

ENCLOSURE 10: WHAT YOU NEED TO KNOW ABOUT THE PHYSICAL EVALUATION BOARD

**10001 General.**

As the result of career-ending illnesses or injuries, each year the Navy and the Marine Corps separates thousands of Sailors and Marines through its disability evaluation system. This enclosure answers a few general questions about the Department of the Navy's disability evaluation system.

**An Overview of the Department of the Navy Disability System**

The Secretary of the Navy is charged with assuring the fitness of Navy and Marine Corps members, and separating or retiring those who become Unfit to continue naval service because of physical disability. The Secretary's authority is derived from Title 10, U. S. Code, Chapter 61, as supplemented by DoD Directive 1332.18 of 4 November 1996, and this instruction. The law provides benefits for eligible members whose military service is cut short due to a service-related physical disability incurred in the line of duty. The Department of the Navy Physical Evaluation Board manages the Navy's disability evaluation system. The PEB is an administrative board that determines whether a service member's disability prevents his or her continued performance in the Navy or Marine Corps. The PEB is comprised of two levels of boards, which review medical evidence and make determinations of fitness or unfitness to continue naval service. If the PEB determines that a service member is Unfit to continue naval service, and finds that the service member is eligible for disability benefits, the PEB determines the percentage of the service member's disability compensation. Depending on the severity of the illness or injury, the service member receives either medical retirement or disability severance pay. The PEB makes determinations of Fitness to continue naval service or Unfitness to continue naval service, Physically Qualified for continued naval service or Not Physically Qualified for continued naval service, and eligibility for disability severance pay.

**When is a service member Unfit to continue naval service?**

A service member is Unfit to continue naval service when one or more physical and/or mental disabilities prevent him or her from reasonably performing the duties of his or her office, grade, rank, or rating. The PEB makes the decision on Fitness by balancing the extent of a member's disability, as shown through objective medical and performance evidence, against the requirements and duties that the member may reasonably be expected to perform in his or her office, grade, rank, or rating. Typical medical evidence used by the PEB includes a narrative summary written by the Medical Evaluation Board (MEB), history and treatment of the injury or illness, referrals to doctors and sick call, and type and frequency of medication. Performance evidence includes non-medical assessments from the member's command, personnel records, promotions, awards, and adverse personnel actions. See enclosure (3), part 3.

### **I've been seriously hurt; what happens next?**

The priority for a service member suffering an illness or injury is to ensure that his or her illness or injury receives proper medical attention. If the service member's condition improves to the point that he/she is able to return to full military duty, he/she is returned to his or her unit. However, if the treating physician believes that the service member is unable to perform full military duty or unlikely to be able to do so within a reasonable period of time, the service member is referred to a Medical Evaluation Board (MEB).

A MEB decides whether a member has an injury or illness and documents the extent of that injury or illness. The MEB then decides if the injury or disease is severe enough to call into question a member's ability to continue on full duty. The MEB does this by relating the nature and degree of the medical impairment of the member to retention standards and the duties that the member may reasonably be expected to perform in his or her office, grade, rank, or rating. If the MEB believes that the member will be able to return to full military duties within a reasonable period of time, then a Temporary Limited Duty (TLD) Board will be written. If the member's physical qualification to continue on full duty remains in doubt or his or her physical limitations preclude his or her return to full duty after the prescribed TLD period, the MEB refers the member's case to the PEB.

The MEB makes the above determinations after performing a complete examination and their report will contain a complete examination including the completion of the Standard Forms (SF) 88 and 93. The MEB documents the member's medical problems, defines the limitations imposed by the resulting medical impairment, and explains how the condition affects the member's ability to perform his or her military duties. See enclosure (3), parts 1, 2 and 3.

### **How is the PEB structured?**

The PEB is comprised of two levels of boards. A board is composed of three members, normally a Navy line officer, a Marine Corps officer, and a Medical Corps officer. The presiding officer for an Informal or a Formal PEB will normally be a Navy line or Marine Corps officer in the grade of O-6. The first level is the Informal PEB. The second level is the Formal PEB. If the PEB determines that a member is no longer Fit to continue naval service, and the member is eligible for disability benefits, the PEB then decides the percentage of disability and the appropriate disposition that shall be assigned to the member.

### **Informal PEB**

When a medical board report expressing a reasonable doubt of a service member's ability to perform his/her duties is referred to the PEB for a determination of fitness, the medical board report is initially reviewed by the Informal PEB. This board, located in Washington, DC, conducts a review of the service member's record. A member does not appear before the Informal PEB. The findings of this board are forwarded to the service member via a Physical Evaluation Board Liaison Officer (PEBLO) counselor.

If found Fit to continue naval service, the service member may either accept the finding or submit a written request for reconsideration to the Informal PEB. The reconsideration will

include new medical information not previously available or considered supporting the service member's argument and indicate whether the member does or does not desire a Formal PEB hearing if the Fit to continue naval service finding remains unchanged. However, if the Fit to continue naval service finding is confirmed upon reconsideration, there is no right to a hearing.

If found Unfit to continue naval service, the service member has the right to accept the findings, or demand a formal hearing before a Formal PEB.

### **Formal PEB**

A member who is found Unfit to continue naval service by the Informal PEB and wishes to appeal can demand a formal hearing, with or without personal appearance. Formal hearings are held before the Formal PEB at one of two locations - Bethesda, MD, and San Diego, CA. The Formal PEB is the member's opportunity, with the assistance of legal counsel, to present evidence, testimony, and documents in support of his or her case. The service member is represented by an appointed lawyer and may appear in person and present evidence pertinent to the case. The service member may also be represented by a National Service Officer from a National Service Organization or civilian counsel of his or her choosing provided at his or her own expense. The Formal PEB's recommended findings will be reviewed for administrative and legal error. The Formal PEB's recommended findings are final only after the President, PEB signs the decision. The President, PEB can choose not to accept the recommended findings or to amend the recommended findings. If the service member disagrees with the findings, he or she may submit a Petition for Relief (PFR). This PFR is separate and distinct from the Formal PEB's decision. See enclosure (5).

### **What is the difference between an MEB and the PEB?**

A MEB and the PEB are separate boards. These two boards consider different information and make distinct decisions. An MEB can not make a determination of Unfit to continue naval service. An MEB decides whether a member has an injury or illness and documents the extent of that injury or illness. The MEB then decides if the injury or disease is severe enough to call into question a member's ability to continue on full duty. The MEB refers those cases involving members who meet the above criteria to CHNAVPERS, CMC (MMSR-4), or the Informal PEB for review. Having a condition or injury that rates referral to the PEB does not necessarily mean that a member is Unfit to continue naval service.

The Informal PEB determines whether a service member can adequately perform the requirements of his or her office, grade, rank, or rating. The PEB alone decides unfitness by balancing the extent of a member's illness or injury against his or her ability to perform the requirements of his or her office, grade, rank, or rating. See reference (f) and enclosures (3) & (4).

### **How does the PEB decide the percentage of disability ?**

If the PEB finds that a service member is Unfit to continue naval service, and the member is eligible for disability benefits, the PEB rates the severity of the member's injuries

using the Veterans Administration Schedule for Rating Disabilities (VASRD), as modified by enclosure (9). The VASRD lists hundreds of physical and mental disabilities and rates these disabilities using objective medical criteria. Depending on the severity of the illness or injury, the PEB rates a member from zero to 100 percent disability. See enclosure (3), part 8 and enclosure (9).

**How does the PEB decide who receives disability severance pay and who receives medical retirement?**

The severity of the injury determines whether a service member, who is eligible for disability benefits, receives disability retirement or disability severance pay. Service members rated with a zero, 10, or 20 percent disability and with less than 20 years of service will be separated from the service with disability severance pay. Disability severance pay is computed in the following manner:

Monthly Base Pay x 2 x Years of service (not to exceed 12 Years)

Service members with 20 or more years of active military service, or possessing a disability rated at 30 percent or more, receive disability retirement. Disability retirement is either permanent or temporary depending on whether the member's disability is likely to change. Disability retirement pay is computed in the following manner for service members with less than 20 years of active duty military service:

30 percent-50 percent disability rating = 50 percent of basic pay;  
50 percent-70 percent disability rating = that percentage of basic pay;  
80 percent-100 percent disability rating = 75 percent of basic pay.

See chapter 61 of reference (a).

**I suffer from a condition listed in the VASRD. Does that mean I will be found Unfit and rated by the PEB?**

Just because a service member has a condition which matches a description in the VASRD does not mean that the PEB will find him/her Unfit to continue naval service and discharge him/her with a disability from the Navy or Marine Corps. Before a member is eligible for a disability separation or retirement the member's case must show that he/she is unable to reasonably perform the duties of his or her office, grade, rank, or rating and that this inability to perform is a direct result of a documented disability. See enclosure (3), parts 2 & 3.

**I have more than one diagnosis? If the PEB finds me Unfit as the result of one of my diagnoses, does that mean all of my diagnoses are unfitting and will be rated by the PEB?**

Before the PEB rates a member suffering from multiple diagnoses, the evidence must show that each condition prevents him/her from performing the requirements of his or her office, grade, rank, or rating. For example, in the case of a member suffering from a bad knee and a bad back must be able to show that each condition, independent of the other, prevents him/her from performing his or her military duties. See enclosure (3), part 8. The PEB rates only those conditions that are unfitting.

### **I am going before a Formal PEB. What should I do?**

Once a service member is scheduled for a hearing, he/she will usually be contacted by a judge advocate assigned to the Formal PEB where the case will be heard. The military attorney will be available to represent the service member. However, members have the option of obtaining private counsel at their own expense or being represented by a National Service Officer of a National Service Organization. Members using the military counsel normally meet their counsel for the first time a day or so before the formal hearing. This is an opportunity to go over the member's case and discuss any last minute questions.

Immediately after the convening on the record of the Formal PEB proceeding, the Informal PEB findings become null and void. A member may, at any time prior to the convening on the record of the Formal PEB proceeding, withdraw the election for a Formal PEB and accept the Informal PEB findings. Once a Formal PEB proceeding has convened on the record, the member cannot accept the Informal PEB findings under any circumstances.

On the day of the hearing, members report, in the appropriate uniform of the day for the locale, to the presiding officer of the Formal PEB. The Formal PEB panel will inform the member of his or her rights, including the right to make sworn or unsworn statements, rights under the Privacy Act, and the right not to make any statements relating to the origin or aggravation of the injury. If the member whose case is before the PEB chooses not to testify under oath the Formal PEB panel may not question him or her.

During the Formal PEB, service members should anticipate questions relating to how the injury occurred, treatments received, medication, and limitations that the disability imposes. The member will be provided an opportunity to discuss his or her case in detail. At the Formal PEB, the panel will usually have the member's medical records, portions of his or her service record, and statements from the member's command concerning duty performance. To avoid undue delay and any detriment to the service member's case, the service member should obtain, and arrive at the hearing with his or her own personal copies of the above materials, especially those items that will be necessary in the presentation of the service member's case. The Formal PEB uses all of this information in its decision-making process.

Following questioning by the board members and the member's representative, the service member has one last opportunity to address the board members and has the option of making a brief statement. Only the board members are present during deliberations. The Formal PEB will forward their recommendations to the President, PEB for review and final authorization. Recommended findings are subject to administrative and legal review and may not be accepted by the President, PEB. See enclosure (4).

### **Can I appeal the decisions of the Formal PEB?**

Service members who are dissatisfied with the decisions of the Formal PEB can appeal, in writing, by filing a Petition For Relief (PFR) with the DIRNCPB. The DIRNCPB can modify the findings of the PEB. However, subsequent to the PFR, the case is finalized and the member is separated or retired. After a service member has been separated or

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retired from the naval service, he/she has the right to petition the Board for Correction of Naval Records (BCNR) for relief from any injustice or inequity. See enclosure (5).

**The PEB says my condition existed prior to service . How can this be? I never suffered from this condition before I came into the Navy/Marine Corps.**

Physical or mental disabilities that make a member Unfit may have existed prior to entering the service (EPTS ). Causes of EPTS disabilities include hereditary or congenital defects or injuries with an inception before entering service. If a member has less than 8 years active service, they could be separated from the service without disability benefits if the PEB deems a member's injuries to have EPTS and his or her condition has not been permanently worsened by military service.

It is possible for a member to possess a physical or mental disability and never experience a problem until he/she faces the stresses of military life. The physical and emotional stress of military training can cause a latent condition to appear or an old injury to worsen to the point that the member is no longer able to perform his or her military duties.

To appeal a finding of EPTS , a member must either present persuasive medical evidence that the condition did not exist prior to entering the service , or provide medical evidence documenting that military service permanently aggravated a pre-existing condition. See enclosure (3), part 8.

**What is the 8-year rule?**

In the case of a member who is on active duty for more than 30 days whose disability is determined to have been incurred before the member became entitled to basic pay in the member's current period of active duty, the disability shall be deemed to have been incurred while the member was entitled to basic pay and shall be so considered for purposes of determining whether the disability was incurred in the line of duty provided the member has over 8 years of active service. The eight years of active service does not have to be continuous.

**What is the Presumed Fit rule?**

The disability evaluation system compensates members for disabilities when those disabilities cause or contribute to premature career termination. Service members retiring from the Navy/Marine Corps for reasons other than a disability, whose careers have not been interrupted by a physical or mental disability, are usually not eligible for medical retirement. Except for service members previously determined Unfit and continued in a permanent limited duty status, service members who are pending retirement (see paragraph 3305b) at the time they are referred for physical disability evaluation enter the disability evaluation system under a rebuttable presumption that they are physically fit; i.e. Presumed Fit (PFit ). Continued performance of duty until a service member is approved for length of service retirement creates a rebuttable presumption that a service member's medical conditions have not caused premature career termination. In that situation, the PEB finds these members to be PFit. A finding of PFit means that the evidence presented to the PEB

establishes that the member's functional impairment did not prevent the member from achieving retirement eligibility. Members found to be PFit have the same rights within the DES as those found Fit. While members found PFit are not eligible for disability retirement, they are still eligible for retirement under other provisions of law, as well as for evaluation by the Department of Veteran's Affairs for disability compensation.

The member can overcome the "Presumption of Fitness " when it can be established by a preponderance of evidence that:

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

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

(3) the condition for which the member is referred is a chronic condition and a preponderance of evidence establishes that the member was not performing duties befitting either his or her experience in the office, grade, rank, or rating before entering the presumptive period. Evaluate cases of members in a TLD status on the merits of each case.

The Pfit rule is not overcome when there has been no serious deterioration within the presumptive period. The ability to perform duty in the future as a result of natural progression shall not be a consideration in overcoming PFit.

### **10002 Conclusion.**

The above information is only an overview of the disability evaluation system. It is not intended as a comprehensive review of the system. Thousands of Sailors and Marines go through the disability evaluation system each year. The physical disability evaluation process can be confusing. Sailors and Marines going through the system should attempt to educate themselves with the help of their PEBLO counselors. The Secretary of the Navy tasks the PEBLO counselors with the responsibilities of counseling and educating service members, undergoing a hospital medical board, on the PEB process. PEBLO counselors carry out this function through the Disability Transition Assistance Program (DTAP). This program is conducted regularly at medical treatment facilities and attendance of members going through the medical board process is mandatory.