



# Department of Defense

## **INSTRUCTION**

**NUMBER 6040.44**

June 27, 2008

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USD(P&R)

**SUBJECT:** Lead DoD Component for the Physical Disability Board of Review (PDBR)

**References:** See Enclosure 1

1. **PURPOSE.** This Instruction:

a. Establishes policy, assigns responsibilities, and provides instructions for PDBR operation and management under the authority of DoD Directive (DoDD) 5124.02 (Reference (a)).

b. Establishes the PDBR within the Office of the Secretary of Defense, as required by section 1554a of title 10, United States Code (Reference (b)).

c. Designates the Department of the Air Force as the Lead DoD Component for the establishment, operation, and management of the PDBR for the Department of Defense (hereafter referred to as the "Lead Component").

d. Conforms to Reference (b).

2. **APPLICABILITY.** This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. **DEFINITIONS.** Terms used in this Instruction are defined in the Glossary.

4. **POLICY.** It is DoD policy that:

a. The purpose of the PDBR shall be to reassess the accuracy and fairness of the combined disability ratings assigned Service members who were discharged as unfit for continued military service by the Military Departments with a combined disability rating of 20 percent or less and were not found to be eligible for retirement. To that end, the PDBR shall review the combined

disability ratings assigned individuals covered by this Instruction upon the individuals' request or upon its own motion and, where appropriate, recommend that the Military Departments correct discrepancies and errors in such ratings.

b. The PDBR shall operate in a spirit of transparency and accountability, and shall impartially readjudicate cases upon which review is requested or undertaken on its own motion. The PDBR has no greater obligation to our wounded, ill, and injured Service members and former Service members than to offer fair and equitable recommendations pertaining to the assignment of disability ratings.

c. The PDBR shall be managed and operated under uniform guidelines established in this Instruction, and the Lead Component shall be reimbursed by the respective Military Department of the applying Service member.

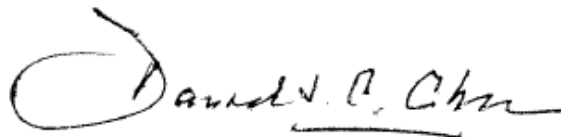
d. Scheduling of cases subject to review by the PDBR shall be based upon an intentional methodology that gives equitable consideration to requests originating from covered Service members regardless of status, component affiliation, or source of disability.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3.

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release. Copies may be obtained through the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Instruction is effective immediately.



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Under Secretary of Defense for  
Personnel and Readiness

Enclosures

1. References
  2. Responsibilities
  3. Procedures
- Glossary

TABLE OF CONTENTS

REFERENCES .....4

RESPONSIBILITIES .....5

    UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS  
        (USD(P&R)) .....5

    ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS (ASD(HA)).....5

    DEPUTY UNDER SECRETARY OF DEFENSE  
        FOR MILITARY PERSONNEL POLICY (DUSD(MPP)) .....5

    UNDER SECRETARY OF DEFENSE (COMPTROLLER) /  
        CHIEF FINANCIAL OFFICER (USD(C)/CFO) .....5

    SECRETARIES OF THE MILITARY DEPARTMENTS.....5

    SECRETARY OF THE AIR FORCE.....6

PROCEDURES.....8

    GENERAL .....8

    COVERED INDIVIDUALS.....8

    MOTION TO REVIEW .....8

    ORGANIZATION AND RESPONSIBILITIES .....8

    ADMINISTRATION .....10

    CORRECTION OF MILITARY RECORDS.....11

GLOSSARY .....13

    ABBREVIATIONS AND ACRONYMS .....13

    DEFINITIONS.....13

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
- (b) Section 1554a and chapter 61 of title 10, United States Code
- (c) DoD 7000.14-R, "DoD Financial Management Regulation," Volume 11A, Chapter 1
- (d) DoD Instruction 4000.19, "Interservice and Intragovernmental Support," August 9, 1995
- (e) DoD Directive 5015.2, "DoD Records Management Program," March 6, 2000
- (f) DoD Instruction 5100.73, "Major DoD Headquarters Activities," December 1, 2007
- (g) DoD Instruction 8910.01, "Information Collection and Reporting," March 6, 2007
- (h) DoD Directive 1332.18, "Separation or Retirement for Physical Disability," November 4, 1996
- (i) DoD Instruction 1332.38, "Physical Disability Evaluation," November 14, 1996
- (j) USD(P&R) Memorandum, "Policy Guidance for the Disability Evaluation System and Establishment of Recurring Directive-Type Memoranda," May 3, 2007
- (k) DoD Directive 5400.11, "DoD Privacy Program," May 8, 2007
- (l) DoD 5400.11-R "Department of Defense Privacy Program," May 14, 2007
- (m) DoD Instruction 1332.39, "Application of the Veterans Administration Schedule for Rating Disabilities," November 14, 1996
- (n) Part 4 of title 38, Code of Federal Regulations, "Schedule for Rating Disabilities," July 1, 2007

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R) shall:

a. Provide policy, guidance, and oversight to ensure the timely implementation of this Instruction, pursuant to the authority delegated in Reference (a).

b. Approve and appoint a Director for the PDBR (hereafter referred to as “the PDBR President”). The PDBR President shall be an O-6 line officer or an equivalent-grade Government civilian employee nominated by the Lead Component and shall possess high professional qualifications and demonstrated knowledge of the disability evaluation system.

2. ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS (ASD(HA)). The ASD(HA), under the authority, direction, and control of the USD(P&R), shall detail specialty medical members to the PDBR, as requested by the PDBR President, to provide medical advisory opinions and recommendations.

3. DEPUTY UNDER SECRETARY OF DEFENSE FOR MILITARY PERSONNEL POLICY (DUSD(MPP)). The DUSD(MPP), under the authority, direction, and control of the USD(P&R), shall issue policy updates as necessary for the effective operation and management of the PDBR.

4. UNDER SECRETARY OF DEFENSE (COMPTROLLER)/CHIEF FINANCIAL OFFICER (USD(C)/CFO). The USD(C)/CFO shall include financial requirements for implementation of this Instruction in the budgets of the Lead DoD Component for the PDBR.

5. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments shall:

a. Comply with procedures and processes established by the Lead Component to meet the information requirements prescribed in paragraph 6.i. of this enclosure and paragraph 5.a. of Enclosure 3.

b. Inform, assist, and cooperate with current and former Service members in forwarding requests to the PDBR. The Military Departments shall compile the records and information required by the PDBR or requested by the individuals covered by section 2 of Enclosure 3, including any applicable Department of Veterans Affairs (DVA) ratings.

c. Obtain written acknowledgment of individuals covered by section 2 of Enclosure 3 that, as a result of the request for review by the PDBR, the covered individual or a surviving spouse, next of kin, or legal representative may not seek relief from the Board for Correction of Military Records (BCMR) operated by the Secretary concerned, and that the recommendation of the PDBR, once accepted by the respective Military Department, is final.

d. Provide reimbursement and funding to the Lead Component for review of cases of covered members of their respective Departments, according to the procedures prescribed by Volume 11A, Chapter 1 of the DoD Financial Management Regulation and DoD Instruction (DoDI) 4000.19 (References (c) and (d), respectively).

e. Provide representatives to the PDBR as required and requested by the Lead Component, subject to the procedures in Enclosure 3.

f. Adhere to standards and processes in Enclosure 3 and those subsequently published under the authority of the Lead Component.

g. Correct the military records of individuals covered by section 2 of Enclosure 3 in accordance with a recommendation made by the PDBR, as outlined in section 6 of Enclosure 3, if the recommendation is accepted by the Secretary concerned.

(1) Any such correction may be made effective as of the effective date of the action taken on the report of the Military Department PEB to which such recommendation relates.

(2) The Secretary concerned may delegate this decision authority no lower than: for the Army and Air Force, to the Directors of the Review Board Agencies; for the Navy, to the Assistant Secretary of Navy (Manpower and Reserve Affairs) who may further delegate it to the Associate Counsel.

6. SECRETARY OF THE AIR FORCE. The Secretary of the Air Force, in addition to the responsibilities outlined in section 5 of this enclosure and as the Lead Component for the establishment, operation, and management of the PDBR for the Department of Defense, shall:

a. Act as the single point of contact for the Department of Defense to establish the operational relationships, capabilities, and system integration necessary for effective and efficient operation of the PDBR.

b. Organize the PDBR, with representation from each of the Military Departments, and comply with section 1554a of Reference (b).

c. Operate the PDBR under the policy direction of the DUSD(MPP), in accordance with DoDD 5015.2, DoDI 5100.73, and DoDI 8910.01 (References (e), (f), and (g), respectively).

d. Nominate the PDBR President for approval and appointment by the USD(P&R). The nominee shall meet the qualifications of paragraph 1.b of this enclosure.

e. Program, obtain, and provide necessary administrative, operational, and financial resources to establish and support the operation of the PDBR.

f. Delineate roles, responsibilities, and authorities among the organizations and elements that participate in or support the PDBR, including but not limited to DoD Components and the DVA.

g. Establish the operational and administrative relationships necessary to operate, publicize, and receive applications for the PDBR, and establish the standard format for packaged records that shall be forwarded to the PDBR for review.

h. Publish operating procedures that comply with DoDD 1332.18, DoDI 1332.38, and USD(P&R) memorandum (References (h), (i), and (j), respectively) and implement the procedures at Enclosure 3.

i. Determine the information required for review of cases by the PDBR. Such information may include, but is not limited to:

(1) The complete record of medical and non-medical material and evidence contained in the Service member's PEB records that served as the basis for the original determination of unfitness and disability rating(s) assigned;

(2) Rating determinations by the DVA, as applicable to the case under review; and

(3) New or newly discovered evidence not previously included in official records.

j. Determine procedures for the collection, storage, and release of information required by the PDBR (see Enclosure 3).

(1) The procedures will be established in collaboration with the Services and the DVA, and will be in accordance with Reference (e).

(2) The Lead Component shall ensure the release of personally identifiable information is in accordance with the requirements of DoDD 5400.11 and DoD 5400.11-R (References (k) and (l), respectively).

k. Semi-annually assess the operations and results of the PDBR, including a review of resources, and provide a report to USD(P&R).

ENCLOSURE 3

PROCEDURES

1. GENERAL. The PDBR is designed to reassess the accuracy and fairness of the combined disability ratings assigned Service members who were discharged as unfit for continued military service by the Military Departments with a combined disability rating of 20 percent or less and were not found to be eligible for retirement, and to recommend corrections where discrepancies and errors in such ratings exist. The PDBR, in accordance with section 3 of this enclosure, shall review the combined disability ratings of individuals covered by section 2 of this enclosure. The PDBR does not review the Military Departments' determinations of fitness for continued military service; the PDBR only reviews the combined disability ratings assigned to the specifically military unfitting conditions acted upon by the Military Department PEBs.

2. COVERED INDIVIDUALS. Any Service member may have his or her case reviewed by the PDBR if that individual (hereafter referred to as a "covered individual"):

a. Was separated from the Armed Forces during the period beginning on September 11, 2001, and ending on December 31, 2009, due to unfitness for continued military service resulting from a physical disability under chapter 61 of Reference (b); and

b. Received from DoD a combined disability rating of 20 percent or less; and

c. Was not found to be eligible for retirement.

3. MOTION TO REVIEW

a. Cases may be considered and presented to the PDBR upon the written request of a Service member meeting the qualifications of section 2 of this enclosure, or by their surviving spouse, next of kin, or legal representative. The PDBR may, upon its own motion, review the findings and decisions of the PEB with respect to a covered individual.

b. If the PDBR proposes to review, upon its own motion, the findings and decisions of the PEB, the PDBR shall notify the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual of the proposed review and obtain the consent of the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual before proceeding with the review.

4. ORGANIZATION AND RESPONSIBILITIES. The PDBR shall:

a. Be composed of career military or senior civilian members in the grade equivalent of O-5 or O-6, appointed by the Secretary of the Military Department that they represent.



(1) The PDBR will consist of at least one member from each of the Military Departments.

(2) Additional PDBR members will be appointed, as required and upon request of the Lead Component as necessary, by the Secretaries of the Military Departments.

(3) When in session and considering the case of a covered individual, the PDBR will be composed of three voting members. No voting member of the PDBR may have a personal interest in, or have been a member of another board that ever considered, the case under review. When the covered individual is a member of the Reserve Component, one voting member of the PDBR shall be from the Reserve Component. Additionally, a non-voting military medical officer, a non-voting legal advisor, and/or a DVA advisor familiar with the application of the Veterans Administration Schedule for Rating Disabilities (VASRD) may be invited to provide advice to the PDBR.

b. Notify the covered individual, after receipt of either the review request or the consent to review described in section 3 of this enclosure, of the commencement of the PDBR's review of the case, and advise the covered individual of the final and non-appealable nature of the review, as described in paragraph 5.c. of Enclosure 2.

c. Review the PEB record of findings and the combined disability rating decisions regarding the specifically military unfitting medical conditions with respect to the covered individual. The review shall be based on the records of the Military Department concerned and such other evidence as may be presented to the PDBR, in accordance with the information requirements prescribed in paragraph 6.i. of Enclosure 2 and paragraph 5.a. of this enclosure.

d. Use the VASRD in arriving at its recommendations, along with all applicable statutes, and any directives in effect at the time of the contested separation (to the extent they do not conflict with the VASRD in effect at the time of the contested separation).

e. Make one of the following recommendations to the Secretary concerned for each case reviewed with respect to a covered individual:

(1) Do not re-characterize the separation of such covered individual or modify the combined disability rating previously assigned such covered individual.

(2) Re-characterize the separation of such covered individual to retirement for disability.

(3) Modify the combined disability rating previously assigned such covered individual by the Military Department PEB. This modified combined disability rating may not be a reduction of the disability rating previously assigned such covered individual by that PEB.

(4) Issue a new combined disability rating for such covered individual. No reduction of the previously issued combined disability rating will result as a product of this review.

5. ADMINISTRATION. The following minimum actions are required to operate the PDBR:

a. The Military Departments shall obtain records and other information required for review of cases by the PDBR.

(1) Evidence to be reviewed by the PDBR will be primarily documentary in nature.

(2) All new or newly discovered records or other relevant evidence gathered and considered by the PDBR will be made a part of the Service member's PEB records and maintained in accordance with regulations pertaining to that system of records.

(3) A witness may present evidence to the Board by affidavit or by any other means considered acceptable by the Lead Component.

(4) If the Service member indicates that a DVA disability award has been made, the applicant shall be requested to provide a copy of the DVA determination letter and sign a release form authorizing the PDBR access to the information. The Military Departments will obtain DVA rating determinations issued on behalf of the former Service member. Once obtained, the PDBR should compare any DVA disability rating for the specifically military unfitting condition(s) with the PEB combined disability rating and consider any variance in its deliberations and any impact on the final PEB combined disability rating, particularly if the DVA rating was awarded within 12 months of the Service member's separation.

b. The Military Departments shall provide the Lead Component with the medical records and non-medical documents that were reviewed and considered by the Military Department PEBs in making their final disability rating determinations; documents detailing the final decisions of the Military Department PEBs; and any documents or decisions subsequently issued on appeal(s), as requested by the Lead Component for case review.

c. The Military Department concerned shall afford a covered individual who petitions the PDBR not less than 2 weeks from notice of pending review to provide documentary evidence outside DoD possession.

d. For each case referred to the PDBR, the PDBR shall review the complete case record that served as the basis for the final Military Department PEB rating determination and, to the extent feasible, collect all the information necessary for competent review and recommendation. The PDBR President may also obtain the advice and assistance of specialized medical authorities for cases involving those respective medical disabilities, if needed. Any assistance provided by the medical authorities will be documented in the covered individual's case.

e. The PDBR shall conduct reviews of the disability rating(s) of the covered individual in accordance with the VASRD in effect at the time of separation.

(1) If the case was adjudicated by the final Military Department PEB and the covered individual was separated from military service prior to January 28, 2008, the PDBR shall also review the disability rating(s) of the covered individual, in accordance with the DoD application

of the VASRD under DoDI 1332.39 (Reference (m)) and applicable Service regulations, if any, in effect at the time of separation for the covered individual. If the covered individual was separated from military service on or after January 28, 2008, the PDBR shall use the VASRD without application of Reference (m), along with any applicable interpretation of the VASRD by the United States Court of Appeals for Veterans Claims.

(2) Only the medical condition(s) determined to be specifically unfitting for continued military service, as previously determined by the Military Department PEB, will be subject to review by the PDBR.

f. The PDBR shall establish a recommendation based on a vote of a simple majority of the board members.

g. The PDBR shall render recommendations, in a written report signed by the President and forwarded to the Secretary concerned, to either affirm or change the rating of the Military Department PEB being reviewed, in accordance with paragraph 4.e. of this enclosure. If the PDBR recommends a change to the covered individual's separation characterization or disability rating, these letters should also contain a brief explanation of the rationale for such recommendation.

h. The timeline goals for the review, adjudication, and notification processes are as follows:

(1) The PDBR shall schedule 80 percent of documentary reviews within 45 days of obtaining the necessary records.

(2) The PDBR shall adjudicate and issue an appropriate recommendation report for 80 percent of cases within 60 days of the review.

(3) The Secretary concerned shall accept or reject recommendations of the PDBR within 45 days of receipt from the PDBR of such recommendations.

(4) The Secretary concerned shall provide covered individuals notification of the Military Department's decisions on the recommendation within 10 days of such decisions.

i. The Lead Component shall maintain statistical review data by Military Department and affiliation (Active Component or Reserve Component) of cases reviewed. A key component of this statistical review shall include an accounting of PDBR recommendations that were rejected by the Secretary concerned.

## 6. CORRECTION OF MILITARY RECORDS

a. The Secretary concerned may correct the military records of a covered individual in accordance with a recommendation made by the PDBR under paragraph 4.e. of this enclosure. Any such correction may be made effective as of the effective date of the action taken on the report of the Military Department PEB to which such recommendation relates.

b. The Secretary concerned shall ensure that, in the case of a Service member previously separated pursuant to the findings and decision of a Military Department PEB together with a lump sum or other payment of back pay and allowances at separation, the amount of pay or other monetary benefits to which the covered individual would be entitled, based on the member's military record as corrected, shall be reduced to take into account receipt of such lump sum or other payment.

c. The Secretary concerned shall ensure that, if the PDBR makes a recommendation not to correct the military records of a covered individual, the action taken on the report of the Military Department PEB to which such recommendation relates shall be treated and recorded as final as of the date of such action.

d. The Secretary concerned shall accept or reject, in whole or in part, the recommendation of the PDBR and shall notify the covered individual of such decision.

(1) If the recommendation is accepted, the Secretary concerned shall notify the covered individual of the effect (medical retirement or separation with severance pay) and effective date of the recommendation.

(2) In those cases where a record change is warranted resulting from an increase of a rating and/or retirement, the Secretary concerned will notify the DVA of the change.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

BCMR	Board for Correction of Military Records
CFR	Code of Federal Regulations
DES	Disability Evaluation System
DVA	Department of Veterans Affairs
FMR	DoD Financial Management Regulation
PDBR	Physical Disability Board of Review
PEB	Physical Evaluation Board
VASRD	Veterans Administration Schedule for Rating Disabilities

PART II. DEFINITIONS

For the purposes of this Instruction, these terms are defined as follows:

combined disability ratings. Assignment of disability ratings are based on the VASRD as implemented by References (i) and (m). An individual with more than one unfitting condition receives a disability percentage rating for each condition, which are then combined using the “whole person concept” into a combined disability rating, as described in paragraph 4.25 of part 4, title 38, Code of Federal Regulations (Reference (n)). A rating of 30 percent in line-of-duty cases for unfitting conditions is required for medical retirement in accordance with chapter 61 of Reference (b).

PEB. The PEB, subject to Military Department Secretary discretion, is the Military Department board that determines the fitness of Service members with medical impairments and, if a member is determined unfit for duty, recommends their entitlement to benefits under chapter 61 of Reference (b).

physical disability. The inability of a Service member or former Service member to meet personal, social, or occupational requirements or demands because of a medical impairment; the reduction in, or loss of a Service member’s or former Service member’s actual or presumed ability to engage in gainful employment or normal activity that is the result of a medical impairment. The term “physical disability” includes mental disease, but not such conditions as

behavioral disorders, adjustment disorders, personality disorders, and primary mental deficiencies. A medical impairment or physical defect standing alone does not constitute a physical disability. To constitute a physical disability, the medical impairment or physical defect must be of such a nature and degree of severity as to interfere with the Service member's or former Service member's ability to adequately perform his or her duties.

VASRD. The rating schedule in Reference (n) is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. The percentage ratings represent, as far as can practicably be determined, the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations. Generally, the degrees of disability specified are considered adequate to compensate for considerable loss of working time from exacerbations or illnesses proportionate to the severity of the several grades of disability. For the application of this schedule, accurate and fully descriptive medical examinations are required, with emphasis upon the limitation of activity imposed by the disabling condition.