusion that the case presents such an exceptional or unusual disability picture, with such related factors as marked interference with employment or frequent periods of hospitalization, as to render impractical the application of the regular VASRD standards.

B-10. Rating of disabilities aggravated by active service

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 the 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. Therefore, it is necessary to deduct from the present degree of disability, if ascertainable, the degree of disability existing at the time of entrance into active service and also the natural progression that has occurred during active service in terms of the rating schedule.

a. If the disability is total (100 percent) and service aggravation has occurred, the EPTS factor will be recorded but no deduction in compensable rating will be made.

b. If the disability at the time of entrance into the service is not ascertainable in terms of the VASRD, no deduction higher than 0 percent will be assigned. The EPTS condition will be listed as “UND” (undetermined) if there is any question.

c. Hereditary, congenital and other EPTS conditions frequently become unfitting through natural progression and should not be assigned a disability rating unless service aggravated complications are clearly documented or unless a Soldier has been permitted to continue on active duty after such a condition, known to be progressive, was diagnosed or should have been diagnosed.

B-11. Existed prior to service—not service aggravated

If the disability at the time of evaluation is not greater than the EPTS, the condition cannot be considered service aggravated and will be listed as (NR) (not ratable). Zero ratings do not apply in this instance.

B-12. Combined ratings table

When a Soldier has more than one compensable disability, the percentages are combined rather than added (except when a “Note” in the VASRD indicates otherwise). This results from the consideration of the individual’s efficiency, as affected by the most disabling condition, then by the less disabling conditions in the order of their severity. Thus, a person having a 60 percent disability is considered to have a remaining efficiency of 40 percent. If he has a second disability rated at 20 percent, then he is considered to have lost 20 percent of that remaining 40 percent, thus reducing his remaining efficiency to 32 percent. Hence, a 60 percent disability combined with a 20 percent disability results in a combined rating of 68 percent. The combined rating for any combination of disabilities can be determined by first arranging the disabilities in their exact order of severity and then referring to the combined ratings table of the VASRD according to the following instructions:

a. *Combining two percentages.* Enter the table by locating the highest percentage in the left-hand column and reading across to where that horizontal line intersects with the vertical column headed by the second percentage. (Example: 40 combined with 20 equals 52.)

b. *Combining three or more percentages.* First, combine the first two percentages as above. Second, re-enter the table by locating that combined value in the left-hand column and reading across to where that horizontal line intersects with the vertical column headed by the third percentage. (Example: 50 combined with 30 equals 65, 65 combined with 20 equals 72.) If there are additional percentages, the second step is repeated using the new combined value and the next percentage.

c. *Converting combined ratings.* After all percentages have been combined, the resulting combined value is converted to the nearest number divisible by 10. Combined value ending in 10 will be adjusted upward. If the combined

value included a decimal fraction of 0.5 or more as a result of applying the bilateral factor, the fraction is converted to the next higher whole number; otherwise, the decimal fraction is disregarded. (Example: If the combined value is 64.5, first round off the fraction to make the combined value 65, which in turn is rounded to 70. If the combined value is 64.4, the decimal fraction is disregarded and the combined value of 64 is rounded off to 60.)

B-13. Bilateral factor

When a partial disability results from injury or disease of both arms, or both legs, or of paired skeletal muscles, or pelvic or shoulder girdle injuries resulting in extremity impairment, the ratings for the disabilities of the right and left sides will be combined as usual, and 10 percent of this value (called the bilateral factor) will be added (that is, not combined) before proceeding with further combinations, or converting to degree of disability. The bilateral factor will be applied to such bilateral disabilities before other combinations are carried out, and the rating for such disabilities, including the bilateral factor as above, will be treated as one disability for the purpose of arranging in order of severity and for all further combinations.

a. The terms “arms” and “legs” are not here intended to distinguish between the arm, forearm, and hand, or the thigh, leg, and foot, but to describe to the upper extremities and lower extremities as a whole. Thus with a compensable disability of the right thigh (for example, amputation), and one of the left foot (for example, pes planus), the bilateral factor applies, and similarly, whenever there are compensable disabilities affecting use of paired extremities regardless of location or specified type of impairment. (Except as noted in *c*, below.)

b. The correct procedures when applying the bilateral factor to disabilities affecting both upper extremities and both lower extremities is to combine the ratings of the disabilities affecting the four extremities in order of their individual severity and apply the bilateral factor by adding, not combining, 10 percent of the combined value, thus attained.

c. The bilateral factor is not applicable unless there is partial disability of compensable degree in each of two paired extremities or paired skeletal muscles. Special instructions regarding the applicability of the bilateral factor are provided in various parts of the VASRD, for example, 5003, 7114-7117, 8205-8412. The bilateral factor is not applicable in skin disabilities rated under Code 7806.

B-14. Use of Department of Veterans Affairs Schedule for Rating Disabilities codes

The VASRD codes appearing opposite the listed ratable disabilities are numbers for showing the basis of the evaluation assigned and for statistical analysis. Great care must be used in the selection of the applicable code and in its citation on the rating sheet. The written diagnosis entered on the rating form should include any description considered necessary to indicate the extent of severity or etiology of the condition. In the selection of codes, injuries generally will be represented by the number assigned to the residual condition on the basis of which the rating is determined. When disease conditions exist, preference must be given to the code assigned to the disease itself. If the rating is determined on the basis of residual conditions, the code appropriate to the residual condition will be added, preceded by a hyphen. Thus, atrophic rheumatoid arthritis rated as ankylosis of the lumbar spine would be coded “5002-5287.” In this way the exact source of each rating can be easily identified. In the citation of disabilities on rating sheets, the diagnostic terminology may be any combination of the medical examiner’s or VASRD terminology that accurately reflects the degree of disability. Residuals of diseases or therapeutic procedures will not be cited without reference to the basic disease. Hyphenated codes are used in the following circumstances:

a. When the VASRD provides that a listed condition is to be rated as some other code, for example, myocardial infarction rated as arteriosclerotic heart disease (7006-7005) or nephrolithiasis rated as hydronephrosis (7508-7509).

b. When the VASRD provides a minimum rating and the unfitting disability is being rated on residuals, for example, multiple sclerosis rated with very diffuse residuals, rated by analogy (8018-8105).

c. When an unlisted condition is rated by analogy, for example, spondylolisthesis rated as lumbrosacral strain (5299-5295). When an unlisted disease, injury, or residual condition is encountered, requiring rating by analogy, the diagnostic code number will be “built-up” as follows. The first two digits will be selected from the part of the schedule most closely identifying the part, or system, of the body involved. The last two digits will be “99” for all unlisted conditions. This procedure will facilitate a close check of new and unlisted conditions rated by analogy.

B-15. Zero percent ratings and minimum ratings

a. Occasionally a medical condition which causes or contributes to unfitness for military service is of such mild degree that it does not meet the criteria for even the lowest rating provided in the VASRD. Apply a 0 percent rating even though the lowest rating listed is 10 percent or more, except when “minimum ratings” are specified or unless the minimum rating is for a “by analogy rating.” In all instances where a zero rating is applied to a principle cause of disability, include a rationale explaining the exact reasons for unfitness. When an otherwise fit Soldier is “unfit” because of his profile and MOS, note this in the rationale. (The 0 percent rating does not preclude the award of severance pay.) The bilateral factor will be applied when a disability is present in two paired extremities, and one is rated at 0 percent.

b. In some instances the VASRD provides a “minimum rating” without qualification as to residuals or impairment. Syringomyelia, 8024, is an example. Diagnosis alone is sufficient to justify the minimum rating providing the condition is unfitting. Higher ratings may be awarded in consonance with degree of severity. No rating lower than the “minimum

may be used if the diagnosis is satisfactorily established unless specifically exempted by this regulation or by higher authority.”

c. The VASRD provides for minimum rating for “residuals” in certain medical conditions. The instructions may be, “rate residuals, minimum—percent,” or may specify what impairment to rate and the minimum rating for that impairment. Examples are 8011, anterior poliomyelitis, and 6015, benign new growth of eyeball and adnexa, other than superficial. To justify the minimum rating for residuals, a functional impairment or other residual caused by the condition must exist. Otherwise, a 0 percent is appropriate.

Section II

Deleted.

Section III

Deleted.

Appendix C Counseling

Section I

Introduction

C–1. Purpose

This appendix outlines the responsibilities and duties of the PEBLO and the appointed Legal Counsel who represents Soldiers before the formal PEB. It provides a guide for counseling Soldiers who are being processed within the PDES.

C–2. Scope

a. The PEBLO will counsel each Soldier (or the next-of-kin or legal guardian, when appropriate) throughout physical disability processing. Counseling will be based upon the individual circumstances of each case and will be designed to serve the Soldier’s best interest. Answers to questions about MEB and PEB procedures will be provided in detail. The PEBLO must reassure the Soldier that counseling will continue, as needed, as the case progresses within the disability system. Soldiers should be encouraged to ask questions during case processing. All Soldiers should be advised of benefits and training provided by the Department of Veterans Affairs, Department of Labor, and Social Security Administration.

b. Federal law (10 USC 1214) provides that no Soldier of the Armed Forces may be retired or separated without a full and fair hearing if demanded. If the Soldier requests a formal hearing, an Army attorney will be appointed as counsel to represent the Soldier at the formal hearing. The attorney is responsible for counseling the Soldier on all matters relating to the formal hearing.

C–3. Stages of counselling

a. The PEBLO will provide counseling at the following stages of case processing.

- (1) Upon referral of the Soldier’s case to a MEB.
- (2) When approved findings and recommendations of the MEB are received by the Soldier or next-of-kin.
- (3) When the findings and recommendations of the PEB informal hearing are received by the Soldier or next-of-kin.
- (4) When the Soldier demands a formal PEB hearing.
- (5) After the PEB president announces the findings and recommendation of the formal hearing.
- (6) When the USAPDA informs the Soldier or next-of-kin of a proposed modification to the findings and recommendations of the PEB.
- (7) When the results of an appeal to the APDAB are received by the Soldier or next-of-kin.

b. Major duties of the appointed legal counsel are outlined in paragraph 4–21*h*. Counsel will ensure that each Soldier who elects a formal hearing has been properly counseled. Counsel will contact the Soldier within 3 days of being detailed by the PEB. The Soldier will be advised of the following rights:

- (1) Rights under the Privacy Act of 1974 and its application to the formal hearing.
- (2) To testify or to remain silent. Remaining silent is not considered adversely by the board.
- (3) To introduce witnesses, depositions, documents, or other relevant evidence in the Soldier’s behalf.

- (4) To question all witnesses including those called by the PEB.
- (5) To make unsworn statements, orally, in writing, or both, without being subject to questioning by the board.
- (6) To decline to make any statement touching on the origin or aggravation of any disease or injury.
- (7) That no Soldier may be separated or retired for physical disability without a full and fair hearing, and that counsel is present to safeguard the legal rights of the Soldier.

C-4. Overview of physical evaluation board liaison officer counseling

a. In order to fully execute required responsibilities, PEBLOs must have a thorough knowledge of the policies, regulations, and directives applicable to the PDES. Section II contains further guidance for counseling purposes.

b. Although specific details will vary with each case, PEBLOs will include the following topic areas when explaining PEB findings and recommendations and applicable benefits.

- (1) Rights of the Soldier—MEB and PEB (see paras C-6 and C-7).
- (2) Findings and recommendations—MEB and PEB (see paras C-6 and C-7).
- (3) Case review (see paras C-8 and C-9).
- (4) Pay and related benefits (see para C-12).
- (5) Grade determination (see para C-12).
- (6) VA benefits (see para C-13).
- (7) Social security benefits (see para C-14).
- (8) TDRL regulatory requirements (see para C-10).
- (9) Rights of retired Soldiers (see para C-11).
- (10) Benefits under the Department of Labor DVOP (see para C-15).

c. At all stages of counseling, PEBLOs will advise Soldiers of the necessity of obtaining sufficient documentation (medical and non-medical) concerning the Soldier's ability to perform military duties and the severity of the Soldier's disease or injury. If additional documentation to support the Soldier's case is required, the PEBLO will assist in identifying the type of information needed and will assist in obtaining the required information. In unique or complex cases the PEBLO is authorized direct contact with the PEB appointed legal counsel to determine what type of additional information will be most useful to the Soldier. The PEBLO will ensure that all additional information received is promptly included in the Soldier's case file as supporting evidence.

d. PEBLOs will maintain close coordination with the PEB during the processing of all cases and will advise the PEB of all matters which have an impact upon the prompt and efficient processing of disability cases.

e. Counseling and assistance will be provided by the PEBLO to Soldiers on the TDRL who are undergoing periodic examination or related evaluations.

f. If found unfit, each Soldier will be counseled by the PEBLO about the approximate date of release from active duty (see app E). This will be accomplished at the initial counseling session following the MEB or PEB processing in order to facilitate an orderly transition from the service.

g. The PEBLO will coordinate with the installation RSO and the Transition Point in arranging for briefings on benefits and programs for which the Soldier may be eligible. If possible, the PEBLO should arrange for interviews with VA, Social Security, and DVOP representatives. Appointments should be scheduled as far ahead of estimated separation date as is possible to allow the Soldier adequate time to assimilate the information.

h. PEBLOs must ensure that the case file of a Soldier being placed on TDRL contains a current mailing address for Soldier's location upon departure from unit.

Section II

Counseling Guides

C-5. Publications for physical disability processing

Listed below are publications that relate to the processing and entitlements of Soldiers undergoing physical disability processing. PEBLOs should obtain these publications in order to counsel Soldiers thoroughly.

- a.* AR 37-104 (Finance series).
- b.* AR 40-400.
- c.* AR 40-501.
- d.* AR 600-8-4.
- e.* AR 600-20.
- f.* AR 600-50.
- g.* AR 608-9.
- h.* AR 608-25.
- i.* AR 635-40.
- j.* DA Pam 360-539.

k. DA Pam 600–5.

l. Veterans Administration Schedule for Rating Disabilities (VASRD).

C–6. Medical evaluation board

a. The MEB may find that a Soldier does not meet Army medical retention standards and refer the Soldier to a PEB for disability processing. MEB findings and recommendations are not binding on the PEB. At this stage Soldiers often have questions requiring PEBLO assistance. PEBLOS should inform the Soldier that additional documentation regarding the Soldier's ability to perform military duties may be necessary. Assistance should be provided by the PEBLO to obtain this information. Such documentation may include letters, performance evaluations, efficiency reports, or additional medical information. Copies of efficiency reports may be obtained upon request from the following locations:

(1) *Officers.* Records Branch, Headquarters, Department of the Army (DAPC–POS), 200 Stoval Street, Alexandria, VA 22331–0476.

(2) *Enlisted.* U.S. Army Enlisted Records Center, Fort Benjamin Harrison, IN 46249–5301.

(3) *USAR personnel.* Commander, ARPERCEN, ATTN: DARP–PRP–P, 9700 Page Boulevard, St. Louis, Missouri 63132–5200.

b. If not already part of the MEB proceedings, PEBLOS should request a statement from Soldier's commander describing current duty performance. This statement should address the following:

(1) The Soldier's most recent performance of duty.

(2) Any special limitation of duty due to the Soldier's physical condition.

(3) The Soldier's ability to adequately perform the duties normally expected of an individual of the Soldier's office, grade, rank, or rating.

(4) The Soldier's current duty assignment, anticipated future assignments, branch, age, and career specialties.

c. Upon receipt of the MEB findings and recommendations, PEBLOS will—

(1) Review and become thoroughly familiar with the DA Form 3947. Check all entries for completeness and accuracy.

(2) Ensure that the medical terminology is explained to the Soldier in terms that the Soldier can understand.

(3) Confirm that the NARSUM accurately represents the Soldier's condition.

(4) Promptly contact and arrange to counsel the Soldier on the MEB findings and recommendations.

d. During the counseling session with the Soldier, PEBLOS will—

(1) Give the Soldier ample time to read the MEB report and the NARSUM and ensure that both are understood by the Soldier.

(2) Ask the Soldier whether all medical conditions and physical defects appear in the report, and whether they have been adequately described. If not, discuss with the Soldier the possibility of submitting an appeal or contacting the physician to obtain an addendum.

(3) Inform the Soldier of the requirements and procedures for requesting discharge under the provisions of chapter 5 (when applicable), and COAD (chap 6), and the probable effect of each.

(4) Explain to the Soldier the following:

(a) How more evidence may be presented for consideration by the MEB.

(b) The options of the appointing authority who will either approve the findings and recommendations or return the proceedings to the MEB for reconsideration.

(c) How the Soldier completes the medical board proceedings in order to indicate a desire to appeal.

(d) How the Soldier can obtain assistance in writing an appeal, if desired, and how clerical support is provided.

(e) The meaning and effect of an adverse LD decision at any stage of the proceedings.

(f) The effect of being under investigation for an offense which could result in discharge under other than honorable conditions.

(5) Describe for the Soldier the course of physical disability processing through the PEB and USAPDA. Inform the Soldier that once the PEB makes findings and recommendations at the formal hearing the Soldier should again see the PEBLO for additional counseling. Furnish the Soldier with publications which answer often asked questions and encourage the Soldier to call if any questions arise which have not been answered.

e. PEBLOS or physicians may not inform any Soldier of the following before PEB action:

(1) That the Soldier has been found physically fit or unfit for duty.

(2) That the Soldier will be discharged or retired from the service.

(3) What disability percentage rating the Soldier will receive for his condition.

C–7. Physical evaluation board

a. The PEB must make findings and recommendations based upon the MEB proceedings, evaluations of duty performance, and any other available relevant evidence. The PEB must first decide whether the Soldier is physically fit or unfit for duty. A Soldier ultimately found fit is returned to duty. If the Soldier is found unfit, the PEB will—

(1) Decide whether the disability was incurred while the Soldier was entitled to basic pay and in LD when the case is that of a Soldier on orders for more than 30 days of active duty. Decide whether the disability was the proximate result of performing duty and incurred in LD when the case is that of a Reservist performing duty for 30 days or less. (See para 3-1 and 4-19g concerning LD and 8-2 concerning eligibility of Reservists performing duty for 30 days or less.)

(2) Assign a percentage rating to the disability if the Soldier otherwise qualifies. (See app B for the method of computing combined ratings for multiple disabilities, and for an explanation of both the amputation rule and the rule prohibiting pyramiding.)

(3) In reference to the Dual Compensation Act and Civil Service employment, determine whether the disability resulted from an injury or disease received in the LD as a direct result of armed conflict, or was caused by an instrumentality of war and incurred in the LD during a period of war. (See paras 4-19j and C-12.)

(4) In reference to tax exemption, determine:

(a) Whether the Soldier was a member or obligated to become a member of an armed force or Reserve thereof, or the NOAA or the USPHS on 24 September 1975. (See paras 4-19k and C-12.)

(b) Whether the disability resulted from a combat related injury. (See paras 4-19k and C-12.)

b. The Soldier does not personally appear at or take part in, the PEB informal hearing. The board bases its findings and recommendations solely on the available evidence of record. Upon receipt of the PEB informal findings and recommendations, PEBLOs will—

(1) Review and become thoroughly familiar with the PEB findings and recommendations.

(a) Compare the PEB findings with the Soldier's MEB, the VASRD, and appendix B. (If the Soldier has been found fit, consult AR 40-501, chap 3 and chaps 2 and 4 of this regulation.) Verify that PEB has not overlooked any condition that may substantially alter the Soldier's benefits.

(b) Various means of rating a disability exist. For example, a joint injury may involve nerve or muscle damage and limitation of motion. Check each to assure the member has been rated the most advantageous way. However, give attention to the amputation rule (see para B-18) and the prohibition of pyramiding (para B-5).

(2) Compute and prepare an estimate of retirement or severance pay, tax benefits, and VA compensation.

(3) Contact the Soldier and make an appointment to counsel the Soldier about the findings and recommendations of the PEB.

c. During the scheduled counseling session with the Soldier PEBLOs will—

(1) Inform the Soldier of the PEB informal findings and recommendations, the benefits which apply, (using the prepared estimates), and the possible courses of action available to the Soldier.

(2) Advise the Soldier that an election to either concur or nonconcur with the results of the PEB informal hearing must be received at the PEB within 10 days from receipt of the DA Form 199, and that if no election is made within the authorized time the Soldier will be considered to have agreed with the informal PEB decision.

(3) Fully explain the Soldier's possible elections. Election choices include—

(a) Concurrence and waiver of the formal hearing.

(b) Nonconcurrence and waiver of the formal hearing with a statement of rebuttal.

(c) Nonconcurrence and a demand for the formal hearing. The Soldier may personally appear or choose not to appear.

(4) Fully explain the guidelines for submission of a statement of rebuttal and the process of review of USAPDA.

(5) Fully explain the Soldier's representational options for the hearing. Possible representatives include the following:

(a) Regularly appointed PEB Legal Counsel (Judge Advocate General's Corps attorney).

(b) Other military counsel if reasonably available.

(c) Civilian counsel of the Soldier's choice at no expense to the Government.

(d) A counselor of an accredited veteran's service organization.

(e) A DA attorney specifically assigned PEB legal counsel duties and made available to represent Soldiers.

(6) If the Soldier chooses to nonconcur, determine whether the nonconcurrence is due to a misunderstanding of benefits. Recheck the MEB (or contact the physician) to insure that all diagnosed conditions are recorded and properly described. Seek an addendum if necessary. Compare the symptomology related by the Soldier and contained in the MEB with the requirements of the VASRD, and appendix B. Advise the Soldier of the merits of the nonconcurrence.

(7) If the Soldier still nonconcurs, notify the PEB so a formal hearing can be scheduled and arrangements can be made for the Soldier to consult with the PEB Legal Counsel.

(8) Prepare a summary of the Soldier's reasons for nonconcurring and forward the summary with the Soldier's election.

d. When a Soldier demands a formal hearing, PEBLOs will advise the Soldier—

(1) That the Soldier may personally appear at the hearing.

(2) Of all the representational options.

(3) That the Soldier or counsel may question any witnesses called to testify at the hearing.

(4) That the Soldier may request the PEB to summon witnesses who are members or employees of the Army or another Armed Service who are reasonably available, and who are essential to the presentation of the Soldier's case. The PEB president (according to AR 635-40, para 4-21) decides whether the presence of such witnesses is essential. The Soldier is responsible for the attendance of witnesses who are not members or employees of the Armed Forces at no expense to the Government. Additionally, the Soldier is entitled to present the testimony of any Soldier or employee of the Army or other armed service obtained at own expense, and who is given leave to attend.

(5) That any statement required to be signed by the Soldier against the Soldier's interest concerning the origin, incurrence, or aggravation of a disease or injury will be excluded from consideration. Any such statement against the Soldier's interest, signed by the Soldier, before he or she is advised that he or she need not make a statement, or any written statement obtained under circumstances indicating that it was involuntary, is invalid.

(6) That the Soldier may submit a written rebuttal or appeal of the PEB formal findings and recommendations according to guidelines in paragraph 4-21*t*.

(7) That if the Soldier elects not to concur with the PEB formal findings and recommendations, the case will be reviewed by the agency providing the election and a statement of rebuttal is received within the prescribed time.

e. PEBLOs will also advise Soldiers that—

(1) Pay computations are merely estimates.

(2) PEB findings and recommendations are not final until approved for the SA. If a modification is made by USAPDA, the Soldier should again contact the PEBLO. (Proceedings of general officers and MC officers found physically unfit must be approved by ASD (HA)).

(3) Soldiers to be retired should read DA Pam 600-5 and DA Pam 360-539.

(4) Contact should be made with appropriate representatives from the VA, Social Security Administration, DVOP, and RSO. Claims should be filed at the time of separation where applicable.

(5) VA compensation is payable as an alternative to Army payments while social security is payable in addition to Army or VA compensation for qualified veterans.

(6) The Soldier should determine if other disability insurance exists on any outstanding indebtedness which might relieve the Soldier of further payments.

(7) Disabled veterans receive a 10-point job performance in Federal Employment (under some circumstances the preference may be claimed by a spouse). Veterans preference provides a waiver of age and physical requirements and it gives retention preference except to those Soldiers retired with 20 or more years of service.

(8) If a Soldier of the RC, at least one voting member of the PEB will be a Reserve Officer.

f. PEBLOs will explain that the Soldier has a duty to keep his home and work telephone numbers current so that the PEBLO can contact him promptly regarding his case.

g. If a Soldier is recommended for the TDRL, explain the TDRL rights listed in paragraph C-10.

C-8. U.S. Army Physical Disability Agency

a. USAPDA reviews those cases designated in paragraph 4-22. When as a result of review, USAPDA modifies the findings and recommendations of the PEB, certain rights accrue to the Soldier. In order to properly counsel Soldiers, the PEBLO must—

(1) Review and become thoroughly familiar with the USAPDA modification and the rationale for the action.

(2) Compare the modification with the findings and recommendations of the PEB, the Soldier's medical board proceedings, the VASRD, and appendix B.

b. The PEBLO will notify the Soldier of the USAPDA modification by telephone or certified mail. Counseling will cover the following:

(1) The effect of the modification on disposition, compensation, and the benefits applicable to DA Form 199, Block 10.

(2) The election options pertaining to USAPDA modification. These include—

(*a*) Concurrence.

(*b*) Demand for a formal hearing (if not already held).

(*c*) Submission of a rebuttal

(3) The rationale for the modification.

(4) The fact that the PEBLO is available to assist in making an election and pursuing the course of action the Soldier elects.

(5) The fact that the election and rebuttal must be received by USAPDA within 10 days of the Soldier's notification of the modification unless an extension has been granted by USAPDA.

c. If the Soldier elects to demand a formal hearing, the PEBLO will—

(1) Notify the PEB who will detail counsel. PEB counsel will contact Soldier within 3 days of being detailed.

(2) Advise the Soldier that the PEB Recorder will provide notification of the date and time of the hearing.

d. If the Soldier nonconcurs and plans to submit a rebuttal, the PEBLO will advise the Soldier that—

(1) The PEBLO is available to assist the Soldier in the preparation of the rebuttal. If the Soldier has been ordered

home on a permanent change of station, it may be more convenient for the Soldier to work with a PEBLO or PEB Legal Counsel near the PCS location.

(2) The rebuttal must meet the same guidelines as a rebuttal to formal proceedings.

(3) Rebuttals are directed to the Commander, USAPDA, Forest Glen Section—WRAMC, Washington DC, 20307-5001.

e. After counseling the Soldier on the modification, complete the counseling statement on the DA Form 199.

C-9. Army Physical Disability Appeal Board

The APDAB reviews cases when the Soldier has elected to rebut a proposed modification and the CG, USAPDA did not agree with the rebuttal. If the APDAB arrives at findings and recommendations different from those of the PEB or USAPDA, the Soldier has the right to be informed of the revision by the APDAB and to submit a rebuttal. In those cases, the PEBLO will—

a. Advise the Soldier of the meaning and effect of the new findings and recommendations.

b. Assist the Soldier in preparing a rebuttal statement if the Soldier so elects. (Send rebuttals to the APDAB for reconsideration.)

C-10. Temporary disability retired list

Soldiers recommended for placement on the TDRL will be advised by PEBLOs that—

a. TDRL status is authorized for a maximum of 5 years, but permanent disposition may be made at an earlier date.

b. Payment while on the TDRL is computed according to section 1401 and 1407, title 10, United States Code (10 USC 1401 and 1407).

(1) For those Soldiers who entered active duty prior to 8 September 1980, the minimum payment is 50 percent of base pay.

(2) For those Soldiers who first entered active duty after 7 September 1980, the minimum payment is 50 percent of the monthly retired pay base (para C-12).

c. No changes will be made in the disability percentage rating while the Soldier is retained on the TDRL even if the disability becomes materially better or worse (see para 7-20*b*).

d. TDRL retired pay will be suspended when the Soldier fails to report for a periodic examination even though the fifth anniversary of placement on the TDRL has not been reached.

e. A Soldier will not be removed from the TDRL without processing through the PEB unless the fifth anniversary of placement on the TDRL has occurred and the Soldier has failed to obtain the required periodic evaluation.

f. Periodic medical examinations are required at least every 18 months. The Soldier will receive instructions detailing where and when to report. If the Soldier fails to respond, Army retired pay will be stopped. If the Soldier is unable to make the appointment for cogent reasons, the PEBLO must be notified so that a new appointment may be made. Prior to examination PEBLOs will ascertain whether the Soldier has been treated by a VA hospital, other military hospital, civilian hospital or a private physician since the last medical evaluation. If the Soldier was recently seen for a service connected disability, the PEBLO will make every effort to obtain copies of any records of the treatment and evaluation.

g. Each periodic examination report is referred to a PEB for a determination as to whether the Soldier is to be retained on, or removed from, the TDRL.

h. Final disposition may result in permanent retirement with the same, greater, or lesser disability percentage rating; separation with severance pay (if less than 20 years service); or a finding of physical fitness.

i. A finding of fit for duty by the PEB results in one or more of the following actions:

(1) A Soldier of the RA upon the Soldier's consent, will be reappointed, reenlisted, or discharged. A Soldier in the RC may, upon the Soldier's consent, reenter the RC without active duty or be discharged.

(2) If the Soldier elects to return to active duty, time spent on the TDRL counts for pay purposes.

(3) If the Soldier elects to be discharged, the finding of fit does not necessarily effect the Soldier's standing with the VA or the entitlement to VA compensation.

j. The Soldier must notify U.S. Army Physical Disability Agency (HRC-DO), Operations, 2530 Crystal Drive, Arlington, VA 22202-3934 of every change of address. Failure to do so or to report for a scheduled examination will result in the suspension of retired pay beginning with the month following the missed examination.

C-11. Rights of retired Soldiers

Soldiers retired for physical disability have the same rights as those retired for years of service. Possession of DD Form 2S (RET) (United States Uniformed Services Identification Card (Retired) (Blue)) is all that is required for most. Dependents require DD Form 1173 (Uniformed Services Identification and Privilege Card). In summary benefits include—

a. Commissary, Post Exchange, and other installation privileges for retiree, spouse and dependent children. (Dependency is determined under applicable regulations.)

- b. Medical care for the retiree, spouse and dependent children, if reasonably available, at any service installation.
- c. Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). Refer the Soldier to the MTF CHAMPUS advisor (or the installation RSO). Briefing should include the issue of CHAMPUS supplemental insurance.
- d. VA hospital treatment and other VA benefits.

C-12. Compensation and related benefits

Computation of disability compensation pay can be complicated by the numerous laws governing it, the various types of creditable service, and other factors. Care should be taken to advise Soldiers that computations provided by the PEBLO are estimates only, and that the U.S. Army Finance and Accounting Center will make the official computation of compensation. Normally a Soldier's retired pay will be computed using the method of computation most favorable to the Soldier. One method is based on multiplying percentage of disability by the retired pay base and the other is based on multiplying the years of creditable service by the retired pay base. (See para c, below.) Estimates of compensation will be provided to the Soldier using DA Form 5892 (PEBLO Estimated Disability Compensation Worksheet.)

a. *Severance pay.* In computing pay for those with less than 20 years' active service and a disability percentage of less than 30 percent, figure 2 months' basic pay for every year of active duty with a maximum of 12 years service. Consider 6 months or more as a whole year for computing years of service as a multiplier. A Soldier with less than 6 months' service cannot receive severance pay. The Soldier may apply to the VA for disability compensation. (Years of service for members of the RC is computed in accordance with 10 USC 12732.)

b. *Retired pay base.* The DOD Authorization Act of 1981, now codified in section 1407, title 10, United States Code (10 USC 1407) changed the method of computing the retired pay base.

(1) Retired pay for Soldiers who entered active duty on or prior to 7 September 1980 is computed on the highest grade "satisfactorily" held or current grade. DA makes the final grade decision.

(2) For Soldiers who first became members of the Armed Forces after 7 September 1980, retired pay is computed on 1/36 of the total amount of monthly basic pay received for the high-36 months of active duty. When the period of active duty is less than 36 months, the amount equal to the total amount of basic pay received divided by the number of months (including any fraction thereof) equals the retired pay base.

c. *Retired pay.* A Soldier is eligible for disability retired pay if he has a rating of less than 30 percent and has 20 years of active service for retirement (19 years and 6 months of active service is not 20 years for retirement) or a disability rating of 30 percent or more. The percentage multiplier is either the total disability percent rating or 2½ percent of the total years of service (including any fraction thereof, that is, 7 months equals 7/12 and disregard any fraction of a month). Use the higher percentage of the two, but not more than 75 percent, as a multiplier of the retired pay base to arrive at the retired pay entitlement. (Years of service for Soldiers of the RC is computed according to 10 USC 12733.)

(1) *Example 1.* A Soldier with 23 years and 7 months of service is entitled to $(23 \frac{7}{12} \times 2.5)$ 58.9 percent of his retired pay base as retired pay. If he is rated as 90 percent disabled, he is entitled to 75 percent as a multiplier. All of the retired pay may be tax free (see d, below).

(2) *Example 2.* A Soldier with 19 years and 6 months of service and 30 percent or more disability is retired because of disability. His retired pay entitlement $(19 \frac{6}{12} \times 2.5)$ percent is 48.7 percent of his retired pay base. If his disability rating is less than 48.7 percent, only that portion (retired pay base times the disability rating of his retired pay) may be tax free (see d, below).

d. *Tax exemption.* A Soldier separated or retired because of a physical disability may be entitled to certain Federal income tax benefits. The Internal Revenue Service will make the final decision on Federal tax entitlements. (Federal tax entitlements may not be applicable to state income tax exemptions). Federal tax entitlements include—

(1) Severance pay and that portion of military retired pay based upon the disability rating is not taxable under Federal tax laws if—

(a) Payable to a Soldier who, on 24 September 1975, was serving in an armed force of any country or Reserve thereof, the NOAA (formerly the Coast and Geodetic Survey), the USPHS, or was under binding written agreement to become such a member.

(b) The disability was incurred as the result of a combat-related injury (para 4-19k).

(2) On application to the VA, the Soldier is entitled to receive VA compensation.

e. *Survivor Benefit Plan.*

(1) Retired Soldiers are automatically covered under the Survivor Benefit Plan unless a specific election is made by both Soldier and spouse either not to participate or to participate at less than maximum level.

(2) Under Title 10, United States Code, Section 1455, the Soldier and the spouse are required to be informed of the election options under Survivor Benefit Plan and the effects of such elections. The PEBLO will refer the Soldier or next-of-kin when the Soldier is mentally incompetent, to the installation RSO for Survivor Benefit Plan counseling and the completion of the required documents. In order to accomplish the administrative requirements to comply with the law, referral to the RSO must be made concurrent with the PEBLO's notification to the Soldier of the PEB's finding.

f. Dual compensation. Retired Soldiers may fall within the limitations of two “dual compensation” laws if they go to work for the Federal Government.

(1) The Dual Compensation Act of 1964 applies only to retired RA officers and warrant officers. This Act limits retired pay according to the following formula—(retired pay minus the exempt amount) divided by two equals the amount by which retired pay is reduced.

(2) The Civil Service Reform Act applies to all Soldiers regardless of component or rank who retired on or after 11 January 1979. The exceptions are Reservists who were employed by the Federal Government on or before 13 October 1978 with no subsequent break in service of 3 days or more, and were eligible for retired pay on that date except for the fact they were not yet age 60. This Act reduces retired pay by the amount (if any) that the combined annual rates of civilian salary and retired pay exceed level V of the executive schedule.

(3) The above reductions do not apply if retired pay is computed, in whole or in part, based on disability resulting from injury or disease received in LD as a direct result of armed conflict or caused by an instrumentality of war (see para 4–19j).

g. Civil Service employment. Special advantages are provided to individuals who are veterans and disabled veterans, in qualifying for civil service employment. These may include preference eligible status, non-competitive appointment, and retention rights. The Office of Personnel Management administers the special advantages and rights.

h. Servicemembers’ Group Life Insurance (SGLI). Soldiers are covered under SGLI for 120 days following separation or retirement with no additional premium during the 120-day period. Those Soldiers who are totally disabled at separation retain SGLI coverage up to one year or until the disability ceases to be total in degree, whichever occurs first, with no additional premium cost during this period. This extension is not automatic but must be applied for by contacting Office of Servicemen’s Group Life Insurance, 212 Washington Street, Newark, N.J. 07102.

i. Veterans Group Life Insurance. SGLI may be converted to a 5-year term coverage. This program is administered by the Office of Servicemen’s Group Life Insurance and is supervised by the Veterans Administration. Coverage may be in amounts from \$10,000 to 50,000 but not more than the amount of SGLI that the member had in force at the time of separation. At the end of the 5 year period, the Veterans Group Life Insurance may be converted to a permanent plan commercial life insurance policy without a physical examination or other proof of health or physical condition. Application should be made before the end of the 120-day period following the date of separation or retirement. Unless totally disabled, if application and premium is not submitted within 120 days, the Veterans Group Life Insurance may be granted provided initial premium and evidence of insurability are submitted within 1 year after SGLI coverage is determined. Soldiers with full-time SGLI coverage who are totally disabled and whose service makes them eligible for Veterans Group Life Insurance may purchase this insurance while remaining totally disabled up to 1 year following separation.

j. Assistance to PEBLOs. PEBLOs should seek the assistance of the local finance officer and Legal Assistance Officer concerning pay and tax issues as needed.

C–13. Department of Veterans Affairs

The VA program for disability benefits is separate and distinct from the Army disability system. The PEBLO will counsel Soldiers on VA benefits, stressing that none are automatic, that the Soldier must start the action by filing a claim with the VA. The PEBLO will attempt to arrange for the Soldier an interview with the VA representative servicing the MTF or installation. Specifically the PEBLO will advise the Soldier of the facts below.

a. Soldiers have the right to file a claim with the VA at the time of separation or retirement outprocessing, after separation or retirement, or not at all. It is to the Soldier’s advantage to file the claim at the time of outprocessing so that the required medical records will accompany the claim to the applicable VA Regional Office. When a claim is filed after separation or retirement, processing by the VA is delayed awaiting for receipt of medical records from the official records custodian.

b. The VA makes its own decisions concerning entitlement to disability compensation and ratings based on the statutes and regulations which govern its operations. The VA is not bound by decisions of the Army; and likewise, the Army is not bound by VA decisions. The Army disability system must first determine whether a Soldier is physically unfit before the provisions of the VASRD are applied and is restricted to rating only those conditions which are unfitting or contribute to unfitness. The VA may rate any service-connected disability. Army ratings are permanent; VA ratings may fluctuate depending upon the future severity of the disability. The amount of military disability compensation is based on set rates by percentage. In addition, for ratings of 30 percent or higher, compensation is increased for each eligible dependent.

c. Because of the differences in the two systems, greater benefits may be available from the VA, especially for lower ranking Soldiers who are higher rated by the VA. Although there is no assurance that VA benefits will be greater, the Soldier is not bound in any case to accept them. For this reason, a claim should be submitted whether or not the Soldier will ultimately use any VA benefits.

d. Compensation may be received from either the Army, the VA, or both. However, the law provides that the whole amount of service retirement pay and VA disability compensation may not be collected at the same time. In

otherwords, the amount received from the VA and military retired pay may not exceed the total of whichever payment is larger.

e. VA compensation is exempt from income tax. In those instances where the military disability retired pay is not tax exempt, the Soldier may waive that amount of service disability pay equal to the amount of VA compensation. Election of choice of compensation may be changed at any time.

f. When a Soldier receives disability severance pay and is subsequently rated by the VA, the VA will deduct the entire amount of severance pay from any VA compensation received. At the discretion of the VA, the Soldier may repay the entire amount in one lump sum, or the VA may withhold the monthly compensation (or a portion thereof if the VA rates higher) until the total amount withheld equals the amount of disability severance pay received.

g. *Service-Disabled Veterans Insurance (RH)*. Soldiers who are granted a service-connected disability but are otherwise in good health may apply to the VA for Service-Disabled Veterans Insurance (RH) for up to \$10,000 coverage at standard insurance rates within 1 year from date the VA notifies the veteran that the disability has been rated as service connected.

h. Other potential VA benefits include the following:

- (1) A rehabilitation program which may include tuition, fees, books, and monthly subsistence for qualified Soldiers.
- (2) Employment assistance.
- (3) Home loans.
- (4) Extensive medical care benefits for veterans and, in some cases, dependents.

C-14. Social Security

a. Soldiers who become disabled may be entitled to social security benefits. Every Soldier should file a claim if any possibility exists that the Soldier will receive benefits.

b. In order to fully advise Soldiers about social security benefits, PEBLOs will—

- (1) Set up and maintain close liaison with managers and officers of social security district offices.
- (2) Supply information concerning the social security disability program.
- (3) Assist Soldiers in setting up appointments or contact with the social security administration.
- (4) Advise Soldiers that social security compensation is generally tax free and is payable in addition to, and without deduction from, Army or VA disability compensation.

C-15. Disabled Veterans' Outreach Program

a. The program is administered and funded by the Office of the Assistant Secretary of Labor for Veterans' Employment and Training. DVOP staff are located in most State Employment Service Agencies (JOB SERVICE) and are available to assist and help the employment needs of veterans, especially disabled veterans, veterans of the Vietnam era, and veterans who are economically or educationally disadvantaged. DVOP staff are also located in many Veterans Administration facilities, Veterans Readjustment Counseling Centers, and other approved facilities such as major veterans organizations.

b. PEBLOs will contact the local DVOP liaison or the state Employment Service Agency (JOB SERVICE) to arrange an interview for Soldier's being separated or retired for physical disability.

C-16. Physical evaluation board liaison officer counseling checklist

The PEBLO will use DA Form 5893 to counsel Soldiers. This document will be signed by the PEBLO and the Soldier at the time of the Soldiers final election and forwarded to the PEB for inclusion in the record of proceedings.

Appendix D Deleted.

Appendix E Personnel Processing Actions

E-1. General

This appendix prescribes personnel processing actions for Soldiers undergoing physical evaluation under the provisions of this regulation.

E-2. Physical evaluation

a. When an MTF commander determines that a Soldier will be processed for physical evaluation, the commander will—

(1) Decide whether the Soldier will be assigned to the medical holding unit of the MTF. The decision will be based on whether the individual may render productive service to the parent unit while undergoing disability processing.

(2) Decide whether the Soldier will be attached to the medical holding company of the MTF to make evaluation processing easier.

(3) Process Soldiers on an outpatient basis from the parent organization whenever possible.

(4) In the case of medical officers assigned to his or her command, determine if medical evaluation by another MTF is required, as directed by AR 40-3, para 7-4.

b. The MTF commander is responsible for initiating proper actions relating to disability processing promptly. Such actions include—

(1) Moving the patient to another hospital, if required.

(2) Moving the patient to the PEB if a Soldier is to make a personal appearance at the board.

E-3. Individual records and property

The commander of the organization to which the Soldier is assigned will—

a. Retain in their organization personnel records of Soldiers attached to a medical holding unit.

b. Upon request, furnish the MTF commander, on a loan basis, records required in conjunction with the study and evaluation of the Soldier.

c. Upon receipt of an order reassigning a Soldier of the organization to a medical holding unit, forward the Soldier's personnel and pay records to the MTF commander within 48 hours.

d. Forward individual clothing of the Soldier according to AR 735-5.

E-4. Administrative control of Soldiers before final PEB action

a. Soldiers processed as outpatients will remain available to the MTF commander or president of the PEB until the PEB completes action in his or her case.

b. Soldiers processed by MTFs in attached status will normally be retained at the MTF until PEB processing is completed. The Soldier may, however, be authorized to reside elsewhere pending completion of PEB action.

c. Soldiers processed by MTFs in assigned status normally will remain at the MTF until PEB action is completed. The Soldier may, however, be authorized to reside elsewhere pending completion of PEB action.

E-5. Administrative control of Soldiers after PEB action

After PEB proceedings have been completed, the Soldier's disposition will be according to the recommended findings of the board as indicated in *a* and *b*, below. Do not separate the Soldier from the service before notice is received of the final decision from HQDA.

a. *Physically fit.* The MTF commander will process the Soldier according to AR 40-3 if the Soldier concurs in the finding. If the Soldier does not concur with the PEB's finding of fit, or is being processed in connection with mandatory or voluntary retirement, the MTF commander will retain the Soldier under control, pending final action on the case at HQDA. If an inpatient, the MTF commander may place the Soldier on duty within the MTF or with a nearby organization pending final action on the case. If the Soldier is an outpatient, he or she will remain assigned to his or her parent organization pending final action on the case.

b. *Physically unfit.* The MTF commander will retain a Soldier under his or her control pending final review and approval of his or her case.

c. *Inpatient processing.* A Soldier who is an inpatient when his or her case is referred to a PEB may be—

(1) Retained as an inpatient at the option of the MTF commander.

(2) Placed on duty within the MTF, if assigned to the medical holding unit, to perform such duties as his or her condition permits. DA Form 3349 will be furnished to the Soldier and duty supervisor.

(3) Authorized to reside elsewhere pending completion of PEB action.

(4) Ordered on a permanent change of station. The MTF commander may authorize a Soldier to "PCS in awaiting orders status" to await final disposition of the disability case under certain conditions. The Soldier must apply in writing through the PEBLO to the MTF commander. All the requirements listed below must be met.

(a) The Soldier cannot be a MC officer whose case requires review by ASD (HA).

(b) A determination of in LD has been made.

(c) Permanent change of station from continental United States (CONUS) to CONUS and outside continental United States (OCONUS) does not exceed normal separation or retirement entitlements specified by the JFTR.

(d) Soldier must be assigned to medical hold unit within CONUS.

(e) Soldier must be on extended active duty.

(f) Case must have been evaluated by the PEB with a finding that the Soldier is unfit, and the recommended disposition must be disability retirement or discharge with or without severance pay.

(g) Soldier must have agreed with the informal PEB findings.

(h) Soldier must not have requested COAD or submitted a rebuttal requesting retention on active duty.

- (i) Soldier must be competent.
- (j) Soldier must not need further medical care at a military or VA facility.
- (k) Soldier must not have a nondisability retirement or separation action pending.
- (l) Soldier must be counseled on movement of dependents and households goods.
- (m) Soldier must be advised that while in a permanent change of station status, he or she must return to unit of assignment, referring medical facility, or the PEB if directed to do so. A Soldier will not have to return if the PEB recommendations are approved.
- (n) Soldier must give the MTF commander a nonmilitary address and phone number where he or she can be reached and must advise the MTF commander of changes to that address or phone number.
- (o) Soldier must acknowledge understanding that the number of days in PCS awaiting orders status must be deducted from the number of days leave accrued as of the date of retirement or discharge.
- (5) Ordered to a VA hospital on a permanent change of station (PCS) as set forth in AR 40-3.

d. Change in status.

(1) If the Soldier is rehospitalized before final disposition, amend orders to show the place and date of rehospitalization and authorization for travel between Soldier's home and the MTF. Also show whether Soldier is entitled to basic allowance for quarters and subsistence during hospitalization. Do not charge the Soldier leave during hospitalization and connected travel. If rehospitalization is completed before final disposition of case, the Soldier may again be placed on a permanent change of station status, if requested.

(2) Furnish the PEB a copy of the Soldier's request and orders directing permanent change of station to attach to the case records. If the records have already been sent to the CG, USAPDA, the PEB will send the request and orders to USAHRC (AHRC-PDB). If the orders are later amended as described in (1), above, furnish the CG, USAHRC, without delay, a copy of each amendment at the same address.

E-6. Soldiers located in overseas command

A Soldier assigned in an overseas command, or who is on the TDRL and residing (not visiting) in the command, will be processed as follows:

a. Active duty. When the responsible overseas MTF completes the medical board proceedings, forward the medical records and related papers to the PEB. Should the Soldier refuse to accept the findings and recommendations of the informal board and demand a formal hearing with personal appearance, the PEB conducting the informal hearing will schedule the formal board. The PEB will inform the overseas MTF commander of the scheduled hearing and request that the Soldier's travel orders be issued. Authorize the Soldier 5 days TDY at the PEB. The Soldier will return immediately to his or her assignment overseas after the hearing unless otherwise directed by proper authority.

b. TDRL. When a Soldier on the TDRL resides in an overseas command and demands a formal hearing with personal appearance, the Soldier will perform necessary travel on the orders issued as prescribed in chapter 7. Authorize the Soldier 5 days TDY at the PEB.

E-7. Continuance of disabled Soldiers

Process disabled Soldiers who request COAD according to chapter 6.

E-8. Army Soldiers hospitalized in non-Army medical treatment facilities

The commander, Health Services Command is responsible for the administration of Army Soldiers hospitalized in other than Army MTFs. This responsibility is exercised through Army MTFs designated by the Health Services Command commander to assume responsibility for such Soldiers as provided for in AR 40-3.

a. If transfer to an Army MTF is not contemplated or is inadvisable, commanders of Army MTFs designated to assume administrative control will exercise the functions and responsibilities necessary for the timely processing of such Soldiers. If transfer of a Soldier to an Army MTF is planned, defer disability processing until the Soldier has been moved.

b. Medical board proceedings prepared by Navy and Air Force MTFs on Army Soldiers will be routed through the responsible Army MTF commander and used for disability processing whenever feasible. Medical evaluation boards appointed by Army MTF commanders having administrative responsibility for Soldiers in nonservice MTFs will evaluate such Soldiers who require disability evaluation.

E-9. Final disposition instructions

After final approval, forward DA orders or other disposition instructions to the proper commander for final disposition. AR 635-10 establishes procedures for processing Soldiers for retirement or discharge. The following instructions supplement those in AR 635-10 when Soldiers who are unfit because of physical disability are processed for retirement or discharge:

a. Discharge. Discharge will be effected usually within 20 days from the date of secretarial approval of the determination of physical unfitness advanced by the number of days accrued leave which can not be sold back to the Government (para *d*, below.)

b. Retirement. Retirement processing must be completed by the effective date established in DA orders. Retirement dates will be established as follows:

- (1) *General officers.* Date of retirement will be on an individual basis.
 - (2) *Individuals processed for mandatory retirement.* Date of retirement will be one of the following:
 - (a) The mandatory retirement date.
 - (b) As soon thereafter as possible, as provided in (4), below.
 - (c) An earlier date, if requested.
 - (3) *Individuals processing for voluntary retirement at time of referral into the disability system.* Date of retirement will be one of the following:
 - (a) The date originally requested.
 - (b) As soon after the date requested as possible, as provided in (4) below.
 - (c) An earlier date if requested later.
 - (4) *All others.* Date of retirement will usually be 20 days from the date of secretarial approval of the determination of unfitness advanced by the number of days of accrued leave which cannot be sold back to the Government.
- c. Release from active duty of recalled retired Soldier.* Processing required will be completed and the Soldier released from active duty on the effective date established in DA orders.
- d. Accrued leave.* Soldiers may be permitted to use accrued leave in excess of that which may be sold back to the Government. If Soldiers have not sold back their leave, they are required to do so in lieu of using their leave.
- e. Requests for exception to established discharge or retirement date.* Request for deviation from established discharge date or amendment or revocation of retirement orders for other than medical reasons will be submitted, with justification, to USAHRC (AHRC-PDB). If the Soldier is rehospitalized, and the presence of substantial new evidence indicates that the initial disability decision or percentage of disability should be changed, the MTF commander will notify the PEB that adjudicated the case. USAPDA will decide whether the case should be reconsidered by the PEB. USAPDA may request USAHRC cancel discharge instructions, or amend or revoke retirement orders.
- f. Responsibility of MTF commanders.* MTF commanders will be responsible for final disposition of Soldiers for physical disability separation within their area of responsibility.

E-10. Preparation and distribution of orders

Orders separating Soldiers for physical disability will be prepared and distributed according to AR 310-10. If applicable, a statement will be made regarding termination of appointment.

E-11. Separation Documents

See AR 635-5 for instructions on completion of DD Form 214.

E-12. Type discharge certificate issued

- a. Officers.* Officers discharged for physical disability will be honorably discharged. Issue a DD Form 256A. An exception is a case in which the disability upon which discharge is based was the result of intentional misconduct or willful neglect of the officer concerned or was incurred during a period of unauthorized absence. In any of these circumstances, the officer will be discharged under honorable conditions and issued a DD Form 257A.
- b. Enlisted personnel.* Service of enlisted Soldiers discharged by reason of physical disability normally will be characterized as honorable, or described as uncharacterized for those in entry level status. However, characterization of general under honorable conditions is authorized for Soldiers beyond entry level status whose service is satisfactory, but not sufficiently meritorious to warrant honorable characterization.

E-13. Delivery of separation forms

Deliver separation forms to the Soldier according to AR 635-5. If the Soldier has been moved to a VA hospital before the date of separation or retirement, and is mentally incompetent, mail the separation forms to his or her next-of-kin or legal guardian. Furnish the director of the VA hospital a copy of the DD Form 214.

E-14. Retirement honors

Extend proper honors to Soldiers retired for physical disability according to installation standing operating procedures. *Figure E-1. Deleted.*

Appendix F

Internal Control Evaluation Checklist

F-1. Function

The function covered by this evaluation is management of the temporary disability retired list (TDRL).

F-2. Purpose

The purpose of this checklist is to assist the U.S. Army Physical Disability Agency (USAPDA) in evaluating the key internal controls listed. It is intended as a guide and does not cover all controls.

F-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).

F-4. Test questions

- a.* Does USAPDA maintain the TDRL in accordance with 10 USC 1376 and AR 635-40?
- b.* Does each Soldier currently on the TDRL have an active file maintained at USAPDA?
- c.* Are orders and letters of instruction issued to the military treatment facilities and the Servicemember far enough in advance of a Servicemember's scheduled examination date to achieve compliance with 10 USC 1210 for conduct of physical examination at least once every 18 months?
- d.* Does USAPDA terminate retired pay as required under 10 USC 1212 when the Servicemember fails to report for his or her periodic physical examination?
- e.* Does USAPDA stop TDRL pay after enlisted Servicemembers 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?
- f.* Does USAPDA remove Servicemembers from the TDRL in a timely manner upon completion of re-evaluation?
- g.* Are Servicemembers 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?
- h.* Is the TDRL status and retired pay of Servicemembers who are determined fit and who request return to active duty terminated in accordance with 10 USC 1211?

F-5. Supersession

Not applicable.

F-6. Comments

Help make this a better tool for evaluating internal controls. Submit comments to the U.S. Army Physical Disability Agency Web site using the "contact us" link at <https://www.hrc.army.mil/site/active/tagd/pda/pdapage.htm>.

Glossary

Section I Abbreviations

ABCMR

Army Board for Correction of Military Records

ACRB

Army Council of Review Boards

ADRRB

Army Disability Rating Review Boards

AGR

Active Guard Reserve

AHRC

Army Human Resources Command

APDAB

Army Physical Disability Appeal Board

ARNG

Army National Guard

ARNGUS

Army National Guard of the United States

ASD (HA)

Assistant Secretary of Defense (Health Affairs)

AWOL

absent without leave

COAD

continuation on active duty

COAR

continuation on active reserve status

CG

commanding general

CHAMPUS

Civilian Health and Medical Program of the Uniformed Services

DA

Department of the Army

DCS, G-1

Deputy Chief of Staff, G-1

DES

Disability Evaluation System

DODD

Department of Defense directive

DTM

Directive-Type Memorandum

DVOP

Disabled Veterans Outreach Program

EPTS

existed prior to service

GCMCA

General Court Martial Convening Authority

HQ

headquarters

HQDA

Headquarters, Department of the Army

IDT

inactive duty training

IRR

individual ready reserve

JFTR

Joint Federal Travel Regulations

LD

line of duty

MC

medical corps

MEB

medical evaluation board

MOS

military occupational specialty

MTF

medical treatment facility

NARSUM

narrative summary

NCO

noncommissioned officer

NOAA

National Oceanic and Atmospheric Administration

OSA

Office of the Secretary of the Army

PDES

Physical Disability Evaluation System

PEB

physical evaluation board

PEBLO

physical evaluation board liaison officer

RA

regular Army

RC

reserve components

RSO

retirement services officer

SA

Secretary of the Army

SGLI

Servicemembers' Group Life Insurance

TDRL

temporary disability retired list

TDY

temporary duty

UCMJ

Uniform Code of Military Justice

USAHRC

U.S. Army Human Resources Command

USAPDA

U.S. Army Physical Disability Agency

USAR

U.S. Army Reserve

USC

United States Code

USMA

U.S. Military Academy

USPHS

U.S. Public Health Service

VA

Veterans Affairs

VASRD

Department of Veterans Affairs Schedule for Rating Disabilities

Section II**Terms****Accepted medical principles**

Fundamental deductions that are consistent with medical facts. They are accepted for treating and practice in current major textbooks and publications.

Active duty

Full-time duty in the active military service of the United States. This general term applies to all active duty service with the active forces without regard to duration or purpose.

Active service

Service on active duty.

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 opposed to a prolonged chronic condition.

Armed conflict

Any activity in which American military personnel are engaged with a hostile or belligerent nation, faction, or force. The activity may include a war, expedition, occupation, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, or similar situation.

Combat-related injury

A personal injury or sickness that a Soldier incurs under one of the following conditions: as a direct result of armed conflict; while engaged in extrahazardous service; under conditions simulating war; or which is caused by an instrumentality of war.

Conditions simulating war

Those circumstances of training so simulating conditions of war that a special personal risk attends the situation. The mere fact that training (calisthenics) was required, or that training (football) is sponsored by the military, does not equate with “conditions simulating war.”

Counsel

As used in this regulation, the term “counsel” will be construed to include Servicemembers in good standing of the Federal bar or the bar of any State, accredited representatives of veterans’ organizations recognized by the Administrator of Veterans Affairs under section 3402, title 38, United States Code (10 USC 3402), and other persons who, in the opinion of the board, are considered to be competent to present equitably and comprehensively the Soldier’s case.

Disease

An abnormal condition affecting a person that is not defined or classified as an injury. (A detailed listing of diseases may be found in Volume I, International Classification of Diseases, Adapted for Use in the United States (ICD-9-CM) Eighth Revision, diagnostic codes 000 to 796.9.)

Deleterious-type cases

A case in which disclosure of information on a Soldier’s physical condition would be harmful to his physical or mental health.

Deterioration of existing condition

When recurring coincident with non-disability separation, it must be equivalent to acute, grave illness to overcome the presumption of fitness.

Extended active duty

The duty status of a member of the RA. It is also the duty status of a non-regular member who is called or ordered to active duty for a period of more than 30 days other than for training under Title 10, United States Code, 10148(a) (10 USC 10148(a)).

Impairment of function

The lessening of the capacity of the body or its parts to perform normally because of disease or residual of an injury.

Impairment, manifest

An impairment evidenced by signs or symptoms.

Impairment, physical

Any anatomic, functional, or physiologic abnormality of the body. The term is synonymous with “physical defect.”

In loco parentis

In the place of a parent instead of a parent; charged, factitiously, with a parent’s rights, duties, and responsibilities.

Injury

A condition caused by trauma, such as a fracture, wound, sprain, dislocation, concussion, or compression. Also, an injury includes conditions resulting from extremes of temperature or prolonged exposure. Acute poisonings resulting

from exposure to a toxic or poisonous substance are also classed as injuries. Poisoning due to contaminated food is not considered an injury. (A detailed listing of injuries may be found in Volume I, International Classification of Diseases, Adapted for Use in the United States (ICD-9-CM), Eighth Revision, diagnostic codes 800 to 999.9.)

Instrumentality of war

A device designed primarily for military service and intended for use in such service at the time of the occurrence of the injury. It may also be a device not designed primarily for military service if use of or occurrence involving such a device subjects the individual to a hazard peculiar to military service. This use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits. There must be a direct causal relationship between the use of the instrumentality of war and the disability and the disability must be incurred incident to a hazard or risk of the service.

Maximum hospital benefits

The point during hospitalization when a patient's progress appears to be stabilized. At this point, it can be anticipated if additional hospitalization will contribute to any further substantial recovery. A patient who can be expected to continue to improve over a long period of time without specific therapy or medical supervision, or with only a moderate amount of treatment on an outpatient basis, may be considered as having attained maximum hospital benefits.

Next-of-kin

An individual's nearest relative. (See AR 600-8-1 for identification as well as the definition of "parent" in this glossary.)

Not on extended active duty

The duty status of a non-Regular member who is ordered to active duty for training under section 270(b), title 10, United States Code (10 USC 270(b)); ordered to active duty or active duty for training for 30 days or less; or performing inactive duty for training.

Office, grade, rank, or rating

For the purpose of this regulation—

- a. Office is a position of duty, trust, or authority to which an individual is appointed.
- b. Grade is a step or degree in a graduated scale of office or military rank that is established and designated as a grade by law or regulation.
- c. Rank is the order of precedence among members of the Armed Forces.
- d. Rating is the name prescribed for members of an Armed Force in an occupational field. The term equates with military occupational specialty.

Optimum hospital improvement

The point during hospitalization when a patient's fitness for further military service can be decided. Also further treatment for a reasonable period in a military MTF will probably not result in material change in his condition so as to alter his type of disposition or amount of separation benefits.

Parent

Father of a legitimate child, mother of a legitimate child, father through adoption, mother through adoption, mother of an illegitimate child, and father of an illegitimate child but only if—

- a. He acknowledged paternity in writing signed by him; or
- b. He had been judicially ordered to contribute to the child's support; or
- c. He had been judicially decreed to be father of such child; or
- d. Proof of paternity is established by a certified copy of the public record of birth or church record of baptism showing that he was the informant and was named as father of the child; or
- e. Proof of paternity is established from service department of other public records, such as school or welfare agencies, which show that with his knowledge he was named as father of the child.

Physical disability

Any manifest impairment due to disease or injury, regardless of degree, that reduces or prevents an individual's actual or presumed ability to engage in gainful or normal activity. The term includes disability due to mental disease.

Physical evaluation board liaison officer (PEBLO)

An experienced, mature officer, NCO, or civilian employee designated by the MTF commander to perform the primary duties of counseling Soldiers who are undergoing physical disability evaluation. The PEBLO provides Soldiers with

authoritative and timely answers to their questions about the physical disability system and aids them in understanding their rights and entitlements. The PEBLO is not, and need not be, an attorney.

Physically unfit

Unfitness due to physical disability. The unfitness is of such a degree that a Soldier is unable to perform the duties of his office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of his employment on active duty. “Physically unfit” is synonymous with “unfit because of physical disability.”

Preponderance of evidence

Factual information that tends to prove one side of a disputed fact by outweighing the evidence on the other side. Preponderance does not necessarily mean a greater number of witnesses or a greater mass of evidence; rather, the term means a superiority of evidence on one side or the other of a disputed fact. The term requires consideration of the quality rather than the quantity of the evidence.

Presumption

An inference of the truth of a proposition or fact. It is reached through a process of reasoning and based on the existence of other facts. Presumed matters need no proof to support them. They may be rebutted by evidence to the contrary, however.

Processing for separation from active service

A Soldier is “processing for separation from active service” when he has requested retirement by reason of age or length of service or is being processed for administrative separation to include separation at ETS or ESA date (for officers only).

Proximate result of performing duty

A disability may reasonably be assumed to have been the result of, arising from, or connected with active duty, full-time training duty, other full-time duty, or inactive duty training. All facts, circumstances, and laws on a particular case must be considered.

Reasonable doubt

Reasonable doubt exists when evidence does not satisfactorily prove or disprove a claim. Reasonable doubt is substantial, not specious. It is within the range of probabilities as distinguished from pure speculation or remote possibility. It is not means of reconciling conflicts or contradictions in evidence.

Reserve components of the Army

The Army National Guard of the United States and the US Army Reserve.

Separation

An all-inclusive term that is applied to personnel actions resulting from release from active duty, discharge, retirement, dismissal, resignation, dropped from the rolls, or death. In this regulation, separation means discharge because of physical disability with or without severance pay.

Service aggravation

a. Medical treatment facilities frequently list a medical condition as “service aggravated” based on the fact that the condition becomes symptomatic under certain conditions found in the military. Symptoms arising when limits imposed by a condition have been exceeded are poor criteria of service aggravation of the condition, itself.

b. When an EPTS condition becomes symptomatic under the stress of active duty it may be unfitting but it has not been aggravated by AD unless it has been permanently worsened over and above natural progression.

Unfit because of physical disability

Synonymous with physically unfit.

Section III**Special Abbreviations and Terms**

There are no special terms.

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