

THE SECRETARY OF THE NAVY

SECNAV M-1850.1
SEPTEMBER 2019



DEPARTMENT OF THE NAVY

DISABILITY EVALUATION SYSTEM

MANUAL



PUBLISHED BY
THE ASSISTANT SECRETARY OF THE NAVY, MANPOWER AND
RESERVE AFFAIRS (M&RA)



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

SECNAV M-1850.1
23 Sep 2019

FOREWORD

This manual implements the policy established in Secretary of the Navy Instruction (SECNAVINST) 1850.4F Disability Evaluation System.

This manual establishes procedures, clarifies responsibilities, and provides guidance for referral, evaluation, return to duty, separation, or retirement of Service Members for disability in accordance with references (a) through (t).

This manual, which is effective immediately, applies to the Offices of the Secretary of the Navy (SECNAV); Chief of Naval Operations; Commandant of the Marine Corps (CMC); Bureau of Medicine and Surgery (BUMED); U.S. Navy and U.S. Marine Corps installations; Office of the Judge Advocate General (OJAG), commands, activities, and field offices; and all other organizational entities within the Department of the Navy (DON).

Records created as a result of this manual, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules found on the Directives and Records Management Division (DRMD) portal page:

<https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx>.

For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.

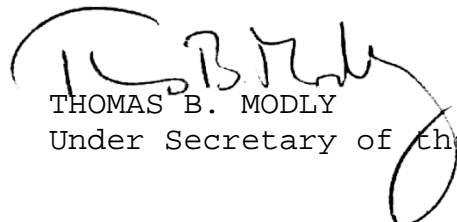

THOMAS B. MODLY
Under Secretary of the Navy

TABLE OF CONTENTS

FOREWORD	i
TABLE OF CONTENTS	ii
CHAPTER 1 - GENERAL INFORMATION	
1. Overview of the Disability Evaluation System (DES).....	1-1
2. Integrated Disability Evaluation System (IDES).....	1-1
3. Legacy Disability Evaluation System (LDES).....	1-4
4. Temporary Disability Retired List (TDRL) Timeliness Goals	1-5
5. Physical Evaluation Board Liaison Officers	1-6
6. Legal Counsel	1-11
7. Resources	1-16
CHAPTER 2 - DES REFERRAL	
1. Members Eligible for the DES	2-1
2. Members Ineligible for the DES	2-2
3. Referral Criteria.....	2-3
4. Enrollment in the LDES	2-3
5. Service Members with Medical Waivers	2-5
6. Waiver of Physical Evaluation Board (PEB) Evaluation	2-5
7. Prohibition from Waiving Disability Evaluation	2-6
8. Suspension, Rejection, and Termination of Referrals to the PEB	2-6
9. Courts-Martial, Administrative Separation Proceedings, and Controverted Cases	2-9
10. Elective Surgery or Treatment after Referral	2-10

CHAPTER 3 - MEDICAL EVALUATION BOARD

1. Convening	3-1
2. Composition	3-1
3. Decisions	3-1
4. Medical Evaluation Board (MEB) as a Part of the DES	3-1
5. Overseas IDES.....	3-5
6. Line of Duty and Misconduct (LOD/M) Determinations	3-6

CHAPTER 4 - PHYSICAL EVALUATION BOARD

1. General Procedures	4-1
2. Fitness Determinations	4-11
3. Unfitness Determinations	4-11
4. Combat-Related Determinations	4-18
5. Final Disposition	4-22
6. Standards for Disability Compensation	4-34
7. TDRL Management	4-43
8. Petition for Relief	4-54

REFERENCES	A-1
GLOSSARY.....	B-1
DEFINITIONS.....	C-1
FORMS AND REPORTS.....	D-1

CHAPTER 1 - GENERAL INFORMATION

1. Overview of the DES. The DES consists of three phases: MEB, PEB, and Transition. All timeliness measures specified in references (a) through (s) are applicable and counted in calendar days, unless otherwise specified. The phase and stage goals are to complete 80 percent of the cases within that goal time. Specific limits are applied to specific actions as detailed below.

2. IDES

a. Overall IDES Process. This is measured from the date of referral to the IDES to the date of return to duty or notification of the Department of Veterans Affairs (VA) benefits decision. Only medical authorities (normally physicians) can refer Service Members into IDES.

b. MEB Phase. The MEB phase of the IDES includes activities from the point of referral to the IDES to the transfer of a completed MEB case file to the PEB. The phase is from the date of referral to an MEB by a Department of Defense (DoD) medical care provider to the date of transfer of the complete MEB case file to the PEB. The stages within the MEB phase are:

(1) Referral Stage. This stage is measured from the date of referral to the IDES by a DoD medical care provider to the date the Physical Evaluation Board Liaison Officer (PEBLO) provides the Service Member's complete service treatment record, including the Service Member's entrance physical and VA Form 21-526EZ, to the VA Military Services Coordinator (MSC).

(2) Claim Development Stage. The claim development stage is from the date the PEBLO provides the Service Member's complete service treatment record and VA Form 526EZ to the VA MSC to the date the MSC requests the Service Member's medical evaluation.

(3) VA Disability Examination Stage. The disability examination stage begins the date the MSC requests the Service Member's disability examination appointments and ends the date the MSC provides the proposed completed disability evaluation

results to the PEBLO after the Disability Rating Activity Site (DRAS) has certified the results as sufficient for rating.

(4) MEB Stage. This stage is from the date the PEBLO receives the completed disability examination results from the MSC to the date the MEB returns the Service Member to duty without referring them to the PEB or forwards the DES case file to the PEB to begin processing for an Informal PEB. Upon receiving the Medical Evaluation Board Report (MEBR), the Service Member may elect an Impartial Medical Review (IMR) and submit an MEB Rebuttal. The Director, Patient Administration will ensure an impartial medical reviewer is assigned to assist the Service Member.

(5) MEB Rebuttal Stage. From the date the PEBLO receives the Service Member's request to submit an MEB Rebuttal, the Service Member shall have five calendar days to accept the MEBR, request an IMR, or submit an MEB rebuttal. This begins either at the time of receipt of the MEBR or, if an IMR was requested, at the time the written report of the IMR provider is received.

c. PEB Phase. This phase consists of the total time the case is with the PEB, which includes the Informal PEB, disability rating stage, Formal PEB (FPEB), rating reconsideration request, and the FPEB appeal (referred to as the Petition for Relief (PFR)). The stages within the PEB phase are:

(1) IPEB Stage. The date the PEB receives the DES case file from the PEBLO to the date either the Service Member requests a FPEB or (if Service Member concurs with IPEB findings) when the President, Physical Evaluation Board (PPEB), or other appropriate final disposition authority, approves the final results of the disposition decision. This timeframe includes the time allotted for the DRAS to complete rating decisions and reconsider rating decisions to the PEB, which is part of the disposition. The Service Member will be allowed 15 calendar days from receipt of the informal findings to accept the findings of the IPEB or request an FPEB. Board findings should be based on a review of documents, including but not limited to:

(a) Medical board reports and associated documents together with endorsements of Convening Authorities and statements of members referred for disability evaluation.

(b) LOD/M determinations, when appropriate.

(c) Statements of service, when appropriate.

(d) Reports of periodic physical examination, when appropriate.

(e) Reports of special consultations, when appropriate.

(f) Statements of non-medical information as to the observation by the Reporting Senior of performance of duty.

(g) Fitness Reports and Performance Evaluations supplied by the Chief of Naval Personnel (CHNAVPERS) or the Commandant of the Marine Corps (CMC) Manpower and Reserve Affairs (M&RA), as they apply to disability evaluation, when appropriate.

(h) LOD Benefits Letters for Reservists, when appropriate

(i) Member's health record.

(j) Any other pertinent materials.

(2) Proposed Ratings Stage. The date the DRAS receives the request for rating and the service treatment record from PEB administration to the date the DRAS sends the proposed rating to PEB administration.

(3) FPEB Stage. The date the Service Member requests an FPEB to the date either the Service Member requests an FPEB appeal or (if Service Member concurs with FPEB findings) when the PPEB, or other appropriate disposition authority, approves the final results of the disposition decision. For cases in which a Service Member is found fit by an IPEB, but unfit by an FPEB, this timeframe includes the time allotted for the DRAS to provide rating decisions and, as applicable, reconsidered rating decisions to the PEB, which is part of the disposition. For

cases found unfit by an IPEB, this timeframe includes the time allotted for the DRAS re-consideration and Service Member appeals.

(4) Rating Reconsideration Stage. The date the DRAS receives the rating reconsideration request from the PEB to the date the DRAS sends the proposed ratings determination to the PEB. The Service Member shall be allowed 15 calendar days from receipt of informal findings, receipt of written FPEB results, or receipt of PFR responses to request a one-time VA Rating Reconsideration of only the unfitting condition(s).

(5) PFR. The date the Service Member submits the PFR to the Director, SECNAV Council of Review Boards (DIRSECNAV CORB) until final decision of the PFR is transmitted to the Service Member.

d. Service Member Transition Phase. The Service Member transition phase of the IDES includes processing the Service Member for a return to duty, separation, or retirement. This is from the date of approval of the final disability disposition decision to the date of the Service Member's separation from Military Service plus the amount of any administrative absences the Service Member is authorized to take during this period.

e. VA Disability Compensation Delivery. There is no phase of the IDES process for Reserve Component (RC) Service Members who are not receiving active duty pay. For RC Service Members, eligibility for disability compensation begins immediately upon separation. For RC Service Members not on active duty orders who meet the definition of a Veteran as defined per reference (f) part 3, the proposed rating will also serve as the actual rating, and the VA will notify the Veteran of the VA decision at that time.

3. LDES

a. General. All timeliness measures, for duty related and non-duty related LDES cases are as per references (a) through (e) and are counted in calendar days.

b. LDES cases do not navigate any VA activities during the process and therefore have specific steps omitted (Claim Development Stage, VA Disability Examination Stage, Proposed

Rating Stage, and Rating Reconsideration Stage). All other stages and specified timelines remain the same.

4. TDRL Timeliness Goals

a. Overall TDRL Process. The overall processing time for TDRL cases from the point of placement on the TDRL to the point of final disposition depends on the pace at which the unfitting conditions for which the veteran was placed on the TDRL become stable for rating purposes. There is no overall IDES TDRL processing timeliness goal, however, all temporary retired Service Members must be removed within three or five years of initial placement on the TDRL. Timeliness goals for cases remain the same for all portions of the IDES process up to the point at which the member is notified of placement on the TDRL and VA notifies the Service Member of the initial VA benefits decision at the completion of the VA benefits stage. The following timeliness goals are established for the remainder of the TDRL process:

(1) Initiation. Initiate the TDRL re-evaluation process within 18 months after placing a Veteran on the TDRL or after the Veteran's previous re-evaluation. Within that time, the Assistant SECNAV ASN (M&RA) will obtain all available medical treatment and rating documentation from the DoD and VA. The Service Member shall be prompted at least 60 days before examination to submit all treatment records from non-DoD or VA medical providers.

(2) Examination. Complete re-evaluations for unstable unfitting conditions within 18 months after placing a Service Member on the TDRL or after the Veteran's previous re-evaluation, provided such examination was conducted within the 18-month timeframe.

(3) PEB. Complete each PEB re-adjudication phase of TDRL cases, including IPEB and FPEB adjudications, administrative processing, and PFR adjudication, no more than 90 days from the date the PEB receives the medical and rating documentation, required by reference (b), for the unfitting conditions for which the veteran was placed on the TDRL to the date the PEB informs the veteran of TDRL disposition. The IPEB phase and mailing of initial findings to the Service Member will

be completed within 30 days of receipt of the Narrative Summary (NARSUM) from the Military Treatment Facility (MTF).

b. TDRL Termination. No Veteran may remain on the TDRL for more than three years if placed on the TDRL on or after January 1, 2017; otherwise the TDRL timeline is not to exceed five years. The disposition of veterans placed on the TDRL rests solely with the ASN (M&RA).

5. PEBLO

a. General. PEBLOs are primarily responsible for informing and assisting Service Members or their designated representative, to include legal counsel, as applicable, during the DES. PEBLOs help manage process expectations, coordinate medical appointments related to the disability process, and oversee and provide access to the Service Member's case file upon appropriate release.

(1) To achieve an informed and seamless transition for Service Members who are medically separated or retired, the PEBLO's responsibility continues until the Service Member attains veteran status and is transferred to VA support.

(2) PEBLOs should know the Service Member's unique issues, coordinate DES processing issues across DoD and other Federal agencies, and ensure transparency and clarity throughout the DES process. The PEBLO is a liaison between the Service Member and a multi-disciplinary team consisting of: Primary Care Managers, other appropriate health care professionals, Medical Care Case Managers, Non-Medical Case Managers, Patient Administration Personnel, PEB, Service Member's command, DON Wounded Warrior Program liaison, Service Member's counsel, and the appropriate Service Headquarters.

(3) The PEBLO may assist with the administrative submission of Service Member rebuttals and appeals in coordination with the member's Government DES counsel or hired legal counsel. However, PEBLOs are not Service Member legal advocates and shall not provide legal advice, legal counsel, or other assistance regarding substantive aspects of the rebuttal. The PEBLO shall, upon request and with the consent of the Service Member, provide Government DES counsel with the Service Member's complete DES case file.

(4) For all DES cases, the PEBLO educates the Service Member about the MEB and PEB processes, by providing the IDES Overview Seminar, and coordinates with the assigned VA MSC on all issues requiring the VA's action.

(5) The PEBLO shall review all Narrative Summaries, Addendums, and Non-Medical Assessments for quality assurance to ensure the minimum requirements set forth in this document have been met before submission to the PEB. At the request of the Service Member, Government DES counsel, or referring physician, the PEBLO may contact additional providers to request addendums for condition(s) that may interfere with the reasonable performance of the Service Member's duties.

(6) Upon request from the referred Service Member's assigned Recovery Care Coordinator (RCC), the PEBLO will provide an update on the status of the individual's progress through the DES.

(7) In cases where a Service Member has elected a FPEB, the PEBLO will inform the assigned counsel prior to assisting a Service Member with accepting the IPEB Findings and waiving the right to a board.

b. Assignment Guidelines

(1) PEBLOs will be military or civilian personnel, E-7 or above or civilian equivalent, whenever practical. The unique duties of the PEBLO require the individual to possess the requisite experience, knowledge, and maturity to provide appropriate support and information to the Service Member or the member's designated representative. The PEBLO must be able to carefully handle administrative tasks, including the scheduling and management of all appointments and consultations, and be able to communicate with senior members of the medical and non-medical communities.

(2) PEBLOs should be assigned the role for a minimum of two years. PEBLOs should not be assigned any additional duties that would conflict with their PEBLO duties. PEBLOs must be trained and certified in accordance with this manual prior to the assignment of their duties.

(3) Caseload. A PEBLO's caseload should not exceed 34.

c. Training and Qualification

(1) Orientation. Newly assigned PEBLOs will receive an orientation and introduction to key DES personnel in the MTF where they work. The establishment of strong professional relationships is critical to PEBLO effectiveness and continuity of care for Service Members.

(2) Standardized DES Training. All PEBLOs will be trained through formal classroom or web-based training and will not be considered qualified to perform their duties until after demonstrating proficiency in the minimum DoD competencies. Qualification will be documented and filed with the PEBLO's training records. At a minimum, training curricula must provide instruction on the following DoD competencies:

- (a) An overview of the statutory and policy requirements of the DES.
- (b) Electronic and paper recordkeeping policies of the DON.
- (c) Customer service philosophies.
- (d) Familiarization with medical administration processes.
- (e) Roles and responsibilities of Government DES counsel throughout the DES process.
- (f) An overview of VA services and benefits.
- (g) Online and other resources pertaining to the DES, DOD, and VA.
- (h) The chain of supervision and command.
- (i) Inspector General hotlines for resolution of issues.

(3) On-the-Job Training. PEBLOs will receive at least two weeks of on-the-job training with the Patient Administration Officer, incumbent, or other trained PEBLO who is fully trained and has at least one year of experience prior to assuming their

full duties. During this transition and prior to case transfer, the incoming PEBLO will make personal contact with each Service Member in their portfolio. Transfer and accountability of existing cases must be verified by the PEBLO's supervisor prior to the PEBLO assuming full duties.

(4) Continuing Education. After completion of initial training, an annual refresher or continuing education and training is required to ensure PEBLOs remain current in their understanding and application of DES procedures. When DES procedures or processes significantly change, appropriate specialized education and training will be conducted to ensure a fundamental understanding and ability to follow new procedures.

d. PEBLO Duties. At a minimum, the PEBLO:

(1) Explains the DES process in detail, including the differences between IDES and LDES, and explains the role of the MEB Report and Addendum(s) as well as the Non-Medical Assessment, access to IMRs, boards, rebuttals, Personal Impact Statements, and appeals, and provides an overview of the VA claims process to the Service Member. The PEBLO must provide brochures and access to other organizational or online resources to the Service Member.

(2) Explains the statutory rights and requirements, DOD requirements, and DON policies to the Service Member, including process steps but shall not provide legal advice.

(3) Explains DES results to the Service Member and provides the Service Member with an election of options form.

(4) Explains and assists in the processing of requests for FPEB hearings and appeals.

(5) Refers the Service Member to the appropriate Government DES counsel for mandatory initial counseling and advises the Service Member of the right to Government DES counsel throughout the DES process. Follows up with the Service Member to ensure mandatory initial counseling has been scheduled no later than five calendar days from referral into the DES.

(6) Advises Service Members of available support provided by military, veteran, and national service

organizations related to disability processing and transition services.

(7) If the Service Member elects to be represented by a veteran's service organization, ensures he or she completes VA Form 21-22, "Appointment of Veterans Service Organization as Claimant's Representative."

(8) Refers the Service Member to the appropriate Defense Finance and Accounting Service (DFAS) or finance representative for explanation of payment calculations for severance or retirement pay.

(9) For IDES cases, refers the Service Member to the MSC to explain potential VA benefits and VA-specific appeal processes, including referral to a vocational rehabilitation and employment counselor.

(10) Refers the Service Member to the Social Security Administration for information on benefits the Service Member could receive while on active duty and after transition to veteran status.

(11) Informs the Service Member of potential transition programs and benefits or refers the Service Member to the appropriate base-level support agencies, including trained Survivor Benefit Plan Counselors and Transition Assistance Program staff.

(12) Constructs the case file in accordance with DON policies and regulations.

(13) Obtains the LOD investigation and determination with all supporting documentation, when required, from the Service Member's command.

(14) Ensures the Service Member is scheduled for all general and disability examinations required for the case through the best source, i.e., MTF, contractor, Veterans Health Administration, or TRICARE provider.

(15) Monitors the completion of examinations, including IMR if elected, and resolves scheduling issues to ensure completeness of the case file.

(16) Acts as a conduit for information and DES decisions to the Service Member's parent command and the MSC, to include initial notification of the commander once the Service Member is referred into the DES.

(17) Acts as a conduit between the Service Member and other DON stakeholders for all related matters.

(18) Provides Service Members or their designated representative, within three business days of receipt, a copy of documents leveraged to adjudicate the case. This includes but is not limited to: Service Member's MEB results; Narrative Summary; Addendum(s); Veterans Affairs Compensation and Pension examinations; LOD determinations; PEB findings; Preliminary or Reconsideration Ratings; and any other decisional documents.

6. Legal Counsel

a. Requirements

(1) The JAG will provide government DES counsel to advise and represent Service Members during the DES process (IPEBs and FPEBs) and any subsequent appeals to the SECNAV or designee relating to the final disposition of Service Member disability cases. Legal counsel, whether Navy or Marine Corps judge advocates or civilian attorneys employed by the DON, will be provided at no expense to the Service Member. Government DES counsel will also be available to respond to inquiries by Service Members who are in a limited duty status and who may be referred to the DES.

(2) Caseload

(a) IPE Board. Normally Government DES counsel will not advise and represent more than 300 IPEB clients in a fiscal year.

(b) FPE Board. Normally, Government DES counsel will not be assigned an overall caseload that requires them to represent more than six Service Members per week at FPEB hearings.

(3) MTF and installation commanders will provide Government DES counsel with adequate space for counseling and

access to online resources. At a minimum, this includes a private counseling space, computer, printer, telephone line, and Internet and e-mail connectivity.

b. Legal Representation

(1) The DON will be best served if it requires every Sailor and Marine going through the DES to consult Government DES counsel within five business days of being referred into the DES. When requested by PEBLOs, Government DES counsel will contact Service Members to provide legal counseling and obtain Service Member's election of DES options. PEBLOs will contact the designated OJAG hotline if Government DES counsel documentation and election of options are not received within three business days of referral.

(2) IPEB. Government DES Counsel will be available to consult, advise and represent Service Members in person by telephone, or otherwise regarding all DES issues, to include: referral into the DES; rights during the MEB phase; including the IMR; NARSUM rebuttals; Non-Medical Assessment; and the Personal Impact Statement; and before and after the member's receipt of an IPEB decision, as well as re-evaluation for TDRL cases. Regardless of consultation with Government DES Counsel, all paperwork will be submitted via the PEBLO.

(3) FPEB. Government DES counsel will be detailed to represent each Service Member upon their election to proceed to an FPEB hearing. Representation will last through the Service Member's discharge from active duty (separation or retirement) or return to duty, including submission of a PFR. All Service Members appearing before the FPEB shall have counsel detailed from the Washington Navy Yard FPEB counsel office, unless they have hired a civilian attorney at their own expense and excused their FPEB counsel as discussed below. IPEB counsel may only be detailed as co-counsel for a FPEB hearing if travel funding will be provided by OJAG or their presence will be via videoconferencing, if available in the PEB spaces.

(a) Non-government counsel. In lieu of Government DES counsel, a Service Member may elect for primary representation to be through private legal counsel or a representative from a veteran's organization. Any non-government representation will be at no expense to the



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

SECNAV M-1850.1
23 Sep 2019

government. If non-government counsel is elected, the Service Member may either release Government DES counsel from further representation in writing or retain Government DES counsel in addition to non-government counsel.

c. Access to Documentation. When a Service Member within the DES process requests assistance from Government DES counsel, the Service Member will provide Government DES counsel an executed release of information form that authorizes Government DES counsel to access all documentation pertaining to the member's disability case including: medical records, MEB NARSUM and Addendum(s), Non-Medical Assessment, VA Compensation and Pension examinations, ratings, diagnostic codes, LOD determinations, and any other information to be considered by the PEB. In addition to an executed release of information form, non-governmental attorneys or representatives shall also provide a notice of appearance in their client's case to the PEB. Counsel may submit, for insertion in the case file, additional evidence obtained outside the Service Member's case file to the PEB via the PEBLO. These items shall be documented and inserted into the Service Member's case file. PEBLOs will provide a member's service treatment record and DES case file to counsel upon the member's request. Counsel will also have full access to computerized databases and electronic medical records that relate to the Service Member's disabilities.

d. Legal Advice Regarding Hearings and Appeals. If a Service Member requests legal advice beyond the mandatory IDES/LDES counseling, Government DES counsel shall explain to the Service Member the general duties of legal counsel during the DES, including, but not limited to, assisting the Service Member with decisions about electing an IMR, rebutting the NARSUM and/or Addendum(s), submitting a Personal Impact Statement, rebutting the IPEB decision, submitting a VA Rating Reconsideration of unfitting condition(s), requesting an FPEB hearing, submitting a written appeal of the FPEB decision to DIRSECNAV CORB, and petitioning the Board for Correction of Naval Records (BCNR). A Service Member also will be advised that:

(1) If found unfit, he or she may demand an FPEB hearing. A Service Member may elect to appear before the FPEB

23 Sep 2019

in person, through a designated representative, by telephone, or via videoconference if feasible and technology is readily available.

(2) If found fit, he or she may request the PEB to exercise its discretion to grant an FPEB hearing. Upon recommendation of PPEB, the DIRSECNAVCORB may deny the FPEB hearing request based upon a review of the Service Member's PEB records and materials submitted in the FPEB request.

(3) Service Members must be provided a minimum of ten calendar-day advance written notice of their FPEB hearing. This ten day requirement may be waived by the Service Member in writing.

(4) Appeals of an FPEB decision will be submitted to DIRSECNAVCORB within ten calendar days of the Service Member receiving the FPEB findings from the PEBLO or via certified mail for TDRL members. The assigned Government DES counsel or non-governmental counsel may request additional time.

e. Legal Counsel in Advance. FPEB Counsel shall be detailed and their names forwarded to PEB as soon as reasonably practical. Detailed Government DES counsel will consult with the Service Member at least one day in advance of the scheduled FPEB hearing. Service Members traveling to an FPEB hearing must be afforded sufficient time to arrive (more than one day) in advance of their scheduled hearings to confer with Government DES counsel in person. Before commencement of the hearing, a Service Member may waive, in writing, the right to confer with Government DES counsel in person prior to the hearing.

f. Delay for Good Cause. A Service Member or representative may request a delay of a hearing for good cause (e.g., emergent surgery, upon death or severe illness of a family member, temporary illness with medical or Sick In Quarters note, or to secure documentation or witness testimony). Any requests for delay should be submitted to the PPEB in writing as soon as practicable. If a delay request is submitted less than seven days before the hearing, it must detail the emergent circumstances and explain why the request was not submitted in a timely manner. Documentary support for the continuance will be provided to the maximum extent possible. The PPEB will respond to requests for delay in writing.

23 Sep 2019

g. The Judge Advocate General (JAG) shall ensure qualifications and training of Government DES counsel. Government DES counsel shall receive training on, and be

familiar with, the following concepts prior to representing Service Members within the DES:

(1) Statutory and policy requirements of the issuances pertaining to the disability evaluation process, Veterans Affairs Schedule for Rating Disabilities (VASRD), and laws and regulations pertaining to combat-related special compensation.

(2) VA services and Federal benefits, including compensation tables based on ratings determinations in effect at the time a rating is adjudicated.

(3) Available resources for recovering Service Members and other Service Members in the DES.

(4) Online and other resources pertaining to the DES, DOD, and VA services.

(5) Inspector General hotlines, Ombudsman Programs, and DON programs for resolution of issues of concern to recovering Service Members.

h. Duties Of Legal Counsel. Government DES counsel shall:

(1) Confer with and advise members of legal and other substantive considerations in their cases.

(2) Present information and arguments in support of the member's case and interests to the PEB and/or the MTF.

(3) Identify desired witnesses and evidence to support the member's case.

(4) In the case of an FPEB, interview witnesses prior to the hearing and question them during the hearing.

(5) Advise the member regarding FPEB findings and election of options and recommend courses of action most favorable to the member consistent with the letter and intent of DES-related statutes, regulations, and directives.

23 Sep 2019

(6) Advise the member of the procedural requirements involved in submitting a request for Permanent Limited Duty if

the member has not already been denied this request by Service Headquarters.

(7) Advise the member regarding a PFR and prepare or assist in the preparation of a PFR at the member's request, if the member has had a Formal hearing.

(8) Prepare or assist in the preparation of an appeal of the PEB's combat-related or combat-zone determination at the request of the member.

(9) In the case of a Service Member determined incompetent as per this instruction, fully inform the court-appointed guardian of the legal and factual issues in the case and proceed following the wishes of the guardian. If no guardian has been appointed by a court for a Service Member determined to be incompetent, inform the member's spouse or Next-of-Kin of the necessity of obtaining a court-appointed guardian or conservator. Do not discuss the legal and factual issues in the case with the member's spouse or Next-of-Kin.

7. Resources

a. Best Practices. The PEB, OJAG Code 16, and BUMED should collect and distribute best practices related to customer support and communications, standardized training useful to DES management specialists, DON correspondence courses related to the DES or non-medical case management, and other methods designed to develop individual skills in this area.

b. Multi-Disciplinary Teams. All members of the professional health care team, including Medical Care and Case Managers, Non-medical Case Managers, Patient Administration Personnel, Wounded Warrior Program liaisons or advocates, and MSCs, share in the responsibility to maintain continuity of care for Service Members. Specialists who wish to submit Addendum(s) to the MEB Report shall review the MEB Report before submitting the Addendum(s), and the MEB Report shall be revised to reflect the potential combined effect of all conditions within the Service Member's medical record.

c. Subject Matter Experts and Command Authorities. The PEBLO should consult with key individuals to obtain information and assistance for Service Members in the DES. Information and assistance is available from:

(1) Impartial health care providers to help the Service Member interpret the MEB NARSUM and findings.

(2) Medical care or case managers to help remove unnecessary obstacles throughout the spectrum of care.

(3) The Service Member's chain of command, which provides a Non-Medical Assessment of duty performance and LOD determination, when necessary. Additionally, the Marine Corps Wounded Warrior and Navy Safe Harbor programs can provide non-medical support for family members, including travel, meal allowances, housing, and other matters.

(4) The RCC, when assigned, oversees the delivery of services and resources identified in the Comprehensive Recovery Plan of a seriously wounded, ill, or injured Service Member or veteran.

(5) Government DES counsel to help the Service Member understand their legal rights throughout the DES process.

d. Use of electronic signatures with digital certification. The PEB will accept and encourage the use of electronic signatures with digital certification for all submissions. Digital certification of an electronic signature shall be accomplished through public key infrastructure (PKI) certificates issued by DoD or a DoD-approved external PKI as authorized.

CHAPTER 2 - DES REFERRAL

1. Members Eligible for the DES

a. Service Members on active duty and RC who are on orders to active duty specifying a period of more than 30 days. RC members who are ordered to active duty for a period of more than 30 days and are subsequently released from active duty within 30 days of commencing the period of active duty for failure to meet physical standards for retention or medical or dental standards for deployment due to a pre-existing condition not aggravated during the period of active duty will be considered to have been serving under an order to active duty for a period of 30 days or less.

b. RC members who are not currently on orders to active duty specifying a period of more than 30 days but who incurred or aggravated a medical condition while the member was previously part of the Active Component (AC) or while ordered to active duty for more than 30 days. A LOD Benefits (LODB) Letter is required.

c. Midshipmen of the United States Naval Academy.

d. Service Members previously determined unfit, serving in a Permanent Limited Duty (PLD) status, and for which the period of continuation was in excess of one year.

e. Other Service Members on orders to active duty specifying a period of 30 days or less who were issued a LODB Letter certifying he or she had a medical condition that was incurred or aggravated in the line of duty while the Service Member was:

(1) Performing Active Duty or Inactive Duty Training (IDT).

(2) Traveling directly to or from the place at which such duty is performed.

(3) Remaining overnight immediately before the commencement of IDT or while remaining overnight between successive periods of IDT at or in the vicinity of the site of the IDT.

(4) Serving on Funeral Honors Duty pursuant to section 12503 of reference (a) while the Service Member was traveling to or from the place at which the member was to serve; or while the member remained overnight at or in the vicinity of that place immediately before serving.

f. Members of the RC with non-duty related determinations who are otherwise eligible will be referred solely for a fitness for duty determination when one of the following situations exist:

(1) The RC member does not qualify under a duty-related determination.

(2) The RC member requests referral for a fitness determination upon being notified that they do not meet medical retention standards.

(3) Service regulations direct the RC member be referred to the DES for a determination of fitness before being separated by the Reserve for not meeting medical retention standards.

g. Members who are non-deployable for 12 consecutive months, for any reason, will be processed for administrative separation or referred to the DES.

2. Members Ineligible for the DES. Service Members are ineligible for referral into the DES when:

a. The Service Member has a condition, circumstance, or defect of a congenital or developmental nature, not constituting a physical disability, that interferes with assignment to or performance of duty and that was not service aggravated.

b. The Service Member is pending an approved, unsuspended punitive discharge or dismissal unless the ASN(M&RA), subject to the limitations per reference (g), sections 0162 and 0162a, determines that referral to the DES is warranted as a matter of equity or good conscience, and either remits or suspends the punitive discharge or dismissal.

c. The Service Member is not physically present or accounted for.

d. Disability results from intentional misconduct or willful neglect or was incurred during a period of Unauthorized Absence (UA) or excess leave. See reference (g) for clarification on what constitutes intentional misconduct or willful neglect.

3. Referral Criteria

a. When the course of further recovery is relatively predictable or within one year of diagnosis, whichever is sooner, medical authorities will refer eligible Service Members into the DES who:

(1) Have one or more medical conditions that may, individually or collectively, prevent the Service Member from reasonably performing the duties of their office, grade, rank, or rating including those duties remaining on a Reserve obligation for more than 1 year after diagnosis.

(2) Have a medical condition that represents an obvious medical risk to the health of the member or to the health or safety of other members.

(3) Have a medical condition that imposes unreasonable requirements on the military to maintain or protect the Service Member.

b. In all cases, competent medical authorities will refer into the DES eligible Service Members who meet the criteria in paragraph 3a of this chapter within one year of diagnosis.

4. Enrollment in the LDES

a. If requested by a Service Member, on a case-by-case basis, a CO can authorize requests to process through LDES rather than the IDES. Prior to approving such requests, the Service Member must acknowledge, in writing, that he or she had the opportunity to consult with legal counsel regarding the practical and procedural differences between the LDES and the IDES. Service Members must elect to waive their right to proceed through IDES and obtain permission from the CO within ten calendar days after a medical care provider refers them into the Disability Evaluation System in order to proceed through LDES.

b. All Service Members who request or are directed into LDES shall be advised by their PEBLO and offered the opportunity to enroll in the VA Benefits Delivery at Discharge program and/or apply for other appropriate VA disability compensation programs. The PEB will report the number of LDES cases as required or requested by category, disposition, and timeliness.

c. PEBLOs will initially enroll all members into Veterans Tracking Application (VTA) for tracking purposes. If a request to waive IDES and enroll in LDES is approved, the Service Member will be disenrolled from VTA and tracked separately.

(1) PEBLOs will immediately refer the Service Member to the appropriate Government DES counsel and send the Service Members verified contact information to the appropriate DES Counsel office. The DES Counsel office will contact the Service Member to provide legal counseling and obtain the Service Member's election of DES options at the request of the PEBLO.

(2) PEBLOs may contact the designated OJAG hotline if Government DES counsel documentation and Election of Options are not received within three business days of referral.

d. Service Members requesting LDES will submit their requests in writing, signed by a Government DES counsel.

(1) Requests must be approved by the Service Member's CO and returned to the PEBLO within ten calendar days of making their Election of Options. It is the Service Member's responsibility to route and return this request within the timeline.

(2) Service Members will be automatically enrolled in IDES if an approved LDES enrollment request is not returned to the Service Member's PEBLO within the specified ten calendar day period. PEBLOs must accommodate any reasonable written extension request to this ten calendar day period.

(3) Enrollment in LDES is completed when the Service Member is disenrolled from IDES.

(4) If a Service Member does not request LDES, then enrollment in IDES is completed by the PEBLO completing the

appropriate VA form and referring the Service Member to the VA MSC.

5. Service Members with Medical Waivers

a. Provided no permanent aggravation has occurred, Service Members who enter the military with a medical waiver may be separated without disability evaluation when, within six months of the member's entry into active service Chief, Bureau of Medicine and Surgery (CHBUMED) determines the waived condition represents a risk to the member or prejudices the best interests of the Government.

b. Once six months have elapsed, the ASN (M&RA) will refer the Service Member for disability evaluation when the Service Member meets the criteria in paragraph 3 of this chapter and is eligible for referral as per paragraph 1 of this chapter.

c. Members who entered the naval service with a medical waiver for a pre-existing condition and who are subsequently determined unfit for the condition will not be entitled to disability separation or retired pay unless the military service permanently aggravated the condition or if they have served a total of eight years of active service prior to the date of separation for the condition. Members granted medical waivers will be advised of this at the time of waiver application and when the waiver is granted.

6. Waiver of PEB Evaluation

a. Except as prohibited by paragraph 7 of this chapter, Service Members may waive referral to the PEB with the approval of the President, PEB when:

(1) The physical disability evaluation requires extension past the date of the member's service agreement, end of active obligated service, or approved retirement date;

(2) The member does not consent to retention; and

(3) The member has no remaining Reserve service obligation.

b. RC members on Active Duty for more than 30 days may continue disability evaluation upon release from active duty provided they maintain a Ready Reserve status. However, they must sign a waiver declining retention on active duty.

c. Members in a PLD status may not waive referral to the PEB until such time as the PLD period is completed or terminated if the PLD period was in excess of 12 months.

d. A member requesting a waiver must be counseled by Government DES counsel and their PEBLO on the DES process, the right to a PEB, and the potential benefits of remaining in an active duty or active Reserve status to complete evaluation by the DES.

e. To request a waiver of referral to the PEB, a Service Member must submit a written request signed by the member, Government DES counsel, and their PEBLO attesting that the member received the required counseling described in the paragraph above, with command endorsement. The member's command must endorse the facts stated in the request but will not make a recommendation. A waiver is not granted until approved by the President, PEB.

7. Prohibition from Waiving Disability Evaluation. A Service Member approved for voluntary early separation from active duty who incurs a Reserve obligation and who has conditions that are cause for referral into the DES cannot waive disability evaluation.

8. Suspension, Rejection, and Termination of Referrals to the PEB

a. The President, PEB shall suspend, reject, or terminate any case that lacks information necessary to determine fitness, mental competence, eligibility for Disability Benefits, or an appropriate disability rating. If the President, PEB rejects or terminates a case, the MEB referral and all supporting documents will be returned to the originating MTF. Specific deficiencies shall be identified to enable the submitting MTF to provide the required information.

b. Receipt of Information after PEB Issuance of a Notification of Decision for a Previously Adjudicated Case.

Timeliness of submission of new medical information is critical to ensure PEB determinations are based on up-to-date, complete, and accurate information. A Service Member's PEB case is final when a Notification of Decision has been signed and issued to Deputy Commandant of the Marine Corps, Manpower and Reserve Affairs (DC, M&RA) or CHNAVPERS. Accordingly, the President, PEB will generally reject submission of information after the Notification of Decision has been signed and instead require re-referral of the case.

(1) The President, PEB may reject a case if new medical information is submitted in the form of a new MEB report, or addendum to a MEB report, and is dated within six months after the PEB's Notification of Decision for a Service Member, if a PEB medical officer who was not involved in the previous Informal PEB or Formal PEB decisions reviews the case and advises:

(a) The condition reported does not alter the Service Member's previous findings.

(b) The condition reported is not a significant deterioration of the previously reported condition.

(c) The Service Member's treatment has not significantly changed.

(d) The Service Member has required no significant outpatient treatment other than that required for maintenance.

(2) If a Service Member is hospitalized but has not had any surgical procedures performed within six months of the PEB's Notification of Decision, the MEB Convening Authority, with the advice of the Patient Administration office, should assess whether the outcome of the Service Member's hospitalization would alter the previous PEB's findings and warrant re-referral into the DES. This determination is particularly important when there are no additional diagnoses to the conditions the PEB reviewed and adjudicated previously, or a chronic condition is involved and no objective medical evidence indicates that a significant change in the nature and degree of severity of the condition has occurred.

c. Service Members within 120 Days of Retirement. MEB reports submitted for Service Members with mandatory or voluntary retirement dates should be received by the PEB 120 days prior to the retirement date originally approved by DC, M&RA or CHNAVPERS. Unless directed by ASN(M&RA), CHNAVPERS, or DC, M&RA MEB reports received within the 120 day window will be advanced on the docket and given priority Informal PEB review. DC, M&RA or CHNAVPERS will be notified of cases received within the 120-day window. Acceptance of cases within this window does not guarantee that a Service Member will be able to rebut the presumption of fitness.

d. Termination. When the PEB terminates a case for the reasons cited in this chapter, it will return the MEB report and all supporting documents to the originating MTF for corrective action and resubmission, if warranted. In the case of RC members with a LODB letter, the case should be returned to the issuing authority for the LODB letter. President, PEB will provide a letter of decision explaining the reason(s) why the case was terminated, and the PEBLO shall provide the Service Member with a copy of this document.

(1) Resubmission of a Terminated Case. Once a case has been terminated or rejected, resubmission, if necessary, is not allowed until all actions requested by the PEB are complete and information requested by the PEB is submitted. The PEB will process terminated cases resubmitted to the PEB as a new case. All parts of a MEB report, except for the VA Compensation and Pension exams and any neuropsychological examinations, must be less than six months old when received by the PEB, and all interim Armed Forces Health Longitudinal Technology Application entries and other medical documentation not previously submitted must be included in the resubmission. A case not meeting these criteria may be rejected.

e. Suspension. When the PEB suspends a case for the reasons cited in paragraph 8a of this chapter, the case will be held in abeyance pending receipt of required documentation or information. Upon receipt of required information, the case will be inserted back into the process at the point at which the evaluation stopped. Cases that exceed the 60-day suspension period described below will be terminated and returned to the originating MTF. President, PEB will provide a letter of decision explaining the reason(s) why the case was suspended,

and the PEBLO shall provide the Service Member with a copy of this document. No case will be suspended for longer than 60 days.

9. Courts-Martial, Administrative Separation Proceedings, and Controverted Cases

a. Service Members facing courts-martial:

(1) Do not submit a case to the PEB for a member who is currently being investigated or processed for misconduct that could result in a punitive discharge or dismissal as the result of court-martial. If a case has already been submitted to the PEB and charges are subsequently preferred for misconduct that could result in a punitive discharge or dismissal as the result of court-martial, the PEB case will terminate the DES case. Once all misconduct proceedings are complete, referral may be appropriate, depending on the outcome of disciplinary proceedings.

(2) Notwithstanding paragraph 9.a(1) above, disability evaluation in an individual case may proceed if directed by the DIRSECNAV CORB or ASN (M&RA). In such a case, ultimate disposition shall be decided by the ASN (M&RA).

b. Cases referred for the following Service Members will be rejected:

(1) Cases in which a Service Member is pending an approved, unsuspended punitive discharge or dismissal.

(2) Cases in which stated events within the record are controverted. For example, injury claimed from deployment to a war zone when the member never served in a war zone. These cases will be rejected and returned for clarification. The case may be re-submitted as appropriate when the ambiguity is resolved.

c. Members being processed for any type of involuntary administrative separation and who are referred into the DES may continue to be processed for determination of fitness for continued naval service.

(1) If the local Separation Authority (SA) believes the member should not enter the DES because they are being involuntarily administratively processed under provisions that authorize a characterization of service of other than honorable conditions, the DES case must be referred to the first General Officer/Flag Officer (GO/FO) in the chain of command for a final determination of referral into the DES or disapproval. Once referred into the DES, these members will continue to be processed in the DES unless the GO/FO noted above disapproves such continuation.

(2) The SA for enlisted dual processing cases shall be the first GO/FO in the Service Member's chain of command unless a higher authority is required. The SA for officers is governed by reference (h). The SA may direct separation prior to completion of the DES process if the SA determines and documents, in writing, that the member should be separated for the misconduct despite the ratable medical condition.

(3) Refer to reference (i) or (j) for the appropriate SA for all Involuntary Administrative Separations of Service Members diagnosed with Post-Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI), and for any Service Members with 18 or more years of total Active-Duty military service.

(4) For PTSD, TBI, or other mental health conditions, an appropriately privileged military health care provider will be consulted for a medical opinion as to whether the ratable medical condition that caused the referral into the DES contributed to a basis for which the member is being separated.

10. Elective Surgery or Treatment after Referral

a. A Service Member who elects to have surgery after referral into the DES shall be counseled that such surgery may result in the suspension or termination of the DES process as determined by the PEB. If recovery from the surgery is likely to take longer than 60 days, then the Service Member's case may be terminated.

b. Elective surgery includes surgery that is not essential, especially surgery to correct a condition that is not life-threatening or required for survival.

c. Service Members who undergo elective surgery or treatment at a medical facility other than an MTF at their own expense will not be eligible for compensation under the provisions of this instruction for any adverse residual effect resulting from the elective treatment, unless it can be shown that such election was reasonable or resulted from a significant impairment of judgment that is the product of a ratable medical condition.

d. Prior to any elective surgery or treatment performed at an MTF, the Service Member shall receive written counseling by the PEBLO or other designated individual that having an elective surgery may suspend or terminate the Service Member's DES case. If the PEBLO or other designated individual is aware that the Service Member will have an elective surgery at a location other than an MTF, the counseling will include the subsequent risk of ineligibility for disability compensation for any adverse residuals incurred secondary to the elective treatment.

e. In cases where the DES case is resubmitted, the referral will include all medical records from non-MTF providers and all documentation related to the elective surgery.

CHAPTER 3 - MEDICAL EVALUATION BOARD

A MEB can be convened for a variety of purposes. This chapter addresses MEB composition and rules specific to the DES.

1. Convening. A MEB can be convened only by an approved Convening Authority. The CHBUMED shall determine which medical entities (hospitals, clinics, and others) will have Convening Authorities.

2. Composition. CHBUMED shall determine eligibility for membership on a medical board. For the purposes of DES, at a minimum, a MEB will consist of three members with the requirement that at least two members are physicians. One of these physicians must have detailed knowledge of the standards pertaining to medical fitness retention standards, the disposition of patients, and disability separation processing. If the board is to consider a diagnosis of a mental or behavioral health condition, then one of the members must be a credentialed psychiatrist or doctorate-level psychologist. In commands or units with few or no psychiatrists or doctorate-level psychologists, CHBUMED may waive the psychiatrist or psychologist board member requirement; however, a thorough behavioral health evaluation signed by at least one psychiatrist or doctorate-level psychologist (for example, a Network psychiatrist or doctorate-level psychologist) must accompany the MEB report. For MEB deliberations considering more than mental health conditions, the MEB must contain at least one physician, which may be a psychiatrist. Composition of MEB's formed for purposes other than the DES (such as assignment to Temporary Limited Duty or Physical Fitness Assessment failures) shall be left to the discretion of CHBUMED.

3. Decisions. The decisions of the board are to be documented in the medical record and communicated in writing to the appropriate entity.

4. MEB as a Part of the DES
 - a. Purpose. The purpose of the MEB in the DES is to ensure proper standards for referring cases to the PEB are met. This includes ensuring appropriate standards exist so that the evaluation, diagnosis, and documentation for referrals are sufficient to allow the PEB to adjudicate the case. A MEB is

an administrative board by which the Convening Authority or higher authority obtains an informed clinical opinion regarding the ratable medical condition(s) of a Service Member and how the condition(s), whether individually or collectively, impact the Service Member's ability to reasonably perform the duties of their office, grade, rank, or rating. The mere presence of a diagnosis is not synonymous with disability. It must be established that the medical disease(s) or condition(s) underlying the diagnosis individually or collectively prevent(s) the Service Member from reasonably performing the duties of their office, grade, rank, or rating.

b. Referral to PEB. The MEB documents whether a Service Member has medical conditions, whether singularly, collectively, or through combined effect that will prevent them from reasonably performing the duties of their office, grade, rank, or rating. If the Service Member cannot perform the duties of their office, grade, rank, or rating, the MEB shall refer the case to the PEB.

c. Minimum MEBR Elements. The MEBR will consist of the following:

(1) A NARSUM and appropriate addendums as defined below. For specific information that must be provided for each referred condition, refer to paragraph 4.d of this chapter.

(2) A Non-Medical Assessment (NMA) as defined in paragraph 4(g)(2) below.

(3) The full service treatment record, supplemented by any member-submitted records of civilian treatment, current as to the time of submission to the PEB.

(4) Referral package coversheets, rebuttals, surrebuttals, personal impact statements, and Impartial Medical Reviews (IMRs).

(5) VA Compensation and Pension (C&P) Examinations and/or the equivalent of the same are required only for IDES cases.

d. The Narrative Summary

(1) Medical information used in the DES must be sufficiently recent to substantiate the existence and severity of potentially unfitting conditions. At a minimum, the NARSUM must include the diagnosis(es), symptoms experienced by the member, and appropriate clarifying diagnostic and testing procedures. In the NARSUM, the MEB will confirm the medical diagnosis for and document the full clinical information, including history, treatment status, and potential for recovery of the Service Member's medical conditions that, individually or collectively or through combined effect, will prevent the Service Member from reasonably performing the duties of their office, grade, rank, or rating, and state whether each condition is cause for referral to the PEB.

(2) Ideally, the NARSUM is written by the specialist provider treating the member. Every potentially unfitting condition must be addressed in the NARSUM. For conditions outside the referring provider's expertise, addendums are written by other treating specialists. The addition of an addendum may either endorse a condition as potentially disabling or state a medical opinion that the condition is not disabling. Addendums assist the PEB in understanding the MEB perspective regarding the medical diagnoses present in the service treatment record. To further aid in understanding all diagnoses, non-MD (or non-PhD psychologist) specialists may not write addendums, but they may submit notes to the PEB in the form of letters or Armed Forces Health Longitudinal Technology Application records.

(3) The NARSUM shall address the impact on associated operational assignment limitations and whether the medical conditions are likely to improve sufficiently for the Service Member to reasonably perform the duties of their office, grade, rank, or rating within 12 months.

(4) The NARSUM shall address how the severity of the Service Member's medical condition is likely to change within the next three years.

(5) The NARSUM shall address any requirement to monitor or provide treatment for the Service Member's chronic conditions beyond the next 12 months, and what geographic or logistical

constraints such monitoring may place upon the Service Member's assignments.

e. IMRs

(1) Upon request of the Service Member, the Convening Authority will assign an impartial physician or other appropriate health care professional who is independent of the MEB and who did not submit an addendum to the MEB's NARSUM. The physician or health care professional will serve as an independent source of review of the MEB findings and recommendations. Responsibilities include advising and counseling the Service Member regarding the findings and recommendations of the MEB and advising the Service Member on whether the MEB findings adequately reflect the complete spectrum of the Service Member's referred injuries and illnesses.

(2) If the request for an IMR includes mental health conditions, then a mental health care professional must conduct the IMR for those conditions. If the Service Member requests an IMR of both mental health and physical conditions, then separate IMRs will be conducted for both categories of conditions unless an impartial psychiatrist is available to complete the combined IMR.

(3) After the physician or health care professional has counseled the Service Member and the member has received the IMR's report, the member shall have an opportunity to consult with legal counsel during the election period to either concur or submit a written rebuttal to the MEB Report and/or Addendum.

f. Competency. When the Service Member's ability to handle their financial affairs is unclear, the MEB or TDRL packet will include the results of a competency board as appropriate. When a Service Member has been determined incompetent by a competency board, their designated representative (e.g., court-appointed guardian, trustee, or primary Next Of Kin) will be counseled and afforded the opportunity to assert the rights granted to the Service Member, unless prohibited by law. A competency board request can be made to the MTF by any party familiar with a Service Member's case. Government DES Counsel are prohibited from advising a third party regarding the Service Member's case

unless the third party has been appointed by court as the guardian of the Service Member.

g. Non-Medical Documentation. The member's parent command will transmit, via the MTF, the following non-medical documentation:

(1) LOD Determination. When a determination is required, the MEB will consider the findings made for those issues mutually applicable to the LOD and DES referral determinations. These issues include whether a condition is pre-existing and whether it is aggravated by military service as well as any issues of misconduct or negligence.

(2) NMA. An NMA is the Commanding Officer's assessment of the member's ability to reasonably performance their duties. NMAs will be forwarded with the MEB report in all cases. This document is crucial in summarizing the Service Member's limitations from the perspective of the Commanding Officer. Given the Disability Evaluation System's emphasis on performance, the NMA's ability to highlight the Sailor or Marine's ability/inability to reasonably perform duties as required of their office, grade, rank, or rating is critical in portraying a Service Member's limitations. NMAs are due to the member's PEBLO within five business days from the date of request.

5. Overseas IDES. The VA does not have facilities located overseas to allow for full processing of IDES cases overseas. To best ensure Service Members receive the same level of care and guidance when referred to IDES while overseas, Service Headquarters has two executable options, outlined below. Regardless of which option is used, an MTF is obligated to obtain the NMA from the previous parent command.

a. Temporary Duty (TDY) Funded by Parent Command. The parent command will complete the NMA and the responsible MTF will complete IDES referral paperwork and the NARSUM. Any additional information such as legal documents will also be compiled by the responsible MTF. If specialty providers are not available for addendums at the treating MTF, they will be completed by the identified CONUS MTF while TDY. Next, the parent command will work with the appropriate Service Headquarters to execute TDY orders to a CONUS MTF with required capabilities to care for the Service Member while they complete

C&P exams at the nearest VA facility. Once a CONUS MTF is identified, the overseas PEBLO will coordinate with the CONUS PEBLO for proper transfer of care. The CONUS PEBLO will start coordinating with the VA facility to schedule all C&P exams. Once all C&P exams are complete, the Service Member will return to their parent command for continued care while the process continues. The CONUS PEBLO will be required to complete proper transfer of care of the Service Member back to the overseas PEBLO. Both the CONUS and overseas PEBLOs will require access to the system of record/s for proper documentation and care coordination. The provider initiating the IDES referral or the Convening Authority shall coordinate the transfer of care with the receiving CONUS MTF Convening Authority.

b. Permanent Change of Station (PCS) Funded by Service Headquarters. The Parent command will complete the NMA, and the responsible MTF will complete the IDES referral paperwork and the NARSUM. Any additional information such as addendums or legal documents will also be compiled by the responsible MTF. If specialty providers are not available for addendums at the treating MTF, they will be completed by the identified CONUS MTF. The overseas MTF will coordinate with the parent command and the appropriate Service Headquarters to execute PCS orders to a CONUS MTF with the required capabilities for continued seamless care to the Service Member. The PEBLO will initiate the IDES case in the system of record and coordinate the transfer of care with the receiving CONUS MTF. The provider initiating the IDES referral or the Convening Authority shall coordinate the transfer of care with the receiving CONUS MTF Convening Authority. The Service Member will transfer to the new location, report to the MTF, and meet with the assigned PEBLO for continuity of care and IDES processing.

6. LOD/M Determinations. With the exception of chronic and hereditary diseases, diseases or injuries incurred by naval personnel while in active service are presumed to have been incurred in the line of duty unless clear and convincing evidence indicates otherwise.

a. LOD Determination. LOD determinations required by reference (k) will be made by the General Court Martial Convening Authority (GCMCA) in the Service Member's chain-of-command as per reference (g). In addition to the circumstances constituting not in the line of duty listed as per reference

(g), an injury is not considered incurred in the LOD if it was incurred during a period of UA regardless of the length of UA or while on Appellate Leave.

b. **Applicability of Misconduct Determination.** One of the necessary determinations for a LOD determination is whether the injury was due to the Service Member's own misconduct. Per reference (g) discusses what constitutes misconduct. If a Service Member was found to have incurred an injury due to misconduct, the following principles apply:

(1) An injury that was incurred as the result of misconduct may later become service aggravated.

(2) A misconduct determination disqualifies a member from Disability Benefits only for the particular disability to which it applies.

c. **Medical and Dental Record Entries.** If an investigation is completed as per reference (g), then the investigation Convening Authority shall ensure that the investigation with the GCMCA's endorsement is included in the Service Member's medical or dental record. If an investigation is not required, but an LOD determination is required, the command shall ensure the determination is entered in the member's medical or dental records.

d. **LOD Determination Finality.** The PEB will normally defer to the GCMCA's LOD determination. However, if the President, PPEB finds the LOD determination to be contrary to either evidence contained in the command investigation or additional evidence obtained during the DES process, or the GCMCA's LOD determination was based on a deficient LOD investigation, then the PPEB may recommend that the DIRSECNAV CORB overturn the GCMCA's LOD determination. A decision to overturn a GCMCA's LOD determination and the reason(s) for the decision will be in writing and placed in the PEB file. The Service Member's case shall be finalized in accordance with the DIRSECNAV CORB's decision, and the PEB shall notify the Service Member of the decision.

e. Obtaining LOD reports. Before referring a case for PEB review, the MEB Convening Authority shall review case records to ensure they contain required LOD/M determinations from the responsible command.

(1) If the Service Member's command cannot produce the LOD determination or investigation, and the MEB evaluation began more than two years since the date of the injury at issue, the MEB shall presume the injury was incurred in the line of duty, unless clear and convincing evidence indicates otherwise.

(2) If the MEB evaluation began less than two years since the date of the injury at issue, then the PEBLO shall contact the Service Member's command to complete an LOD investigation if necessary and to enter an LOD determination in the Service Member's medical or dental records.

(3) If the command is unable to make a LOD determination, then a letter from the GCMCA detailing the reason the LOD determination cannot be made shall be accepted. At the PEB level, the PPEB may determine a command LOD/M determination is not necessary based upon the facts in the medical record. If so, the PEB shall process the case presuming an LOD/M determination favorable to the member. If more information is necessary, the case will be returned to the MEB to be processed in accordance with this paragraph.

CHAPTER 4 - PHYSICAL EVALUATION BOARD

1. General Procedures

a. Purpose. The PEB determines the fitness of Service Members with medical conditions to perform their military duties and, for members determined unfit because of duty-related conditions, their eligibility for benefits pursuant to reference (a). The PEB phase includes the IPEB, FPEB, and appellate review of FPEB results. The DON is required to collaborate with the VA to ensure continuity of care, timely processing, and seamless transition of the Service Member from the DoD to the DVA in cases of disability, separation, or retirement. The IDES further requires the standards for all determinations related to disability evaluation to be consistently and equitably applied.

(1) IDES and LDES disability examinations will include a general medical examination and any other applicable medical examinations performed for Veterans Affairs compensation and pension standards. Collectively, the IDES and LDES examinations will be sufficient to assess the Service Member's referred and claimed condition(s), assist the VA in ratings determinations, and assist the Department of the Navy to determine if the medical conditions, individually or collectively, prevent the Service Member from reasonably performing the duties of their office, grade, rank, or rating. The PEB uses the information contained in the MEBR to determine a Service Member's fitness for continued military service and Disability Benefits. It is imperative that treating medical providers use the NARSUM to convey information to the PEB.

(2) In making a determination of the rating disability of a member, the SECNAV shall take into account all medical conditions (referred or claimed), whether individually or collectively, that render the member unfit to reasonably perform the duties of the member's office, grade, rank, or rating. As stated, the PEB must state, in its official findings, that combined effect was considered in the fitness determination (and whether it was applied in the final adjudication) of cases where two or more medical conditions are present in the service treatment record. Combined effect includes the pairing of a singularly unfitting condition with a condition that standing alone would not be unfitting.

b. IPEB. The IPEB reviews the case file and makes initial findings without the Service Member present. For IDES cases, within 15 days of receiving disability ratings from the VA Disability Rating Activity Site (DRAS), apply the disability ratings using the diagnostic code(s) provided by the DRAS to the Service Member's unfitting conditions and publish the disposition recommendation. The initial findings commentary must provide the reasons why the Service Member was found fit or unfit, citing substantiating evidence from the record to support the findings, to include placement on the TDRL and combat-related determinations. If, subsequent to PEB referral but prior to issuance of initial findings, there is new or additional information that may alter the severity of a condition before the board, the PEBLO will forward this information to the IPEB for consideration. If the case has not yet begun to be adjudicated, the information will be added to the case file. If the board has begun adjudication of the case, but before completion of the voting, the information will be added to the case file.

(1) Election of Options. The Service Member has 15 calendar days from receipt of the informal findings to accept the IPEB findings or indicate their desire for an FPEB hearing by submitting personally or through represented counsel the Election of Options form to their PEBLO. If the fifteenth day falls on a non-business day, the Election of Options form is due on the first business day after the fifteenth calendar day. If a Service Member has a detailed DES attorney, the Service Member is encouraged to consult with the attorney before signing. All forms and communications must be submitted via the PEBLO.

(2) Presumed Acceptance. If the PEBLO does not receive a response form from the Service Member or represented counsel by the 15-day deadline, then the PEB may presume acceptance of the IPEB findings and finalize the case. In the case of personnel on the TDRL only, acceptance also is presumed 15 calendar days after attempted unsuccessful delivery of certified mail to the last known address of the member.

(3) Directed IPEB Reconsideration. The PPEB may direct an IPEB of new members to completely reconsider (with recorded votes) any case.

c. FPEB. Service Members who are found unfit and all TDRL members are entitled to an FPEB hearing to contest the IPEB findings. Service Members found fit at IPEB may request an FPEB hearing, which will be granted by the PPEB or denied by DIRSECNAVCORB.

(1) If the Service Member chooses to accept the IPEB findings at any point after requesting or demanding an FPEB hearing, the Service Member shall sign an Election of Options form noting declination of an FPEB hearing. If the PEB changes those findings or determinations in accordance with this chapter following a Service Member's concurrence, the Service Member will be entitled to an FPEB hearing to contest the changes.

(2) When necessary, the PPEB or the DIRSECNAVCORB may direct a formal hearing in any case, without regard to a member's election concerning IPEB findings, to obtain additional information/evidence or to consider information/evidence not available to the IPEB. In cases where the member has accepted the IPEB findings, the PEB will notify the member, in writing, of the PPEB's or the Director's decision. The member will be provided written notice as to the date of the directed hearing, which may not occur earlier than 15 calendar days after the member's receipt of the directed formal hearing notification, unless the member consents, in writing, to a formal hearing scheduled prior to the expiration of the 15-day waiting period.

(3) The Service Member has 15 calendar days from acknowledgment of receipt of the formal findings and rationale to accept the FPEB findings or submit a PFR. If the fifteenth day falls on a non-business day, the Election of Options form along with new and material evidence, if appropriate, is due on the first business day after the fifteenth calendar day. If the PEB does not receive an Election of Options form (along with new and material evidence, if appropriate), from the Service Member by the 15-day deadline, then the PEB can presume acceptance of the FPEB findings and finalize the case.

(4) The Service Member has a right to a one-time DVA rating reconsideration of only the referred condition(s) that the PEB has determined to be unfitting. The PEB will initiate a DVA reconsideration upon the member's request and acceptance of the findings.

d. Board Composition

(1) The IPEB will normally be comprised of two Navy or Marine Corps Line Officers and one Navy Medical Officer O-4 or above. The Line Officers will be field grade or, for enlisted cases, may be a non-commissioned officer(s) at the E-9 level. At least two members of the board will be uniformed Service Members for all cases; a civilian equivalent to the officer member is authorized for three-member IPEBs. As needed to expedite case processing, PPEB is authorized to convene two-member IPEBs (one Line Officer and one Medical Officer). Two-member IPEBs will adhere to all requirements, specifically including the assignment of a third board member in cases with split opinions. At least one member of the board will be a uniformed Service Member for all cases.

(2) The FPEB will consist of a presiding officer, a medical officer, and a line officer. At least two members of the board will be uniformed Service Members for all cases. Either the Line Officer or Medical Officer may be replaced by a civilian equivalent. The presiding officer should be O-6 or civilian equivalent and an officer of the same service as that of the Service Member, if feasible. The Line Officer will be field grade or civilian equivalent or, for enlisted cases, may be a non-commissioned officer at the E-9 level. A majority of the FPEB members must not have participated at the IPEB adjudication.

(3) The medical officer cannot be the Service Member's physician, cannot have served on the Service Member's MEB, and cannot have participated in a TDRL re-examination of the Service Member.

(4) In the case of RC Service Members, the PPEB will ensure that each PEB includes at least one Reserve member as per section 12643 of reference (a). If feasible, the Reserve member on the PEB should be from the same service as the member who is subject to DES processing.

e. Conflicts of Interest. If an IPEB or FPEB member cannot render an impartial decision due to personal bias regarding a Service Member's case, or if an actual or apparent conflict is identified by the PPEB, that member shall recuse him or herself from the case. If the PEB member is in doubt as to whether a

conflict exists, or appears to exist, the PEB member must seek an advisory opinion from PEB's Legal Advisor.

(1) The PEB shall not process PEB command members for disability evaluation. If a PEB command member is referred into the DES, the member shall be transferred to another position within SECNAVCORB, to another similar billet at a different command, or to a non-similar billet if it does not negatively impact the Service Member.

f. Right to a Hearing

(1) Service Members found unfit, and all TDRL members may demand and are entitled to an FPEB hearing.

(2) If a Service Member not on the TDRL is found fit, then he or she may request the PEB to exercise its discretion to grant an FPEB hearing. The PPEB may either grant the request or forward a recommendation to deny the request to DIRSECNAVCORB, who may grant or deny the request following a review of the Service Member's PEB records and materials submitted in the FPEB request.

g. Resourcing. CHNAVPERS and DC, M&RA will direct the allocation of additional personnel to the PEB if required for proper and expeditious adjudication of cases. Office of the OJAG will direct the assignment of additional counsel to the DES if required for adequate representation of Service Members.

h. Issues Addressed at FPEB Hearing. At an FPEB hearing, Service Members are entitled to address issues pertaining to: fitness, the percentage of disability for members going through the LDES or TDRL re-evaluation, degree or stability of disability, administrative determinations such as combat-relatedness and combat zone, a determination that a disability was non-duty related, and any alleged violations of applicable law and regulations by the IPEB.

i. Hearing Rights. Service Members will have, at a minimum, the following rights before the FPEB:

(1) To have their cases considered by board members selected as per this instruction, a majority of whom were not voting members of their IPEB review.

(2) To challenge for cause and subsequently examine any board member considering the case. The challenged board member shall withdraw when the hearing is closed to vote upon the challenge. The remaining board members shall adjudicate the challenge using a preponderance of the evidence standard following consultation with legal counsel assigned to the PEB. One vote in favor of the challenge by a remaining board member will sustain the challenge. The challenged member shall be removed from the board and replaced with an alternate board member.

(3) To appear personally. If personal appearance is waived, members may appear through a designated representative, telephonically, or by videoconference, if resources are reasonably available.

(4) To have travel and other expenses related to the Service Member attending an FPEB hearing provided as per reference (1). AC Service Members, RC Service Members on Active Duty Orders for a period of more than 30 days, RC Service Members with a LODB Letter, and members on the TDRL are eligible for Government- Funded Travel and payment for incidentals.

(a) Requests for an escort/attendant with supporting justification from a physician, psychologist, or licensed clinical social worker shall be submitted through the PEBLO to the PPEB for final approval. An accompanying escort/attendant is entitled to travel and transportation allowances as authorized by reference (1). An escort/attendant may be a member of the Uniformed Services, a civilian employee of the U.S. government, or any other person considered suitable by the member and the PEB. Escorts/ attendants shall only travel with the Service Member from the Service Member's point of origin to the PEB and back again.

(b) For members on the TDRL, all travel matters, including requests for escorts/attendants, will be routed through the appropriate Service Headquarters.

(c) RC Service Members without an LODB letter who were found Not Physically Qualified (NPQ) are responsible for their travel and other expenses unless their findings are changed to in the LOD.

(5) To be represented by Government DES counsel provided by OJAG. Service Members may choose their own civilian counsel at no expense to the government. The PPEB shall notify the JAG and the ASN (M&RA) if the lack of Government DES counsel affects timely PEB caseload adjudication. Legal counsel will contact the Service Member at least two weeks prior to the scheduled FPEB hearing.

(6) To make a sworn or an unsworn statement. Service Members who make sworn statements may be questioned regarding the statements. Service Members who make unsworn statements are not subject to questioning by the board. An unsworn statement is an authorized means for a member to bring information to the attention of the PEB and must be given appropriate consideration. The Service Member cannot be cross-examined by the PEB upon an unsworn statement, but the PEB may consider evidence to rebut statements of fact contained in it. The weight and significance to be attached to an unsworn statement rests within the sound discretion of the board, who may consider that the statement is not under oath, its inherent probability or improbability, whether it is supported or contradicted by evidence in the case, and any other matter that may have a bearing upon its credibility. If the Service Member testifies or makes a statement as to information surrounding a Restricted Report of sexual assault to assist the PEB in a fitness for duty or disability determination, the disclosure to the PEB does not cause a Restricted Report to be considered Unrestricted, and all Restricted Reporting information remains confidential and protected.

(7) To remain silent. Service Members will not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury. Service Members may exercise the right to remain silent at any time during the formal hearing. If members choose to exercise the right to remain silent, members may not selectively respond but must remain silent throughout the hearing. If Service Members choose to remain silent, counsel may still represent members at the hearing and speak on their behalf.

(8) To introduce witnesses, depositions, documents, sworn or unsworn statements, declarations, or other evidence and to question all witnesses who testify at the hearing. PPEB determines whether witnesses are essential. If the PPEB

determines a witness is essential, travel expenses and per diem will be reimbursed or paid as per reference (1). Witnesses who the PPEB does not deem essential may attend FPEB hearings at no expense to the government or testify telephonically or via videoconference, if reasonably available.

(9) Objections. Objections may be made to any action (other than a challenge) taken or proposed to be taken by the FPEB, as well as to the admission of testimony. The PEB Legal Advisor assigned to the FPEB shall be available for consultation by the FPEB. The Presiding Officer rules upon objections and must note in the record the ruling on any objections made. If any other board member dissents from the Presiding Officer's ruling, the entire board rules upon the objection in closed session. The ruling is the decision of the majority of the board and is announced on the reopening of the hearing. If the board overrules the objection of the Service Member, it must explain its rationale when announcing its ruling.

(10) To access all records and information regarding Service Members received by the PEB before, during, and after FPEBs. This includes all records and information relating to the Service Member's case. Reference materials not easily attainable, which are relied upon by the PEB, will be appended to the case file.

j. Record of Proceedings. The PPEB will provide the Service Member with a record of the IPEB and/or FPEB proceedings. The record of proceedings will state the PEB findings and conclusions in an orderly and itemized fashion, with specific attention to each issue presented by the Service Member regarding their case, and the basis for applying total or extra-schedular ratings, or unemployability determinations, as applicable. If available, the PEB will provide the Service Member with an audio copy of the proceedings. Inability to provide an audio tape due to equipment failure or operator error neither provides the sole basis for a PFR nor entitles the Service Member to another FPEB hearing.

(1) Duty-Related Determinations. The record of proceedings for active duty Service Members and RC members referred for duty-related determinations will document, at a minimum:

(a) The determination of fit or unfit.

(b) The code and percentage rating assigned an unfitting and compensable disability based on the VASRD.

(c) The reason an unfitting condition is not compensable.

1. The specific accepted medical principle, as stated in reference (b), for overcoming the presumption of service aggravation for all cases with a finding of preexisting condition without service aggravation.

2. The accepted medical principle justifying findings that a RC member performing IDT, active duty training, or on active duty of 30 days or less, has a preexisting disability that was not permanently aggravated by service.

3. The rationale justifying findings that a disability that was incurred in the LOD prior to September 24, 1996, and that was not permanently service aggravated since September 23, 1996, was not the proximate result of military service.

(d) For Service Members being placed on the TDRL or permanently retired, the nature of the disability and the stability and permanency of the disability.

(e) Administrative determinations made consistent with reference (b).

(f) The evidence used to overcome a presumption listed in reference (b) and this instruction.

(g) Any changes made as a result of review by subsequent reviewing authority will include a written explanation in support of each finding and recommendation.

(h) If applicable, the basis for applying or not applying total or extra-schedular ratings or unemployability determinations.

(2) Non-Duty Related Determinations. For RC members referred for non-duty related determinations, the record of proceedings will document only the fitness determination.

k. Communication between IPEB and FPEB Adjudicators and Service Members. Except during the course of an FPEB hearing, IPEB and FPEB adjudicators shall not engage in discussion with Service Members under evaluation, or their counsel, regarding their cases. The creation of any inference of undue influence or partiality shall be avoided.

2. Fitness Determinations

a. Fit Determination. If the PEB determines an active duty Service Member is fit or a RC Service Member is Physically Qualified (PQ), the member will return to their normal duty or Reserve status unless separated or retired on a non-disability basis. However, for personnel on the TDRL, see Part 7 of this chapter.

3. Unfitness Determinations

a. General Criteria for Making Unfitness Determinations.

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

(2) A Service Member may also be considered unfit when a preponderance of the evidence establishes that:

(a) The Service Member's disability represents a decided medical risk to the health of the member or to the welfare or safety of other members.

(b) The Service Member's disability imposes unreasonable requirements on the military to maintain or protect the Service Member.

b. Relevant Evidence. The PEB shall consider all relevant evidence in the Service Member's case file in assessing Service Members' fitness, including the circumstances of referral.

(1) Referral Following Illness or Injury. When referral into the DES immediately follows an acute or grave illness or injury, the medical evaluation may stand alone, particularly if medical evidence establishes that continued service would be harmful to the member's health or is not in the best interest of the Navy or Marine Corps. In these cases, it is incumbent upon the MTF to inform the PEB, BUMED, and the VA MSC immediately.

(2) Referral for Chronic Condition. When a Service Member is referred for disability evaluation under circumstances other than as described in paragraph (1) above, supervisors' evaluations of the Service Member's performance of duty may more accurately reflect the capacity to perform. Supervisors may include letters, efficiency reports, credential reports, status of physician medical privileges, or personal testimony of the impact of the medical condition on the Service Member's ability to perform duties. Particularly in cases of chronic illness, these documents may be expected to reflect accurately a member's capacity to perform.

(3) Cause-and-Effect Relationship. Regardless of the presence of illness or injury, inadequate performance of duty by itself will not be considered evidence of unfitness due to disability, unless a cause-and-effect relationship is established between the two factors.

(4) Permissible Information for PEB Adjudication. The PEB shall consider all evidence transmitted to it by proper authority, may examine files held by the DON, and may consider all evidence having probative value. This includes all material that relates to and is relevant to the issues at hand. If the PEB has good cause to believe that statements made by a Service Member contained in the PEB case file or testimony before the board are substantially misleading or false, then the PEB may request investigation of those statements or additional information through official channels or may terminate the case until the ambiguity is resolved.

(5) Objective information such as medical literature may always be considered. Before subjective information about an individual Service Member can be considered by the PEB, however, it must be in writing or other tangible form, identifying the source of the information, the date the information was

received, the record of telephone conversations, letters, or copies of documents. If information from sources outside of the Service Member's case record is obtained prior to a FPEB, the Service Member must be given the opportunity to examine the information prior to the hearing. If a request for information from sources outside the Service Member's case file occurs subsequent to a personal appearance, the Service Member and counsel, if any, are to be notified of and permitted to review and respond to such additional information prior to the PEB issuing its final decision on the case.

c. Reasonable Performance of Duties

(1) Considerations. Determining fitness or unfitness and determining whether a Service Member can reasonably perform duties includes consideration of:

(a) Deployability. The ability to deploy in a current or future assignment is a crucial component of naval service, and the inability to deploy can be the sole basis for an unfit determination. Deployability takes into consideration whether the Service Member is able to deploy individually, or as part of a unit, with or without prior notification, to any vessel or location specified by the Department of the Navy. When deployability is used by a service as a consideration in determining fitness, the standard must be applied uniformly to both the AC and RC of that service.

(b) Common Military Tasks. Whether the Service Member can perform the common military tasks required for the Service Member's office, grade, rank, or rating, including those during a remaining period of Reserve obligation. Examples include routinely firing a weapon, performing field duty, or wearing load-bearing equipment or protective gear.

(c) Physical Fitness Test. Whether the Service Member is medically prohibited from taking the respective Service's required physical fitness test. When an individual has been found fit by a PEB for a condition that prevents the member from taking the Service physical fitness test, the inability to take the test will not form the basis for an adverse personnel action against the member.

(d) Special Qualifications. For Service Members whose medical condition disqualifies them for specialized duties, whether the specialized duties constitute the member's current duty assignment, the member has an alternate branch or specialty, or reclassification or reassignment is feasible.

(2) General, Flag, and Medical Officers. An officer in pay grade O-7 or higher or a Medical Officer in any grade being processed for retirement by reason of age or Length of Service will not be determined unfit unless the determination of the ASN(M&RA) with respect to unfitness is approved by Under Secretary of Defense (Personnel & Readiness) (USD (P&R)) on the recommendation of the Assistant Secretary of Defense (Health Affairs)(ASD(HA)).

(3) Service Members on PLD. A Service Member previously determined unfit and continued in a PLD status or otherwise continued on active duty will normally be found unfit when the Service Member has been continued on PLD for over 12 months. However, the Service Member may be determined fit when the condition has healed or improved such that the Service Member would be capable of performing their duties in an other than limited duty status.

(4) Combined Effect. A Service Member may be determined unfit as a result of the combined effect of two or more conditions even though each condition alone would not cause the Service Member to be referred into the DES or be found unfit because of disability. The PEB will include in its official findings, in cases where two or more medical conditions (referred or claimed) are present in the service treatment record, that the combined effect was considered in the fitness determination as referred by the MEB. Combined effect includes the pairing of a singularly unfitting condition with a condition that standing alone would not be unfitting.

d. Evidentiary Standards for Determining Unfitness Because of Disability.

(1) Objective Evidence

(a) The PEB must cite objective evidence in the record, as distinguished from personal opinion, speculation, or

conjecture, to determine a Service Member is unfit because of disability.

(b) Reasonable doubt that cannot be resolved with evidence will be resolved in favor of the Service Member's fitness through the presumption that the Service Member desires to be found fit for duty. The presumption shall be rebutted if the Service Member has expressed their desire to be found unfit in any document before the PEB, including the Non-Medical Assessment, or if the Service Member so informs the PEB.

(2) Preponderance of Evidence. With the exception of presumption of fitness cases, the PEB will determine fitness or unfitness for military service on the basis of the preponderance of the objective evidence in the record. Quality of evidence is more important than quantity. All relevant evidence must be weighted in relation to all known facts and circumstances that prompted referral for disability evaluation.

e. Mental Competency and Responsibility

(1) Presumption of Mental Competence. All Service Members are presumed to be mentally competent and thus responsible for their actions. Clear and convincing evidence is required to overcome this presumption.

(2) Mental Responsibility Considerations. A Service Member may not be held responsible for their actions and their foreseeable consequences if they were unable to appreciate the nature and quality or the wrongfulness of the actions due to severe mental disease or defect at the time of the action. As used in this paragraph, the terms "mental disease" and "defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. Thus, an injury that was the proximate result of actions performed while the Service Member was mentally impaired, as a result of voluntary ingestion of a hallucinogenic drug would be deemed to have been incurred as a result of the Service Member's own misconduct because certain properties of such drugs are notorious and their use is prohibited by Article 112a of reference (m), unless it is determined that the substance abuse was due to an underlying mental health disorder.

(3) Determining Mental Incompetence

(a) When mental competency is an issue, disbursement of a member's pay and allowances to a trustee properly designated by an appropriate authority can only be made after a determination of mental incapacity to manage financial affairs by a board of Navy Medical officers or physicians convened and constituted as per reference (n) section 602 and reference (o). Such a board must consist of three members, at least one of whom must be a Navy psychiatrist or clinical psychologist.

(b) Where a Service Member on the TDRL elects to receive compensation from the VA in lieu of all retired pay from the DON, a determination of mental incompetence by a psychiatrist or clinical psychologist other than a medical officer, or physician employed by one of the Services, Department, or agencies may be accepted subject to the approval of the appropriate Defense Finance and Accounting Service (DFAS).

(c) When the member is mentally unable to acknowledge the findings of the PEB, the member's guardian appointed by a court or, if no one has been appointed, the Primary Next Of Kin as designated on the member's NAVPERS 1070/602 (Dependency Application/Record of Emergency Data) or DD Form-93 (Record of Emergency Data) may act on their behalf. The member's psychiatrist or clinical psychologist shall annotate this determination and the reasons therefore in the member's Medical Record.

(4) Restoration of Mental Competency. Once a determination of mental incompetence has been properly made, a finding of restoration of competency or capability to manage financial affairs may be accomplished by a minimum of one Medical Officer, who shall be a psychiatrist or PhD Psychologist.

(5) Suicide Attempts. A bona fide suicide attempt designated as such by a psychiatrist or PhD psychologist, as distinguished from other acts of intentional self-injury, shall be considered to create a strong inference that any resultant disability was the product of a less than fully functioning mental capacity, and as such was in the LOD and not due to the Service Member's own misconduct.

f. Unreasonable Refusal of Medical, Dental, or Surgical Treatment.

(1) If a Service Member unreasonably refuses to submit to medical, dental, or surgical treatment, any unfitting disability that proximately results from such refusal is incurred as a result of the member's willful neglect. However, unreasonable refusal under this section may only equate to willful neglect when the member most likely would have been determined fit had they submitted to or complied with the treatment regimen. Additionally, a member who refuses medical treatment on a bona fide religious basis is eligible for Disability Benefits; refusal shall not be considered willful neglect.

(2) The PEB must determine whether refusal of treatment was or was not reasonable regardless of any opinion expressed in an MEB report. The MEB report shall contain the following:

(a) Written comments by the Service Member regarding the member's refusal.

(b) Written comments by the physician explaining why the refusal is unreasonable, supported by specific medical references.

(3) If the PEB finds the refusal of treatment was unreasonable, the member shall be notified before a finding of willful neglect may be made and advised that continued refusal will result in a finding of willful neglect and loss of Disability Benefits. If a NAVMED 6100/4 (Medical Board Certificate Relative to Counseling on Refusal of Surgery and/or Treatment) already is contained in the record, then the Service Member does not have to be notified prior to the finding of willful neglect.

g. Presumption of Fitness

(1) Presumptive Period. Service Members shall be considered to be pending retirement or mandatory separation pursuant to this section when referral into the DES occurs after any of the circumstances designated below:

(a) When a Service Member's request for Voluntary Retirement has been approved. Revocation of Voluntary Retirement Orders for purposes of referral into the DES does not negate application of the presumption.

(b) An officer has been approved for Selective Early Retirement or is within 12 months of mandatory retirement due to age or Length of Service.

(c) An enlisted Service Member is within 12 months of their High Year Tenure (HYT) or Expiration of Active Obligated Service (EAOS) and will be eligible for retirement at their HYT or EAOS.

(d) A RC Service Member is within 12 months of mandatory retirement or removal date and qualifies for a 20-year letter at the time of referral for disability evaluation.

(e) A retiree is recalled, to include those who transferred to the Retired Reserve, with eligibility to draw retired pay upon reaching the age prescribed by statute, unless the recalled retiree incurred or aggravated the medical condition while on their current active duty orders and overcomes the Presumption of Fitness.

(2) Application. Service Members who are pending retirement at the time they are referred for disability evaluation are Presumed Fit for military service.

(a) Service Members may overcome this presumption by presenting a preponderance of evidence that they are unfit for military service. The Presumption of Fitness may be overcome when:

(1) An illness or injury occurs within the Presumptive Period that would prevent the Service Member from performing further duty if they were not retiring.

(2) A serious deterioration of a previously diagnosed condition, including a chronic one, occurs within the Presumptive Period, and the deterioration would preclude further duty if the Service Member were not retiring.

(3) The condition for which the Service Member is referred is a chronic condition and a preponderance of evidence establishes that the Service Member was not performing duties befitting their experience in the office, grade, rank, or rating before entering the Presumptive Period because of the condition.

(b) Service Members are not Presumed Fit for military service in these instances of a pending retirement:

(1) The disability is one for which a Service Member was previously determined unfit and continued in a PLD status. The Presumption of Fitness will be applied to other medical conditions unless the medical evidence establishes they were impacted by the original unfitting disabilities.

(2) Selected RC Service Members who are eligible to qualify for non-regular retirement pursuant to the provisions of section 12731b per reference (a).

(3) RC Service Members referred for non-duty related determinations.

4. Combat-Related Determinations

a. Provision of Combat-Related Determination

(1) Once the PEB determines a condition to be unfitting, the PEB shall provide a combat-related determination for the member that shall be binding on the appropriate finance center in the absence of guidance to the contrary from the Internal Revenue Service or from the JAG. CHNAVPERS and DC, M&RA, as appropriate, shall communicate this determination to the separating activity and to the appropriate finance center. The combat-related determination shall be in writing.

(2) No combat-related determination need be made when it is clear from the record of proceedings that the member was on active duty or under binding contract with the Armed Forces on or before 24 September 1975.

(3) The PEB will state affirmatively, for purposes of employment under the Federal Civil Service, whether the injury or disease that makes the member unfit or that contributes to

unfitness was incurred in combat with an enemy of the United States; or was the result of armed conflict; or was caused by an instrumentality of war during a period of war. (These determinations pertain to whether a military retiree later employed under Federal Civil Service is entitled to the following benefits: credit of Military Service toward a Federal Civil Service retirement under reference (p) section 8332; retention preference under reference (p) section 3502; exemption from the dual compensation provisions of reference (p) section 5532; and credit of military service for Civil Service annual leave accrual under reference (p) section 6303).

b. General. Retired and severance pay awarded to members who were not a member of an armed force or under a binding contract to become such a member on 24 September 1975 is considered taxable under Section 104 of the Internal Revenue Code, found in reference (q) section 104. An exception to this provision exists in reference (q) section 104 for a member receiving separation or retired pay by reason of a combat-related injury.

c. Combat-Related Injury. A disability that makes a Service Member unfit or contributes to unfitness is considered combat-related if the preponderance of the evidence shows it was incurred under any of the following circumstances listed in reference (q) section 104:

- (1) Incurred as a direct result of armed conflict;
- (2) Incurred while engaged in extra hazardous service;
- (3) Incurred under conditions simulating war; or
- (4) Caused by an instrumentality of war.

d. Direct Result of Armed Conflict. The physical disability is a disease or injury incurred in the LOD as a direct result of armed conflict. The fact that a member may have incurred a disability during a period of war, or in an area of armed conflict, or while participating in combat operations, is not sufficient to support this finding. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

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

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

(3) Armed conflict may include conditions that arise due to complications due to medical treatment or non-treatment of combat injuries.

e. Engaged in Extra Hazardous Service. In general, this covers disabilities resulting from military duties that present significant risk to life and limb. This includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

f. Conditions Simulating War. In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training, rappelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

g. Caused by an Instrumentality of War

(1) An instrumentality of war is a vehicle, vessel, or device designed primarily for military service and intended for use in such service at the time of the occurrence of the injury. It also may be a vehicle, vessel, or device not designed primarily for military service, if use of or occurrence involving such a vehicle, vessel, or device subjects the individual to a hazard specific to military service. This use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits.

(2) For income taxation purposes only, incurrence during a period of war is not required. A favorable determination is made if the disability was incurred during any period of service as a result of such diverse causes as wounds caused by a military weapon; accidents involving a military combat vehicle; or injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material.

(3) 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. For example, an injury resulting from a Service Member falling on the deck of a ship while participating in a sports activity would not normally be considered an injury caused by an instrumentality of war (the ship) since the sports activity and not the ship caused the fall. The exception occurs if the operation of the ship caused the fall.

h. Appeals of Combat-Related Determinations

(1) JAG shall act on behalf of the SECNAV in providing departmental appellate resolution of combat-related determinations.

(2) CORB may request an opinion from the JAG as to the appropriateness of a PEB combat-related determination. Such opinion shall be binding on the PEB.

(3) If an IPEB determines a disability is not combat-related, the Service Member may request an FPEB or appeal the combat-related determination to the JAG via OJAG (Code 13).

(4) If an FPEB determines a disability is not combat-related, the Service Member may appeal the combat-related determination to the JAG via OJAG (Code 13).

(5) Upon review of an appeal, OJAG will ensure compliance with applicable laws, regulations, and this instruction. Appeals to OJAG shall be by letter addressed to OJAG (Code 13), Washington Navy Yard, 1322 Patterson Ave SE, Suite 3000, Washington, DC 20374-5066, and shall set forth the reasons the member disagrees with the determination of the PEB. The member's disability evaluation proceedings will not be delayed or abated pending action on the appeal by OJAG.

5. Final Disposition

a. Final Decision Authority

(1) Secretary of Defense. The Secretary of Defense, after considering the recommendation of the USD (P&R), approves or disapproves the appeal of any Service Member found fit by the PEB but determined unsuitable for continued service by the ASN (M&RA) for the same medical condition considered by the PEB.

(2) USD (P&R). The USD(P&R), after considering the recommendation of the ASD (HA), approves or disapproves the disability retirement of any being processed for, scheduled for, or receiving non-disability GO/FO retirement for age or length of service.

(3) Except as stated above, the SECNAV or the designee, ASN (M&RA), has the authority to make all determinations in accordance with reference(b) and this instruction regarding unfitness, disability percentage, and entitlement to disability severance and retired pay.

(4) ASN (M&RA). The ASN (M&RA) approves or disapproves the disability retirement of any GO/FO who is retirement eligible but is not pending non-disability retirement. Additionally, ASN (M&RA):

(a) May direct the PEB to re-evaluate any Service Member determined to be unsuitable for continued military service.

(b) May retire or separate for disability any Service Member determined upon re-evaluation to be unfit to reasonably perform the duties of the Service Member's office, grade, rank, or rating.

(c) May not authorize the involuntary administrative separation of a member based on a determination that the Service Member is unsuitable for deployment or worldwide assignment after the PEB has found the Service Member fit for the same ratable medical condition.

(d) May not deny the member's request to reenlist based on a determination that the member is unsuitable for

deployment or worldwide assignment after a PEB has found the member fit for the same ratable medical condition.

b. Dispositions for Unfit Service Members

(1) NPQ. If a RC Service Member with neither active duty orders for a period longer than 30 days nor an LODB letter is unfit due to a stable and permanent disability, then the Service Member will be separated from naval service without DoD Disability Benefits. NPQ Service Members with more than 15 years of service, as per reference (a) section 12731(b), may receive a non-disability retirement.

(2) Permanent Disability Retirement. If a Service Member is unfit due to a stable and permanent disability, retirement for a permanent and stable compensable disability is directed pursuant to section 1201 or section 1204 per reference (a) when:

(a) The total disability rating is at least 30 percent per VASRD, and the Service Member has less than 20 years of service computed pursuant to section 1208 per reference (a).

(b) The Service Member has at least 20 years of service computed pursuant to section 1208 per reference (a) and the disability is rated at less than 30 percent.

(3) Placement on the TDRL. Temporary disability retirement is directed pursuant to section 1202 or section 1205 per reference (a) when the requirements for permanent disability retirement are met, except when the disability is not stable and may be permanent.

(4) Separation with Disability Severance Pay

(a) Criteria. Separation is directed pursuant to section 1203 or section 1206 per reference (a) when the member is unfit for a compensable disability determined per the standards of this instruction, and the following requirements are met. Stability is not a factor for this disposition.

1. The Service Member has less than 20 years of service computed pursuant to section 1208 of reference (a).

2. The disability is rated at less than 30 percent.

(b) Service Credit

1. Pursuant to section 1212 of reference (a), a part of a year of active service that is six months or more is counted as a whole year, and a part of a year that is less than 6 months is disregarded.

2. Members separated from the naval service for a disability will be credited with a minimum of three years of service.

3. Members separated from naval service for a disability incurred in the LOD in a designated combat zone tax exclusion area or incurred during the performance of duty in combat-related operations consistent with the criteria of this chapter will be credited with a minimum of six years of service.

4. For the purposes of calculating active service for disability severance pay, ASN (M&RA) will consider disabilities to be incurred in combat-related operations when they are consistent with the criteria set forth in this chapter.

(c) Transfer to the Retired Reserve. Pursuant to § 1209 per reference (a), RC Service Members who have completed at least 20 qualifying years of Reserve service and who would otherwise be qualified for retirement may forfeit disability severance pay and request transfer to an inactive status list for the purpose of receiving non-disability retired pay at age 60. ASN (M&RA) may offer the Service Member the option to transfer to the Retired Reserve. When disability severance pay is accepted, the Service Member forfeits all rights to receive retired pay pursuant to chapter 1223 per reference (a) at age 60. There are no provisions pursuant to reference (a) to repay disability severance pay and to then receive retired pay.

(d) Selected Reserve Early Qualification for Retired Pay. Pursuant to section 12731 of per reference (a), RC Service Members with at least 15 and less than 20 years of qualifying service who would otherwise be qualified for non-regular retirement may waive disability disposition and request early

qualification for retired pay per section 12731(b) of reference (a).

(5) Separation without Disability Benefits. Discharge is directed in accordance with section 1207 per reference (a) when a Service Member is unfit due to a disability incurred as a result of intentional misconduct or willful neglect or during a period of UA.

(6) Discharge Pursuant to Other Than Chapter 61 per reference (a). An unfit Service Member is directed for discharge in accordance with other provisions per references (a), (r), and (s) when they are not entitled to disability compensation when either:

(a) The Service Member is not entitled to disability compensation but may be entitled to benefits under section 1174 per reference (a).

(b) The medical impairment of an RC member is non-duty related and it disqualifies the member for retention in the RC.

(7) Revert with Disability Benefits. Revert with Disability Benefits is used to return a retiree recalled to Active Duty who was:

(a) Previously retired for disability.

(b) Determined unfit during the period of recall. For Service Members previously retired for age or years of service, the compensable percentage of disability must be 30 percent or more to receive disability benefits.

(8) Existed Prior to Service (EPTS). Any injury or disease discovered after a Service Member enters Active Duty is presumed to have had to of been incurred during the period of Active Duty. A condition exists prior to service if it was noted at the time of the Service Member's entrance onto active duty or clear and unmistakable evidence demonstrates that the disability existed before the Service Member's entrance on active duty and was not aggravated by active military service. Only clear and unmistakable evidence establishing that the condition was EPTS and was not aggravated by military service

can overcome this presumption. A Service Member who has had eight years of total active service at the time of separation for the condition is deemed to have incurred the condition while on active service. The eight years of active service does not have to be continuous. When the evidence is unclear concerning whether the condition existed prior to the current period of military service, or if the evidence is equivocal, the presumption of sound condition at entry to the current period of military service has not been rebutted, and the PEB will find the Service Member's condition was incurred in or aggravated by military service.

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

(b) Presumption of Sound Physical and Mental Condition upon Entry. A Service Member is presumed to have been in sound physical and mental condition upon entering active duty, except for medical defects and physical disabilities noted and recorded at the time of entrance.

(c) Presumption of Service Aggravation. Aggravation beyond natural progression of a disease determined to be EPTS is presumed to have been incurred in the LOD. This presumption may be overcome only by clear and unmistakable medical evidence establishing that the disease was clearly neither incurred nor aggravated while serving on active duty or authorized training. Such medical evidence must be based upon well-established and documented medical principles, as distinguished from personal medical opinion alone.

(d) Treatment of Pre-Existing Conditions. Generally, recognized risks associated with treating pre-existing conditions shall not be considered service aggravation. Unexpected adverse events; over and above known hazards; directly attributable to treatment; anesthetic; or operations

performed or administered for a medical condition existing before entry on Active Duty may be considered service aggravation.

(e) RC Service Members Who Have Not Been Issued Orders for 30 Days or More. There are no presumptions of sound condition or service aggravation for RC Service Members serving on orders of less than 30 days.

(9) General, Flag, and Medical Corps Officers

(a) Officers grade O-7 or higher, who are within 12 months of mandatory retirement due to age or service limitations; Medical Officers in any grade who are pending Non-Disability Retirement for age; or Length of Service at the time of referral into the DES, who are on Active or Reserve duty, may not be retired for Physical Disability unless the initial unfit determination is approved by the USD (P&R) on the recommendation of the ASD (HA). ASN (M&RA) will be the final decision authority in cases involving GO/FO who are retirement eligible but are not pending non-disability retirement.

(b) CHNAVPERS and DC, M&RA shall submit one copy of Disability Retirement Orders issued for any officer grade O-7 or higher to the ASD (HA) via the ASN (M&RA).

(c) All MEB reports for Medical Officers referred into the DES will be accompanied by a separate command evaluation to include the medical officer's current overall level of function and a peer review delineating clinical privileges.

(d) Officers grade O-7 or above and any Medical Officer shall not be determined unfit due to disability if the officer can be expected to perform satisfactorily in an assignment appropriate to their grade, qualifications, and experience. Thus, the inability to perform specialized duties or the fact the officer has a condition that is cause for DES referral may not be the sole basis for unfitness.

(e) JAG (via OJAG Code 13) shall review for legal sufficiency all PEB final determinations for which officers, grade O-7 or above, are to be retired for disability or transferred to the TDRL.

(10) Waiver of Disability Retirement or Separation

(a) Members Qualified for Retirement or Separation for Other Reasons. A Service Member who meets all prerequisites for retirement or separation because of physical disability but is also qualified for retirement for other reasons or transfer to the Fleet Reserve or Fleet Marine Corps Reserve may request to be separated for reasons other than disability.

(1) A Service Member who wants Non-Disability Retirement must submit a request to the PPEB via the appropriate Service Headquarters in a timely manner prior to the effective date of disability retirement stating the reason for the request. Service Headquarters shall make a specific recommendation, accompanied with a supporting rationale, prior to forwarding to the PPEB.

(2) A Service Member who wants a non-disability transfer to the Fleet Reserve or the Fleet Marine Corps Reserve must submit a request to transfer to the Fleet Reserve in accordance with reference (i) or the Fleet Marine Corps Reserve Application. Along with the application, per references (i) and (j) the Service Member must forward a signed waiver of their right to referral into the DES, as appropriate, and request an effective date of not more than 60 days from the date of application. A copy of the waiver is to be provided to the PPEB for finalization of the member's case.

(b) Authority to Waive Disability Retirement/Separation. At the request of the Service Member, the PPEB is authorized to waive disability retirement or separation where consistent with Federal law and this instruction.

(11) Deferment of Mandatory Retirement or Separation

(a) Officers

1. If ASN (M&RA) determines the evaluation of the physical condition of an officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation and that such hospitalization or medical observation cannot be completed with confidence in a manner consistent with the

Service Member's well-being before the date on which the officer would otherwise be required to retire or be separated under reference (a), the ASN(M&RA) may defer the retirement or separation of the officer consistent with section 640 of reference (a). For these purposes, "medical observation" includes disability evaluation processing where a medical board report has been accepted by the PPEB for disability evaluation processing.

2. A deferral of retirement or separation may not extend for more than 30 days after completion of the evaluation requiring hospitalization or medical observation. For deferrals of retirement or separation due to pending disability evaluation processing where a medical board report has been accepted by the PPEB, such deferrals may not extend for more than 30 days after final disposition by the PPEB, or other appropriate final disposition authority.

(b) Enlisted Members. As determined by Service Headquarters.

c. Processing PEB Findings

(1) Notification of decision. After acceptance of IPEB or FPEB findings, a PFR, or presumed acceptance, the PEB shall publish a Notification of Decision signed by the PPEB. The Notification of Decision shall contain the findings of fit or unfit, the final disposition, VA code(s), VA rating(s), combat-related findings, and whether the injury was incurred in a Combat Zone.

(2) Issuance of PEB Findings

(a) IPEB. Prior to issuance of IPEB and, separately, FPEB findings to a Service Member, the findings shall go through a quality assurance process. A separate legal and/or medical review will be conducted if requested by the PPEB. If after review, the PPEB determines a change to the findings is warranted and the change is adverse to the Service Member, then the PPEB shall cancel the findings and order a new IPEB or FPEB review. If the change is not adverse to the member, then the PPEB may cancel the previous findings and issue new findings.

(b) During quality review, should the PEB find that the VA provided a different diagnostic coding than that which would normally be assigned for the unfitting condition, then the PEB will request that the VA provide justification for that particular coding. The PEB's request to the VA, and the VA response, shall be documented and inserted into the case file.

(c) After all appropriate legal, medical, and quality assurance reviews have been completed, the PEB findings shall be issued to the Service Member via the Service Member's PEBLO.

(3) Special Interest Cases. PEB findings for any case that DIRSECNAV CORB deems as a Special Interest Case must be forwarded to ASN (M&RA) for final determination. Flag, General, and Medical Officer cases will be processed in accordance with this chapter.

(4) Modification or Cancellation of Findings

(a) The PPEB may modify or cancel a Findings Letter or Notification of Decision and direct an appropriate substitute disposition in the following cases:

1. An administrative, clerical, legal, or rating error occurred in the record of proceedings, Findings Letter, or Notification of Decision, and the correction does not affect the disposition of the individual or change the computation of disability compensation on the basis of percentage of disability.

2. A Service Member has been discharged from naval service under other provisions of law.

3. A Service Member has been hospitalized or is pending surgery but has not been retired or separated.

4. A Service Member demanded a hearing after accepting IPEB findings.

5. When such action is directed by the SECNAV or DIRSECNAV CORB.

(b) No changes to the findings will be made if the Service Member has been separated or medically retired.

(c) If the correction of an error would affect the disposition of a Service Member's case or adversely change the computation of disability compensation, the Service Member and legal counsel shall be notified of the error by the PEB and shall have 15 calendar days from the date of notification to submit a new Election of Options. If the Service Member does not submit a new Election of Options within 15 calendar days, then the correction will be made and the Service Member's case closed.

(d) Communication about a change or modification to the Findings Letter or Notification of Decision shall be memorialized in the Service Member's electronic PEB Total Records Information Management file or its future equivalent.

d. PLD

(1) Continuation of Unfit Service Members on Active or Reserve Duty. Generally, when a Service Member is found unfit by the PEB, the Service Member will be separated or retired in accordance with this instruction. However, CHNAVPERS or DC, M&RA may determine that a Service Member's service obligation or special skill and experience justifies the continuation of a Service Member found unfit in a PLD status, either Active or Reserve Duty in the same or different rating or specialty or a limited assignment for a specified period of time, as determined by Service Headquarters. There is no PLD status for inactive-duty Reservists, but they may be retained in the Individual Ready Reserve (IRR).

(a) A Service Member who is continued on Active or Reserve Duty in accordance with this instruction will be granted Disability Benefits, if eligible, based upon the degree of disability at retirement or separation.

(b) The term "Limited Assignment" means assignment with appropriate limitations based upon the specific disabilities in each case. Specific limitations on duty assignments for members classified as PLD may be directed by Service Headquarters.

(c) A Service Member will not be placed in a PLD status solely to increase monetary benefits.

(d) CHNAVPERS and DC, M&RA may retain inactive-duty reservists who are found NPQ by the PEB in either the Fleet IRR or the Fleet Reserve.

(e) If a Service Member in the Selected Reserve no longer meets the qualifications for membership in the Selected Reserve, solely because the member is unfit because of physical disability, then CHNAVPERS and DC, M&RA may, for purposes of reference (a) section 12731, determine to treat the member as having performed at least 20 years of service computed under reference (a) section 12732 and provide the member with the notification required by Reference (a) section 12731(d) if the member has completed at least 15, and less than 20, years of service computed under reference (a) section 12732. CHNAVPERS and DC, M&RA shall not make this notification if the disability was the result of the Service Member's intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the SECNAV, or if the disability was incurred during a period of UA.

(2) PLD Requests Based upon Active Service Obligation for Education or Training. CHNAVPERS and DC, M&RA may retain Service Members found unfit in a PLD status for the period required to complete their active service obligation for:

(a) Enlisted education and training, including Enlisted Education Advancement Program, Initial and Advanced Skill Training Schools that require obligation beyond initial enlistment contract, nuclear power field, advanced electronic field, and Advanced Technical Field Programs and similar programs. CHNAVPERS and DC, M&RA may waive the service obligation on a case-by-case basis when, as the result of a disabling condition, there is no billet in which a disabled member can adequately perform required duties.

(b) Funded education programs including the U.S. Naval Academy; Naval Reserve Officers Training Corps; Armed Forces Health Professions Scholarships; Uniformed Services University of Health Sciences and equivalent funded education programs; and advanced education or technical training requiring additional obligated service, including postgraduate education,

service school or college, law school, medical residency (including fellowships), flight training, naval officer training, and equivalent programs. CHNAVPERS or DC, M&RA may waive the service obligation on a case-by-case basis when, as a result, of the disabling condition, there is no billet in which a disabled member can adequately perform required duties.

(3) PLD Requests Based on Service Member or Service needs. CHNAVPERS and DC, M&RA may authorize retention in a PLD status:

(a) To complete a tour of duty based on hardship, extraordinary circumstances, or needs of the Service.

(b) To provide continuity in a key, mission-essential billet pending relief.

(c) To allow completion of a current treatment regimen.

(4) Procedures for Requesting PLD. A Service Member found unfit by the PEB who desires to continue on active or Reserve duty must submit a request, with command endorsement, to CHNAVPERS or DC, M&RA as appropriate. The request must identify specific reasons for remaining on active or Reserve duty. Requests are due to CHNAVPERS or DC, M&RA within 15 calendar days of initial notification of IPEB or FPEB findings.

(5) Early Termination of a PLD Period. A Service Member continued on active duty in a PLD status shall be closely observed by the command to ensure further continuance is consistent with the best interests of the Service and the Service Member. When the Service Member's commanding officer believes the member is unable to perform their duties in a PLD status, the member shall be referred to an MTF for observation, treatment, and appropriate disposition. Unless the disqualifying condition has progressed to a point at which the Service Member is no longer able to perform duties with limitations, the Service Member shall complete the PLD period.

(6) Re-evaluation of PLD Members. CHNAVPERS or DC, M&RA will refer all Service Members continued in PLD status for a period in excess of 12 months to the DES for re-evaluation prior to separation. After consultation with a DES attorney, the

Service Member may elect the re-evaluation be completed through the IDES or Legacy DES process. New conditions will be evaluated during the re-evaluation. The MTF completing the re-evaluation shall send the MEB report to the PEB a minimum of five months before the completion of the PLD period or at such time as the PLD is otherwise terminated.

(7) Right to an FPEB. In those cases, where, upon re-evaluation, the Service Member's disability rating changes from the initial rating when placed on PLD, the Service Member may demand an FPEB. Any new and unrelated conditions petitioned for at the FPEB must overcome the presumption of fitness in accordance with this instruction.

6. Standards for Disability Compensation

a. Overview of Disability Compensation Criteria. A Service Member who is determined unfit to reasonably perform the duties of the member's office, grade, rank, or rating because of disability per this instruction may be eligible for Disability Benefits when:

(1) The disability is not the result of the Service Member's intentional misconduct or willful neglect and was not incurred during UA or excess leave.

(2) The Service Member incurred or aggravated the disability while they were:

(a) An Active Duty Service Member entitled to Basic Pay.

(b) A RC Service Member entitled to Basic Pay and called or ordered to Active Duty (other than for training pursuant to section 10148 of reference (a)) for a period of more than 30 days.

(c) On Active Duty for a period greater than 30 days but not entitled to basic pay pursuant to reference (n) section 502 due to authorized absence to participate in an educational program or for an emergency purpose, as determined by ASN (M&RA).

(d) A Midshipman of the United States Naval Academy after October 28, 2004.

(e) A RC Service Member called or ordered to Active Duty for a period of 30 days or less, performing IDT or traveling directly to or from the place of IDT, to Funeral Honors Duty, or for training pursuant to section 10148 of reference (a).

b. Disability Retirement Criteria for Regular Component Members and Members on Active Duty for More Than 30 Days. Regular component members and members on Active Duty for more than 30 days will be retired with disability benefits when:

(1) The disability is permanent and stable.

(2) The Service Member has:

(a) At least 20 years of service computed in accordance with section 1208 of reference (a).

(b) A disability of at least 30 percent, pursuant to reference (o), and that disability.

1. Was not noted at the time of the Service Member's entrance on Active Duty, unless the PEB demonstrates with clear and unmistakable evidence that the disability existed before the Service Member's entrance on active duty and was not aggravated by Active Military Service.

2. Is the proximate result of performing active duty.

3. Was incurred in the LOD in time of war or national emergency.

4. Was incurred in the LOD after September 14, 1978.

c. Disability Retirement Criteria for Members on Active Duty for 30 days or Less, on IDT, Funeral Honors Duty, or Training Pursuant to section 10148 of reference (a). Members on Active Duty for 30 days or less, on IDT, on Funeral Honors Duty, or in training will be retired with Disability Benefits when:

(1) The disability is permanent and stable.

(2) The Service Member has:

(a) At least 20 years of service computed in accordance with § 1208 of reference (a).

(b) A disability of at least 30 percent, pursuant to reference (f), and that disability meets at least one of the following criteria:

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

a. Performing active duty or IDT.

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

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

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

a. While performing Active Duty or IDT.

b. While traveling directly to or from the place of Active Duty or IDT.

c. While remaining overnight immediately before the commencement of IDT.

d. While remaining overnight between successive periods of IDT at or in the vicinity of the site of the IDT.

3. The disability is a result of an injury, illness, or disease incurred or aggravated in the LOD:

a. While serving on Funeral Honors Duty pursuant to section 12503 of reference (a).

b. While the Service Member was traveling to or from the place at which the Service Member was to serve.

c. While the Service Member remained overnight at or in the vicinity of that place immediately before serving, if it is outside reasonable commuting distance from the Service Member's residence.

d. Disability Separation Criteria for Regular Component Members and Members on Active Duty for More Than 30 Days. Regular component members and members on Active Duty for more than 30 days will be separated with Disability Benefits when:

(1) The Service Member has less than 20 years of service.

(2) The disability meets one of the following criteria:

(a) Is or may be permanent and less than 30 percent, pursuant to reference (f).

1. Is the proximate result of performing Active Duty.

2. Was incurred in the LOD in time of war or national emergency.

3. Was incurred in the LOD after September 14, 1978.

(b) Is less than 30 percent, pursuant to reference (f), at the time of the determination and was not noted at the time of the Service Member's entrance on active duty (unless clear and unmistakable evidence demonstrates the disability

existed before the Service Member's entrance on active duty and was not aggravated by active military service).

(c) Is at least 30 percent, pursuant to reference (o), and at the time of the determination, the disability was neither:

1. The proximate result of performing active duty.

2. Incurred in the LOD in time of war or national emergency.

3. Incurred in the LOD after September 14, 1978, and the Service Member had less than eight years of service computed pursuant to section 1208 of reference (a) on the date when he or she:

a. Would otherwise be retired pursuant to section 1201 of reference (a).

b. Was placed on the TDRL pursuant to section 1202 of reference (a).

e. Disability Separation Criteria for Members on Active Duty for 30 Days or Less, on IDT, Funeral Honors Duty, or Training.

(1) Service Members on Active Duty for 30 days or less, On IDT, on Funeral Honors Duty, or in training will be separated with Disability Benefits when:

(a) The Service Member has less than 20 years of service.

(b) The disability meets one of the following criteria:

1. Is or may be permanent.

2. Is the result of an injury, illness, or disease incurred or aggravated in LOD while:

a. Performing active duty or IDT.

b. Traveling directly to or from the place of Active Duty.

c. Remaining overnight immediately before the commencement of IDT, between successive periods of IDT, at or in the vicinity of the site of the IDT if the site is outside reasonable commuting distance of the Service Member's residence.

d. Serving on Funeral Honors Duty pursuant to section 12503 of reference (a) while traveling to or from the place at which he or she was to serve or while remaining overnight at or in the vicinity of that place immediately before serving.

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

f. If the Service Member is eligible for transfer to the inactive status list pursuant to section 1209 of reference (a) and chooses to, they may be transferred to that list instead of being separated.

g. Evidentiary Standards for Determining Compensability of Unfitting Conditions.

(1) Misconduct and Willful Negligence. LOD determinations concerning intentional misconduct and willful negligence will be judged by the evidentiary standards established by the JAG in reference (g).

(2) Presumption of Sound Condition for Members on Continuous Orders to Active Duty for More Than 30 Days. In accordance with reference (b), it is presumed that Service Members, including RC members and recalled retirees, on continuous orders to Active Duty specifying a period of more than 30 days, entered their current period of military service in sound condition when the disability was not noted at the time of the Service Member's entrance to the current period of Active Duty.

(a) Overcoming the Presumption

1. This presumption may be overcome if clear and unmistakable evidence demonstrates that the disability existed before the Service Member's entrance on their current period of Active Duty and was not aggravated by their current period of military service. Absent such clear and unmistakable evidence, the Navy and Marine Corps will conclude that the disability was incurred or aggravated during their current period of military service.

2. Clear and unmistakable evidence is undebatable information that the condition existed prior to military service, or if increased in service, was not aggravated by military service. In other words, reasonable minds could only conclude that the condition existed prior to military service from a review of all of the evidence in the record.

3. A finding that a Service Member's condition was not incurred in or aggravated by their current period of military service must be based on objective evidence in the record, as distinguished from personal opinion, speculation, or conjecture. When the evidence is unclear concerning whether the condition existed prior to the member's current period of military service, or if the evidence is equivocal, the presumption of sound condition at entry to the current period of military service has not been rebutted, and the Service Member's condition will be found incurred in or aggravated by military service.

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

(c) There is no presumption of sound condition for RC members serving on orders of 30 days or less.

(3) Presumption of Incurrence or Aggravation in the LOD for Members on Continuous Orders to Active Duty Specifying a Period of More Than 30 Days. It is presumed that diseases or injuries incurred by Service Members on continuous orders to active duty specifying a period of more than 30 days were incurred or aggravated in the LOD unless the disease or injury was noted at time of entry into service.

(a) Overcoming the Presumption. This presumption may be overcome only when clear and unmistakable evidence indicates the disease or injury existed prior to their current period of military service and was not aggravated by their current period of military service. Clear and unmistakable evidence is the quantum of evidence that cannot be misinterpreted and misunderstood, i.e., it is undebatable and reasonable minds would never differ.

(b) There is no presumption of incurrence or aggravation in the LOD for RC members serving on orders of 30 days or less.

(c) Pursuant to reference (a) sections 1206 and 1207, a pre-existing condition is deemed to have been incurred while entitled to basic pay and will be considered for purposes of determining whether the disability was incurred in the LOD when:

1. The Service Member was ordered to Active Duty for more than 30 days (other than for training pursuant to section reference (a) section 10148) when the disease or injury was determined to be unfitting as subsequently determined by the PEB.

2. The Service Member was not a member of the RC released within 30 days of their orders to Active Duty in accordance with reference (a) section 1206 due to the identification of a pre-existing condition not aggravated by the current call to duty.

3. The Service Member will have a career total of at least eight years of active service at the time of separation. The eight years of active service do not have to be continuous.

4. The disability was not the result of intentional misconduct or willful neglect or was incurred during a period of UA.

(4) RC Members Serving on Orders of 30 Days or Less. This chapter governs the determination of whether injuries and diseases to RC members serving on orders of 30 days or less were incurred or aggravated in the LOD. Aggravation must constitute the worsening of a pre-existing medical condition as a direct result of military duty and over and above the natural progression of the condition.

(5) Prior Service Impairment. Any medical condition incurred or aggravated during one period of active service or authorized training in any military service that recurs, is aggravated, or otherwise causes the member to be unfit, should be considered incurred in the LOD regardless of the time between the two periods of active service, provided the origin of such impairment or its current state is not due to the Service Member's misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the Service Member was not in a duty status.

(6) Medical Waivers

(a) Service Members who entered the Navy or Marine Corps with a Medical Waiver for a pre-existing condition and are subsequently determined unfit for the condition will not be entitled to Disability Separation or Retired Pay unless:

1. Military service permanently aggravated the condition or hastened the condition's rate of natural progression; or

2. The member will have eight years of active service at the time of separation.

(b) Service Members granted medical waivers will be advised of the waiver application process when applying for a waiver and when it is granted.

(7) Treatment of Pre-existing Conditions. Generally recognized risks associated with treating pre-existing conditions will not be considered service aggravation.

Unexpected adverse events, over and above known hazards, directly attributable to treatment, anesthetic, or operation performed or administered for a medical condition existing before entry on Active Duty may be considered service aggravation.

(8) Elective Surgery or Treatment. A Service Member choosing to have elective surgery or treatment done at their own expense will not be eligible for compensation in accordance with the provisions of this instruction for any adverse residual effect resulting from the elected treatment, unless it can be shown that such election was reasonable or resulted from a significant impairment of judgment that is the product of a ratable medical condition.

(9) Rating Disabilities. When a disability is established as compensable, it will be rated in accordance with reference (f). When after careful consideration of all procurable and assembled data, a reasonable doubt, as defined in reference (f) section 3.102, arises regarding the degree of disability, such doubt will be resolved in favor of the Service Member.

(10) For IDES cases, the VA shall be the initial rating entity. In the IDES, the IPEB and FPEB determine a Service Member's fitness but do not assign disability ratings to conditions. The PEB will apply ratings for unfitting conditions provided by the VA to establish the Service Member's disability rating under the IDES process. The PEB will use the VASRD to establish the Service Member's proposed disability rating under the LDES process.

7. TDRL Management

a. Initial Placement on the TDRL

(1) A Service Member will be placed on the TDRL when the Service Member meets the requirements for Permanent Disability Retirement except that the disability is not determined to be stable but may be permanent.

(a) A disability will be determined stable when the preponderance of medical evidence indicates the severity of the

condition will probably not change enough within the next three years to increase or decrease the disability rating percentage.

(b) A Service Member with unstable conditions rated at a minimum of 80 percent who is not expected to improve to less than an 80 percent rating will be permanently retired.

b. Administration. CHNAVPERS and DC, M&RA are responsible for managing the TDRL for their respective service.

(1) CHNAVPERS and DC, M&RA shall maintain an accurate account of authorized TDRL members; issue notifications or orders to meet the requirements for periodic disability examinations; coordinate with PPEB when a TDRL member is unable to undergo periodic physical examinations; suspend retired pay and order prompt removal from the TDRL pursuant to chapter 61 of reference (a); and implement dispositions of members whose cases are finalized by the PEB.

(2) The maximum time that a member's name can be carried on the TDRL in a pay status is three years or five years if placed on the TDRL before 1 January 2017 or three years if initially placed on the TDRL on or after 1 January 2017.

c. TDRL Re-evaluation Frequency. All temporary retirees must undergo a periodic physical examination within 18 months after the Service Member's retirement date to determine whether there has been a change in the disability for which the member was temporarily retired. This includes TDRL members who have waived compensation of retired pay in lieu of VA compensation. MTFs shall report Service Members who do not appear for their scheduled appointments to the appropriate Service Headquarters within two business days. Per reference (f) section 4.129, when a mental disorder that develops in service as a result of a highly stressful event is severe enough to bring about the Service Member's release from active military service, the PEB shall input a rating of not less than 50 percent for the condition.

d. TDRL Re-evaluation Orders and Expenses

(1) Notification. CHNAVPERS and DC, M&RA shall notify members on the TDRL to proceed and report for periodic physical examinations via the Director of a VA facility or MTF. The

examining facility will endorse the orders and specify when and where the member shall report, providing the member with a minimum of 30 days from when the orders are sent to the member. The examination shall be conducted during the period specified in the notification sent to the member or during the preceding or following month. The MTF Commanding Officer shall notify CHNAVPERS or DC, M&RA, and CHBUMED of failure to complete the examination within this time frame and the reason therefore.

(a) CHNAVPERS and DC, M&RA shall send TDRL members a notification to schedule periodic physical examinations by certified mail (or by an equivalent form of notice if such service by U.S. Mail is not available for delivery at an address outside the United States) to the member's address of record. Electronic notice shall be sent in addition to certified mail if the member's current e-mail address is on file.

(b) All members on the TDRL shall keep CHNAVPERS, DC, M&RA, and DFAS apprised of their current mailing address, e-mail address, and telephone number. Failure to respond to correspondence, notifications, or orders issued to the address on file with the appropriate finance center either willfully, or through negligence in keeping that address current, will result in the suspension of Disability Retired pay. Additionally, all Active Duty members being placed on TDRL and those TDRL members going before an FPEB must fill out an Address Information Form. PEBLOs will submit this form with a member's Election of Options (for active duty personnel), and the PEB will ensure all TDRL members reporting for a hearing complete the form and include it in the PEB case file.

(2) Inpatient Observation. Whenever inpatient observation is desirable or necessary for a proper evaluation, inpatient admission and retention for a period of as much as ten days is authorized. This length of inpatient observation may be extended upon authorization of CHNAVPERS or DC, M&RA, as appropriate. It is particularly important that inpatient admission be considered for proper evaluation of psychiatric or neuropsychiatric cases.

(3) Travel Expenses. Section 1210 of reference (a) authorizes a member on the TDRL to travel and transportation allowances authorized by reference (1) for members in their retired grade traveling in connection with Temporary Duty while

on Active Duty for periodic physical examinations and any appearances before the PEB. TRDL members will only be reimbursed for modes of travel that are beneficial to the government.

e. TDRL Re-evaluation Report Format and Content

(1) Format. The report may be prepared in MEB report, letter, or narrative format.

(2) Content. The report shall contain:

(a) Current address and contact telephone number of the member.

(b) Beginning from the date of the last examination, a detailed occupational history and activities of daily living with particular reference to the member's employment and time lost due to the disability for which retired. Focus shall remain on the relationship between current capabilities and primary duties of the member's former rating and paygrade.

(c) A description of each disability that the PEB determined was unfitting but was unstable at the time the Service Member was placed on the TDRL, including all related conditions that contributed to the unfitting condition(s) but were not separately unfitting, the current status and stability of such disabilities, the course of the disabilities, and a suggested time frame (at least 12 months and not to exceed 18 months) for the next examination.

(d) A description, including treatment and etiology, of any new disability and whether the new diagnosis was caused either by or directly related to the condition for which the member was placed on the TDRL or the treatment received for such a condition. If not caused by or directly related to the condition for which the member was placed on the TDRL, whether the member's medical records document incurrence or aggravation of the condition while the member was in a military duty status; and if so, whether the condition was cause for referral into the Disability Evaluation System at the time the member was placed on the TDRL.

(e) All clinical evaluations and laboratory studies necessary to document the member's physical condition.

(f) Information regarding the member's current condition and prognosis including current stability and the likelihood of significant change within the remaining statutory time the member might remain on the TDRL and a comparative estimate of changes relative to the member's previous condition.

(g) In the case of psychiatric disabilities, statements by a psychiatrist or PhD psychologist as to the current degree of impairment of industrial adaptability and social adaptability. The mental health provider shall either use a current Disability Benefits Questionnaire (DBQ) provided to the public on the Department of Veterans Affairs website or otherwise specify which of the specific symptoms listed under reference (f) 4.150, General Rating Formula for Mental Disorders, apply to the TDRL Service Member currently.

(h) A statement as to whether disclosure to the member of information relative to their physical or mental condition or a personal appearance before the PEB would be detrimental to the member's physical or mental health, as determined by a licensed medical provider.

f. Disposition of the Periodic Physical Examination Report by the Examining MTF.

(1) Copy of Report to Service Member. Unless disclosure of the information contained therein would adversely affect their physical or mental health, provide the member a copy of the report by mail with instructions to send any comments directly to the President, Physical Evaluation Board, 720 Kennon Street, SE, Suite 400, Washington Navy Yard, Washington, DC 20374-5023. If the member is incompetent, provide the report to the member's court-appointed guardian. The member should also be notified that uniformed or civilian attorneys are available to assist TDRL members.

(2) Forwarding to PPEB. The MTF CO shall forward the report, together with the medical records, within 30 days following completion of the examination to the President, Physical Evaluation Board (TDRL), 720 Kennon Street, SE, Suite 400, Washington Navy Yard, Washington, DC 20374-5023.

(3) Copy to CHNAVPERS/CMC (MMSR-4). The MTF CO shall send a statement of compliance to CHNAVPERS/CMC (MMSR-4) for the historical record.

g. TDRL Examination Issues and Concerns

(1) Competency. TDRL periodic physical examinations shall include the results of a competency board when the member's mental condition has deteriorated or the member has a functional or organic disorder such that the member's ability to handle personal affairs and to understand and cooperate in DES proceedings is questionable.

(a) Whenever a member on the TDRL was previously found mentally incompetent or incapable of managing their affairs, the periodic physical examination report shall contain either a statement by a psychiatrist or PhD psychologist that the member continues to be incompetent or a finding of restoration of competency.

(2) Service Member Medical Records. The member will provide to the examining physician, for submission to the PEB, copies of all of their medical records (e.g., civilian, VA, and military) documenting treatment since the last TDRL re-evaluation or discharge from active duty service. The member shall be notified of this requirement and the consequences for non-compliance at least 30 days in advance of the submission deadline.

(3) Refusal or Failure to Report. Per chapter 61 of reference (a), after verifying that notice was provided to the Service Member no less than sixty (60) days in advance of each examination or the date to submit medical records, when a member on the TDRL refuses or fails to report for a required periodic physical examination or provide medical records per paragraph (2) of this section, disability retired pay will be suspended. After verifying that notice was provided to the Service Member no less than sixty (60) days in advance, CHNAVPERS or DC, M&RA will administratively remove any member on the fifth anniversary of placement on the TDRL for failure to report for a periodic physical examination for members placed on the TDRL on or before December 31, 2016 and on the third anniversary of placement on the TDRL for failure to report for a periodic physical examination for members placed on the TDRL on or after January

1, 2017, and they will be separated without entitlement to any DoD disability benefits under chapter 61 or reference (a).

(a) If the member later reports for the periodic physical examination and has not exceeded three years or five years, as appropriate, on the TDRL or been administratively removed from the TDRL list, retired pay will resume effective on the date the examination was actually performed.

(b) If the member subsequently shows just cause for failure to report, disability retired pay may be paid retroactively for a period not to exceed 1 year prior to the actual performance of the periodic physical examination.

(c) If the member does not undergo a periodic physical examination after disability retired pay has been suspended, they will be administratively removed from the TDRL on the third or fifth anniversary, as appropriate, of the original placement on the list.

(d) Notify the CHNAVPERs or DC, M&RA if the Service Member does not make an appointment or does not attend a scheduled periodic physical examination.

(4) Priority. TDRL examinations, including hospitalization in connection with the conduct of the examination, will be furnished with the same priority given to active duty members.

(5) Reports from Non-MTFs. MTFs designated to conduct TDRL periodic physical examinations and CHNAVPERs/DC, M&RA may use reports of medical examinations from medical facilities of another service, the VA, other government agencies, and authorized civilian medical facilities and physicians to complete the periodic physical examination. The designated MTF remains responsible for the adequacy of the examination and the completeness of the report. The report must include the information specified in this chapter, if applicable.

(6) Incarcerated Members. A report of medical examination shall be requested from the appropriate authorities in the case of a Service Member imprisoned by civil authorities. In the event no report or an inadequate report is received, make

documented efforts to obtain an acceptable report. If an examination is not received, disposition of the case shall be in accordance with this chapter. Advise the member of the disposition and that remedy rests with the BCNR.

(7) Administrative Finality. During TDRL reevaluation, previous determinations concerning application of any presumption established by this instruction, LOD, misconduct, combat-relatedness, combat zone, proximate result, and whether a medical condition was permanent, service-incurred, or pre-existing and aggravated will be considered administratively final for those conditions for which the member was placed on the TDRL unless there is evidence of fraud, a change of diagnosis that warrants the application of accepted medical principles for a pre-existing condition, or correction of error in favor of the member.

(8) Fitness and Compensability. A fitness and compensability determination shall be made on all diagnoses present during the period of TDRL evaluation. When a member is determined fit for the condition for which they were placed on the TDRL but unfit for a non-compensable condition incurred while on the TDRL, separate the member from the TDRL without entitlement to DoD disability benefits. Conditions newly diagnosed during TDRL periodic physical examinations shall be compensable upon finalization when:

(a) The condition is unfitting.

(b) The condition was caused by the condition for which the member was placed on the TDRL or directly related to its treatment.

(c) To correct an error in favor of the Service Member, ASN(M&RA), DIRSECNAVCORB, or PPEB may determine the condition was unfitting and compensable at the time the Service Member was placed on the TDRL.

h. Fit TDRL Disposition. Members found fit are entitled to an FPEB. The member may be afforded the opportunity to re-enter military service if the member seeks reentry.

(1) AC Service Members

(a) Enlisted Members. An enlisted Service Member shall have their status on the TDRL and disability retired pay terminated on the date preceding re-enlistment on active duty of the Service, which they were a member before being placed on the TDRL. Any such reappointment or reenlistment shall be in a rank, grade, or rating not lower than the rank, grade, or rating permanently held by the Service Member at the time of being placed on the TDRL, and may be in the rank, grade, or rating immediately above the rank, grade, or rating permanently held. For the purpose of being placed on a lineal or promotion list, the Service Member will be given such seniority in rank, grade, or rating or will be credited with such years of service as the appropriate authority may authorize. In this connection, consider the probable opportunities for advancement and promotion to which the Service Member might reasonably have been entitled had it not been for the placement on the TDRL.

(b) Officers. An officer who seeks reentry may be recalled to Active Duty and, as soon as practicable, be reappointed to the Active List of a regular component, even if this means there will be a temporary increase in the number of officers authorized for that grade. Any such reappointment shall be in a rank or grade not lower than the rank or grade permanently held by the member at the time of placement on the TDRL. For the purpose of being placed on a Lineal or Promotion List, the member will be given such seniority in rank or grade or will be credited with such years of service as SECNAV may authorize. In this connection, consideration will be given to the probable opportunities for advancement and promotion to which the member might reasonably have been entitled had it not been for the placement on the TDRL. An officer in the AC shall have Disability Retired Pay terminated on the date preceding recall to Active Duty.

(2) RC Members. A member of the RC who seeks reentry may be reappointed or reenlisted as the case may be in the RC. The Reserve member shall their status on the TDRL and disability retired pay terminated on the date preceding reappointment or reenlistment in the RC.

(3) Members of the Fleet Reserve or Fleet Marine Corps Reserve. With their consent a member of the Fleet Reserve or Fleet Marine Corps Reserve found fit to continue naval service with less than 30 years in service shall resume their status in

the Fleet Reserve or Fleet Marine Corps Reserve in the grade held when placed on the TDRL, or the next higher grade if considered qualified therefore in accordance with section 1210 of reference (a). Members of the Fleet Reserve or the Fleet Marine Corps Reserve found fit who have 30 or more years in service will be permanently retired.

i. Unfit TDRL Disposition. TDRL members determined unfit to continue naval service who have achieved maximum improvement or whose disability is permanent should have their case finalized by the third or fifth anniversary, as appropriate, of placement on the TDRL. In the event a member desires to contest the unfit finding or the disability rating, the member shall be entitled to an FPEB.

(1) Retention on TDRL. Members on the TDRL for less than three or five years, as appropriate, whose conditions have not stabilized will remain on the TDRL at the original disability rating. A member continued on the TDRL does not have the right to an FPEB.

(2) Separation. A member on the TDRL who has less than 20 years of active service computed under section 1208 of reference (a) and a Physical Disability ratable at less than 30 percent (but continues to render the member unfit to continue naval service) under the VASRD in use at the time of determination shall be removed from the TDRL and may be separated under section 1203 or section 1206 of reference (a), whichever applies in accordance with section 1210 of reference (a).

(a) Severance Pay. If the disability is ratable at less than 30 percent but continues to render the member unfit to continue naval service, and if the member has less than 20 years of Active Duty service (and will not be entitled to retired pay or retainer pay by other provisions of law), the member will be discharged with severance pay computed in accordance with section 1212 of reference (a).

(b) Exceptions to Separation with Severance Pay

1. Reversion to Former Status - Members of the Fleet Reserve or Fleet Marine Corps Reserve. A member of the Fleet Reserve or Fleet Marine Corps Reserve on the TDRL who has

20 years of service computed under section 1208 of reference (a) and who, as a result of a periodic physical examination, will become entitled to severance pay per reference (a), shall be given an opportunity to request that their name be removed from the TDRL and that their status in the Fleet Reserve or Fleet Marine Corps Reserve be resumed.

2. Transfer to Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of reference (a). A member on the TDRL who has 20 years of service computed under section 1208 of reference (a) and who, as a result of a periodic physical examination, will become entitled to severance pay under Chapter 61 of reference (a), shall be given the opportunity to request transfer to the Fleet Reserve or Fleet Marine Corps Reserve if the member is eligible for transfer under section 6330 of reference (a).

3. Transfer to Inactive Status List. Officers and enlisted members of the Navy and Marine Corps Reserve on the TDRL who have at least 20 years of service and who, as a result of a periodic physical examination, are determined to be entitled to severance pay under Chapter 61 of reference (a), shall be given an election, instead of being separated, to request transfer to the Inactive Status List under section 1290 and section 1335 of reference (a), to receive Retired Pay at age 60.

(3) Permanent Retirement. Rate members under VASRD criteria in effect at the time of their final evaluation.

(a) Members with 20 Years or More of Service Computed Under reference (a) section 1208. If, as a result of a periodic physical examination or upon final determination, it is determined that a Service Member's physical disability is of a permanent nature, and if they have at least 20 years of service computed under section 1208 of reference (a), remove the Service Member's name from the TDRL and retire them under section 1201 or section 1204 of reference (a), whichever applies, with retired pay computed under section 1401 of reference (a).

(b) Members with Less Than 20 Years of Service Computed Under section 1208 of reference (a). If, as a result of a periodic physical examination, or upon final determination, it is determined that the member's physical disability is of a

permanent nature and is at least 30 percent under the VASRD in use at the time of the determination remove the member's name from the TDRL and retire them under section 1201 or section 1204 of reference (a), whichever applies.

(4) Current Physical Examination. Service Members on the TDRL are not entitled to permanent retirement or separation with disability severance pay without a current periodic physical examination acceptable to the PEB, as required by chapter 61 of reference (a).

j. Cases on VA Appeal. When a Service Member who was temporarily retired for disability has appealed a VA decision and the appeal resides with the Board of Veterans Appeals or Court of Appeals for Veterans' Claims, the VA will provide a copy of the most current rating and medical evidence upon which the most current rating is based in accordance with section 7332 of reference (f).

(1) Examination Documentation. The PEB will obtain and review the available DoD and VA medical treatment and disability examination documentation available for the condition for which the Service Member was placed on the TDRL. A request for records not conducted at DoD or VA medical facilities shall be sent to the Service Member no less than 60 days before the medical evidence is to be reviewed.

(2) Review of Medical Evidence. The PEB will review the available medical evidence to determine if the documentation is sufficient to conduct the TDRL re-evaluation process without a disability examination of the Service Member.

(3) Additional Examination. If the PEB determines the Service Member requires an additional disability examination, the Service Headquarters will coordinate actions needed to meet the statutory examination requirement in reference (a). Upon receipt of all necessary medical evidence, the PEB will adjudicate the case.

8. PFR

a. Following an FPEB, Service Members may submit a PFR to DIRSECNAVCORB.

(1) Members who have been separated or permanently retired may not submit a PFR but can petition the BCNR for relief. Members who were medically separated with a disability rating below 30 percent between September 11, 2001 and December 31, 2009 and who have not submitted a BCNR appeal may also petition the Physical Disability Board of Review (PDBR) for review of their disability ratings.

(2) PDBR recommendations that have been approved by ASN (M&RA) are final agency actions that may be appealed to BCNR.

b. PFR Format. PFR submission is to DIRSECNAVCORB. The PFR must be in writing and signed by either the petitioner or petitioner's legal counsel. It must state the grounds for the appeal and the desired relief. If a PFR is based upon evidence not contained in the Service Member's PEB file, it must be included with the PFR.

c. PFR Timelines. Per reference (d), the PEBLO has three business days to deliver the findings to the Service Member. A post-FPEB election requesting a PFR to include the new and material evidence must be submitted within 15 calendar days from delivery of the findings to the Service Member. All requests for extensions in submitting a PFR must be in writing and sent directly to the DIRSECNAVCORB. The request will include a statement detailing the reason an extension is necessary, the length of the extension, the date the FPEB was held, and the date the member received the findings.

d. PFR Adjudication

(1) The DIRSECNAVCORB will normally adjudicate a case within 30 days of receiving a PFR.

(2) The adjudication of a PFR will not result in an adverse finding for the petitioning Service Member with the following exception: In LDES and TDRL cases, the final physical disability percentage rating assigned by the PEB can be reduced only if the petitioning Service Member is granted an additional appearance before an FPEB whose members have not previously ruled on the case. An adverse finding occurs when an FPEB's finding of fit is changed to unfit or, in a TDRL case, a disability rating is lowered.

(3) DIRSECNAVCORB may direct a fitness determination or a finding of fit/Physically Qualified, except for a presumption of fitness determination. Such a finding is not adverse and does not provide entitlement to another FPEB.

(4) DIRSECNAVCORB may make a final decision in LOD/M appeals, or he or she can refer the matter as a special interest case to the ASN (M&RA).

e. Grounds for Appeal

(1) An appeal of the Formal PEB's determination may only be based upon one or more of the issues listed below and must provide justification or additional evidence in support of the issue. Issues not considered and adjudicated by the Formal PEB may not be the basis of an appeal.

(a) The decision of the PEB was based upon fraud or mistake of law (i.e., policy letters issued by DIRSECNAVCORB or ASN (M&RA), regulations, and statutes). Disagreement with a PEB determination that is within its discretionary decisional authority (e.g., application of rating percentage in LDES and TDRL cases) does not constitute a mistake of law.

(b) The Service Member did not receive a full and fair hearing.

(c) Material new evidence exists and is submitted, which by due diligence could not have been presented before adjudication of the case by the PEB.

(d) The decision of the PEB was arbitrary and capricious (i.e., determination was a result of willful and unreasonable action without consideration or in disregard of the facts; or, the PEB relied upon assumptions of facts that are not present in the record).

f. Submission of non-PFR Appellate Petitions

(1) Petitions to the BCNR shall be submitted in accordance with BCNR regulations and timelines.

SECNAV M-1850.1
23 Sep 2019

(2) Appeals of LOD Benefits and combat-related determinations will be directed to the Office of the JAG of the Navy, Administrative Law Division (Code 13).

APPENDIX A - REFERENCES

- (a) 10 U.S.C.
- (b) DoD Instruction 1332.18 of 17 May 2018
- (c) DoDM 1332.18 Volume 1, Disability Evaluation System Manual: General Information and Legacy Disability Evaluation System Time Standards of 5 August 2014
- (d) DoDM 1332.18 Volume 2, Disability Evaluation System Manual: Integrated Disability Evaluation System of 5 August 2014
- (e) DoD 1332.18 Volume 3, Disability Evaluation System Manual: Quality Assurance Program (QAP) of 21 November 2014
- (f) 38 U.S.C.
- (g) JAG Instruction 5800.7F, Manual of the Judge Advocate General of 26 June 2012
- (h) SECNAVINST 1920.6C
- (i) NAVPERS 15560D
- (j) MCO 1900.16
- (k) SECNAVINST 1770.5
- (l) Joint Travel Regulations of 1 May 2019
- (m) Uniform Code of Military Justice
- (n) 37 U.S.C.
- (o) NAVMED P-117, Manual of the Medical Department CH-167 of 15 February 2019
- (p) 5 U.S.C.
- (q) 26 U.S.C.
- (r) DoD Instruction 1332.14 CH-4 of 12 April 2019
- (s) DoD Instruction 1332.30 CH-1 of 12 April 2019
- (t) SECNAV M-5214.1

APPENDIX B - GLOSSARY

ABBREVIATIONS AND ACRONYMS

AC	Active Component
BCNR	Board for Correction of Naval Records
CHBUMED	Chief, Bureau of Medicine and Surgery
CHNAVPERS	Chief of Naval Personnel
DC, M&RA	Deputy Commandant, Manpower and Reserve Affairs
DES	Disability Evaluation System
DFAS	Defense Finance and Accounting Service
DODD	DOD Directive
DODI	DOD Instruction
DODM	DOD Manual
DRAS	Disability Rating Activity Site
EPTS	Existed Prior to Service
FPEB	Formal Physical Evaluation Board
IDES	Integrated Disability Evaluation System
IDT	Inactive Duty Training
IPEB	Informal Physical Evaluation Board
IT	Information Technology
JAG	Judge Advocate General of the Navy
LDES	Legacy Disability Evaluation System
LOD	Line of Duty
MEB	Medical Evaluation Board
MTF	Military Treatment Facility
MSC	Military Services Coordinator
NARSUM	Narrative Summary
NMA	Non-Medical Assessment
NPQ	Not Physically Qualified
PDRL	Permanent Disability Retired List
PEB	Physical Evaluation Board
PFR	Petition for Relief

PEBLO	Physical Evaluation Board Liaison Officer
PLD	Permanent Limited Duty
PPEB	President, Physical Evaluation Board
PQ	Physically Qualified
RC	Reserve Component
RCC	Recovery Care Coordinator
SECNAV	Secretary of the Navy
TDRL	Temporary Disability Retired List
U.S.C.	United States Code
UA	Unauthorized Absence
VA	Department of Veterans Affairs
VASRD	Department of Veterans Affairs Schedule for Rating Disabilities

APPENDIX C - DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this instruction.

Accepted Medical Principles. Fundamental deductions, consistent with medical facts, that are so reasonable and logical as to create a virtual certainty that they are correct. The PEB will state with specificity the basis(es) for the conclusion.

Active Duty. Full-time duty in the active military service of the United States. It includes:

- a. Full-time Active Reserve Duty;
- b. Annual training;
- c. Attendance while in active military service at a school designated as a service school by law or by the SECNAV; and
- d. Service by a member of a Reserve Component ordered to active duty (with or without consent), or active duty for training (with consent), with or without pay under competent orders.

Acute. Characterized by sharpness or severity.

Armed Conflict. A war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service Members are engaged with a hostile or belligerent nation, faction, force, or terrorist. Armed conflict may also include such situations as incidents involving a member while interned as a prisoner of war or while detained against their will in the custody of a hostile or belligerent force or while escaping or attempting to escape from such confinement, prisoner-of-war, or detained status.

Case File. All records, information, and testimony relied upon by the PEB that are contained in the Service Member's adjudication file. This includes reference materials, including articles from medical journals.

Catastrophic Injury or Illness. A permanent, severely disabling injury, disorder, or disease incurred or aggravated in the line of duty that compromises the ability to carry out the activities of daily living to such a degree that a Service Member requires personal or mechanical assistance to leave home or bed or requires constant supervision to avoid physical harm to self or others.

Clear and Convincing Evidence. As a standard of proof, it is that quantum of evidence beyond a mere preponderance, but below that of "clear and unmistakable evidence," such that it will produce in the mind of the fact finder a firm belief as to the facts sought to be established.

Clear and Unmistakable Evidence. Undebatable information that the condition existed prior to military service, or if increased in service, was not aggravated by military service. In other words, reasonable minds could only conclude that the condition existed prior to military service from a review of all of the evidence in the record.

Compensable Disability. A medical condition that is determined to be unfitting due to disability and that meets the statutory criteria of reference (a) for entitlement to disability retired or severance pay.

Competency Board. A board consisting of at least three medical officers or physicians (including one psychiatrist) convened to determine whether a member is competent (capable of making a rational decision regarding their personal and financial affairs).

Conditions Simulating War. In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training, rappelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

Deployable. A Service Member who does not have a Service-determined reason that precludes them from deployment.

Disability. Any impairment due to disease or injury, regardless of degree, that reduces or prevents an individual's actual or presumed ability to engage in gainful employment or normal activity. The term "disability" or "physical disability" includes mental disease, but not such inherent defects as developmental or behavioral disorders. A medical impairment, mental disease, or physical defect standing alone does not constitute a disability. To constitute a disability, the medical impairment, mental disease, or physical defect must be severe enough to interfere with the Service Member's ability to adequately perform their duties.

Disability Benefits

a. Active Duty. Disability retirement pay and severance pay, authorized by reference (a), provided for members, who, if otherwise qualified, become unfit to continue naval service because of physical disability acquired or aggravated while entitled to receive basic pay. Once released from active duty and no longer entitled to receive base pay, members or former members are not authorized benefits under reference (a) even though their disabilities are service connected. Rather, such members or former members must file separate disability claims with the Department of Veterans Affairs.

b. Reserve Component Members. A Reserve Component member shall be adjudicated under the statutory provisions applicable to their duty status at the time of onset or aggravation of the condition for which the member is determined unfit. This means Ready Reserve members not on orders for a period of more than 30 days at the time of their referral into the DES, but who is determined unfit for a disability incurred or aggravated while the member was on a call to active duty of more than 30 days, comes under the provisions of reference (a) 1201 - 1203 and not 1204 - 1206. In such a situation, "in line of duty while entitled to basic pay" rather than "proximate result" is the applicable statutory requirement for entitlement to disability compensation.

Disability Evaluation System. The DoD mechanism for determining return to duty, separation, or retirement of Service Members because of disability in accordance with chapter 61 of reference (a).

Disability Retired Pay. Regular periodic compensation a member receives who is retired because of disability from active service.

Disability Severance Pay. One-time compensation received by a member who is discharged because of disability resulting from active service. Also see reference (a) § 1212.

Disposition. PEB directs Service Headquarters to effect a member's status within the naval service. As used in this instruction, "disposition" may mean one or a combination of the following:

Disposition	Directed Action
Fit for continued military service	<ul style="list-style-type: none"> • Return to duty • Discharge under other provisions of law • Remove from TDRL
Unfit to continue military service	<ul style="list-style-type: none"> • Discharge with severance pay • Discharge without severance pay • Transfer to TDRL • Continue on TDRL • Transfer to PDRL
Physically Qualified for continued military service	<ul style="list-style-type: none"> • Return to duty in the Reserve Component
Not Physically Qualified for continued military service	<ul style="list-style-type: none"> • Discharge from the Reserve Component • Non-Disability Retirement (more than 15 years of service-10 U.S.C. 12731b)

Duty Related Impairments. Impairments which, in the case of a member on active duty for 30 days or less, are the proximate result of, or were incurred in the line of duty after September 23, 1996, as a result of:

- a. Performing active duty or IDT;

b. Traveling directly to or from the place at which such duty is performed; or

c. After September 23, 1996, an injury, illness, or disease incurred or aggravated while remaining overnight, between successive periods for purposes of IDT, at or in the vicinity of the site of the IDT, if the site is outside reasonable commuting distance of the member's residence. Reasonable commuting distance is defined as a 100-mile radius.

Elective Surgery. Surgery that is not essential, especially surgery to correct a condition that is not life-threatening; surgery that is not required for survival.

Existed Prior to Service. A finding by the PEB that evidence establishes that the member is unfit to continue naval service due to a medical impairment that manifested or existed prior to entry in the military service and has not been permanently aggravated by military service. Members found unfit - EPTS, Not Ratable are not eligible for disability severance pay or disability retirement if they have less than eight years of cumulative active service, but may be eligible for severance pay or retirement under other provisions of law.

Extra-Hazardous Service. Military duties that present significant risk to life and limb, including, but not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

Final Decision. A final decision shall be construed as having been issued when:

a. the member accepts, either actually or constructively, the findings of the PEB following a record review, subject to review and approval.

b. the President, PEB, issues the Findings Letter following a formal hearing.

c. a PFR is acted upon by DIRSECNAVCORB or higher authority.

Final Reviewing Authority. The final approving authority for the findings and recommendations of the PEB.

Fit. A finding by the PEB meaning that the member is fit to continue naval service based on evidence that establishes that the member is reasonably able to perform the duties of their office, grade, rank or rating, to include duties during a remaining period of Reserve obligation.

Grave. Very serious; dangerous to life; used of an illness or its prospects.

Inactive Duty Training. Duty prescribed for Reservists, other than active duty, under reference (n) § 206 or other provision of law. It does not include work or study in connection with a correspondence course of a Uniformed Service.

Instrumentality of War. A vehicle, vessel, or device designed primarily for military service and intended for use in such service at the time of the occurrence or injury.

Integrated Disability Evaluation System. The joint DoD-VA process by which the DoD determines whether wounded, ill, or injured Service Members are fit for continued military service, and the DoD and VA determine appropriate benefits for Service Members who are separated or retired for disability.

Legacy Disability Evaluation System. A DES process by which the DOD determines whether eligible wounded, ill, or injured Service Members are fit for continued military service and determines appropriate benefits for Service Members who are separated or retired for disability. Service Members processed through the LDES may also apply for veterans' disability benefits through the VA pre-discharge Benefits Delivery at Discharge program or upon attaining veteran status.

LOD Benefits Letter. A document that is issued by Service Headquarters when it is determined that an injury or disease was incurred or aggravated by Reserve service and may authorize disability severance pay or disability retired pay to include medical care, travel to and from medical treatment, incapacitation pay and/or drill pay, and processing through the DES.

LOD Determination. An inquiry to determine whether an AC Service Member's injury or illness will be eligible for certain disability benefits. An injury or disease, or aggravation of the same, incurred during active service will be considered in the

line of duty except when incurred as a result of the Service member's intentional misconduct or willful neglect that demonstrates a reckless disregard for the foreseeable and likely consequences of the conduct involved or incurred while in an unauthorized absence status.

Medical Evaluation Board. A body of physicians (or others specifically designated by CHBUMED) convened in accordance with reference (o) to identify members whose physical and/or mental qualification to continue on full duty is in doubt or whose physical and/or mental limitations preclude their return to full duty within a reasonable period of time. They are convened to evaluate and report on the diagnosis; prognosis for return to full duty; plan for further treatment, rehabilitation, or convalescence; estimate of the length of further disability; and medical recommendation for disposition of such members.

MEB Convening Authority. A senior medical officer, appointed by the MTF commander, who has detailed knowledge of standards of medical fitness and disposition of patients and disability separation processing and who is familiar with the VASRD.

MEB process. For Service Members entering the DES, the MEB conducts the medical evaluation on conditions that potentially affect the Service Member's fitness for duty. The MEB documents the Service Member's medical condition(s) and history with a MEB Narrative Summary as part of a MEB Report.

Medical Impairment. Any disease or residual of an injury that results in a lessening or weakening of the capacity of the body or its parts to perform normally, according to accepted medical principles.

Natural Progression. The worsening of a medical condition due to nature and expected course that would have occurred even if the member was not in the military service.

Non-Duty-Related Medical Conditions. Impairments that were neither incurred nor aggravated while the member was performing duty.

Office, Grade, Rank, or Rating

- a. Office. A position of duty, trust, and authority to

which an individual is appointed.

b. Grade. 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. The order of precedence among members of the military services.

d. Rating. The name (such as "Boatswain's Mate") prescribed for Service Members of the naval service in an occupational field.

PEB Liaison Officer. The non-medical case manager who provides information, assistance, and case status updates to the affected Service Member throughout the DES process.

Permanent Limited Duty. The continuation on active duty or in the Ready Reserve in a limited-duty capacity of a Service Member determined unfit because of disability evaluation or medical disqualification.

Petition for Relief. A request by a member, who has not been discharged or separated or permanently retired, for appellate review of final PEB findings based upon: new or newly discovered evidence; fraud, misrepresentation, or other misconduct; and/or mistake of law. Members who have been separated or permanently retired may still petition the BNCR.

Preponderance of Evidence. Preponderance of the evidence means to prove that something is more likely so than not so. In other words, a preponderance of the evidence means evidence, when considered and compared with the evidence opposed to it, has more convincing force and produces a belief that what is sought to be proved is more likely true than not true. This standard does not require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

Presumed Fit. PEB finding applied to Service Members pending retirement at the time they are referred to the PEB for disability evaluation and, therefore, are evaluated under a presumption of fitness. A finding of PFIT means evidence establishes that the member's functional impairment has not caused the premature termination of their career. Members found

to be PFIT are afforded the same rights within the DES as those found fit to continue naval service. Members found PFIT are not eligible for disability retirement but are eligible for retirement under other provisions of law and for evaluation by the VA for disability compensation.

Presumption. An inference of the truth of a proposition or fact reached through a process of reasoning and based on the existence of other facts. Matters that are presumed need no proof to support them but may be rebutted by evidence to the contrary.

Proximate Result. A permanent disability the result of, arising from, or connected with active duty, annual training, active duty for training, or IDT, to include travel to and from such duty or remaining overnight between successive periods of IDT. Proximate result is a statutory criterion for entitlement to disability compensation under chapter 61 of reference (a) applicable to RC members who incur or aggravate a disability while performing an ordered period of military duty of 30 days or less.

Relevant Evidence. Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining the action.

Retention Standards. Guidelines that establish medical conditions or physical defects that could render a Service Member unfit for further military service and may be cause for referral of the Service Member into the DES.

Service Aggravation. The permanent worsening of a pre-service medical condition over and above the natural progression of the condition.

Service Treatment Record. The chronologic record of medical, dental, and mental health care received by Service Members during the course of their military careers. It includes documentation of all outpatient appointments (i.e., without overnight admittance to a hospital, clinic, or treatment facility) as well as summaries of any inpatient care (discharge summaries) and care received while in a military theater of operations. The service treatment record is the official record used to support continuity of clinical care and the administrative, business-related, and evidentiary needs of the

DoD, VA, and the individual.

Unfit. A finding by the PEB that the member is unfit to continue naval service based on evidence that establishes that the member is unable to reasonably perform the duties of their office, grade, rank or rating, to include duties during a remaining period of Reserve obligation. A Service Member may also be considered unfit when the evidence establishes that: (1) the Service Member's disability represents a decided medical risk to the health of the member or to the welfare or safety of other members; or (2) the Service Member's disability imposes unreasonable requirements on the military to maintain or protect the Service Member.

APPENDIX D - FORMS AND REPORTS

1. Forms

a. VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits, is available from the Department of Veterans Affairs website, <https://www.va.gov/vaforms>.

b. VA Form 21-22, Appointment of Veterans Service Organization as Claimant's Representative, is available from the Department of Veterans Affairs website, <https://www.va.gov/vaforms>.

c. NAVPERS 1070/602, Dependency Application, is available from the Navy Personnel Command website, <https://www.public.navy.mil/bupers-npc/reference/forms/NAVPERS/Pages/default.aspx>.

d. DD Form 93, Record of Emergency Data, is available from The Official DoD Website for DoD Forms, <https://www.esd.whs.mil/directives/forms/>.

2. Reports. The reporting requirements contained in Chapter 1 paragraph 2c(1), Chapter 2 paragraph 8c, Chapter 3 paragraph 6e, and Chapter 4 paragraph 7g(5) are exempt from information collection control, per reference (t), Part IV, paragraphs 7k and 7p.

SECNAV M-1850.1

DEPARTMENT OF THE NAVY ISSUANCES
[HTTPS://WWW.SECNAV.NAVY.MIL/DONI/DEFAULT.ASPX](https://www.secnav.navy.mil/DONI/default.aspx)