



Report to Congress

The Temporary Disability Retired List (TDRL): An Assessment of its Continuing Utility and Future Role

Prepared by:

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**Assessments of Continuing Utility and Future Role of the Temporary
Disability Retired List (TDRL) in Fulfillment of Sec. 1647 of the National
Defense Authorization Act (NDAA) for FY 2008 (PL 110-181)**

The Department of Defense (DoD) appreciates the opportunity to provide Congress with information regarding the assessment of the continuing utility and future role of the Temporary Disability Retired List (TDRL) as required by National Defense Authorization Act (NDAA) for Fiscal Year 2008 (FY08), Pub. L. 110-181. This report is intended to satisfy the requirements of Section 1647(a) and (b) of the NDAA.

This report provides a statistical analysis of the administration of the TDRL since January 1, 2000; summarizes analysis conducted on the current utility and administration of the TDRL; and provides analysis on how the TDRL factors into changes currently being piloted in the Disability Evaluation System, as well as how that role may change in the face of future changes currently being considered by DoD. As this report relies on statistical data that predates the requirements for addressing unique gender-specific needs of recovering service members, it is inapplicable to the longitudinal cohort analysis of the TDRL.

Summary of Findings

The analysis conducted in developing this report indicates that the Military Departments within DoD utilize the TDRL in a consistent manner across Military Department components (active and reserve) and between officer and enlisted ranks. However, the primary purpose of the list as originally envisioned has shifted from a mechanism to allow wounded, ill, or injured Service members to return to duty to more of a support program that allows individuals additional time to continue their recovery before a final disability disposition is rendered. This usage is consistent with the secondary desires of Congress in 1949 in that it offers protection to both the Service member and the government against the negative implications of rendering a final and permanent disposition prematurely.

The final disability rating assigned to individuals upon departure from the TDRL reveals that the list is being used in a manner that protects the interests of the individual and the government. Fully half of the Service members transitioning from the TDRL from 2000 thru 2007 were discharged with the same level of rating at which they entered. Thirty-five to thirty-nine percent (varying by component) were released with a decreased rating, indicating that the medical condition leading to their placement on the TDRL had improved during the time they were on the list. The remaining eleven to fourteen percent received a higher rating than at entry, indicating that the individuals benefited from their time on the TDRL and may have received a more accurate rating than they would have if placed directly on to the Permanent Disability Retired List (PDRL).

Usage patterns across DoD reveal that individuals remaining on the TDRL for four or five years have a strong probability (over 87 percent) of being placed on the PDRL. This fact supports the possibility of shortening the allowed tenure on the TDRL from five years to three, with

flexibility for Military Department Secretaries to approve additional time in cases of unstable and unmanageable conditions rated at less than 30 percent.

NDA FY 2008, Sec. 1647

The following is an extract from the FY 2008 NDA which describes the requirements and elements of this report:

SEC. 1647. ASSESSMENTS OF CONTINUING UTILITY AND FUTURE ROLE OF TEMPORARY DISABILITY RETIRED LIST.

(a) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report containing—

- (1) a statistical history since January 1, 2000, of the numbers of members of the Armed Forces who are returned to duty or separated following a tenure on the temporary disability retired list and, in the case of members who were separated, how many of the members were granted disability separation or retirement and what were their disability ratings;
- (2) the results of the assessments required by subsection (b); and
- (3) such recommendations for the modification or improvement of the temporary disability retired list as the Secretary considers appropriate in response to the assessments.

(b) REQUIRED ASSESSMENTS.—The assessments required to be conducted as part of the report under subsection (a) are the following:

- (1) An assessment of the continuing utility of the temporary disability retired list in satisfying the purposes for which the temporary disability retired list was established.
- (2) An assessment of the need to require that the condition of a member be permanent and stable before the member is separated with less than a 30 percent disability rating prior to exceeding the maximum tenure allowed on the temporary disability retired list.
- (3) An assessment of the future role of the temporary disability retired list in the Disability Evaluation System of the Department of Defense and the changes in policy and law required to fulfill the future role of the temporary disability retired list.

Statistical History of the TDRL Since January 1, 2000

Research Methodology

The research conducted to examine the statistical trends of TDRL dispositions since January 1, 2000, as required by Sec. 1647 of the NDA for FY 2008, used a cohort grouping to perform the analysis. In response to a data request, the Military Departments provided information on the individuals entering the TDRL in a given calendar year, tracking them throughout their time on the list. This multi-year cohort analysis provides a longitudinal look at a Service members' experience on TDRL by grouping them in a "class" by the year they are initially placed on the TDRL and the Service in which they are a member. For example, cohort class of 2000 (year first entered) contains data for each Service member placed on the list in 2000 for the subsequent five

years (2000-2005). Similarly the cohort class of 2001 would extend from 2001-2006 while being exclusive of any other Cohort class entry or exit. Data was gathered on six cohort classes, running from calendar year 2000 through 2005. Although more intensive, this longitudinal approach more clearly identifies trends in administration of the TDRL including: final dispositions, tenure on the list, and Service-specific administrative patterns.

The information was broken out between Active and Reserve components as well as Officer and Enlisted Service members. Additionally, the data indicated the number of individuals entering the TDRL at each level of disability rating, as well as the numbers of dispositions by level of rating each year from the cohort.

This analysis was augmented by key informant interviews with each Service's Physical Evaluation Board, the personnel most directly connected with the administration of the TDRL; as well as careful review of previous reports on the military disability system, media coverage, and legislative documents available at the National Archives.

Research Findings

Section 1647 (1)(a) of the NDAA requires that DoD provide a statistical history since January 1, 2000, of the numbers of members of the Armed Forces who are returned to duty or separated following a tenure on the temporary disability retired list and, in the case of members who were separated, how many of the members were granted disability separation or retirement.

Table 1 presents the number of individuals entered on the TDRL, breaking them out by disability rating on entry, and whether they were officer or enlisted, active duty or reserve component. The table highlights the number of individuals who returned to duty with a disposition of 'Fit' or return to duty, those who were separated with separation pay ('Separated'), and those who were placed on the PDRL ('Permanently Retired'). In the case of those who were separated or placed on the PDRL, the table provides the number of individuals at each level of disability rating.

The number of dispositions does not equal the number of individuals entered on to the TDRL due to the fact that the cohorts from 2003-2005 have not yet reached the end of the five year limit. The dispositions for the cohorts that have completed the five year tenure are presented in the following section, "Assessing the continuing utility of the TDRL in satisfying the purposes for which it was established."

DoD Cohorts 2000 - 2005	Disability Rating		Initially Enrolled on TDRL	Total				Sum	Percent
				Officer		Enlisted			
				Active	Reserve	Active	Reserve		
Fit		#		46	16	486	27	575	3.4%
Separated	0%	#		21	9	456	42	528	3.1%
	10%	#		71	42	1758	145	2016	11.8%
	20%	#		20	15	514	61	610	3.6%
	Total			112	66	2728	248	3154	18.5%
TDRL	0%	#	5	1	0	3	1	5	
	10%	#	17	4	0	11	2	17	
	20%	#	9	1	0	7	1	9	
	30%	#	8907	411	207	7408	881	8907	
	40%	#	3653	180	101	2970	402	3653	
	50%	#	1005	66	45	743	151	1005	
	60%	#	1069	82	47	792	148	1069	
	70%	#	313	24	14	234	41	313	
	80%	#	199	15	4	148	32	199	
	90%	#	77	7	3	65	2	77	
			1800	189	78	1342	191	1800	
			17054						
Permanently Retired	0%	#		4	0	15	0	19	0.1%
	10%	#		19	0	32	10	61	0.4%
	20%	#		3	1	25	1	30	0.2%
	30%	#		203	112	2783	362	3460	20.3%
	40%	#		103	41	1194	160	1498	8.8%
	50%	#		48	33	490	68	639	3.7%
	60%	#		48	18	390	80	536	3.1%
	70%	#		23	7	159	27	216	1.3%
	80%	#		12	6	91	20	129	0.8%
	90%	#		4	3	45	2	54	0.3%
			69	29	437	79	614	3.6%	
				536	250	5661	809	7256	42.5%
Deceased		#	229						
Other		#		11	961	108	1135	2215	13.0%

Table 1: Section 1647 (a)(1), History of the TDRL

Required Assessments

(1) Assessing the continuing utility of the TDRL in satisfying the purposes for which it was established

The TDRL has evolved into a vehicle to provide a safeguard both to Service members whose condition may develop into a more serious permanent disability and to the government against permanently retiring a member who may subsequently fully recover (or nearly so) from the condition that led to them being placed on the list in the first place.

Current DoD policies for returning a Service member to duty following a period of separation are administratively complex and varied, and often place professional obstacles in the form of loss of rank or rating on the Service member. At the same time, current force structure ceilings create a powerful incentive for the Services to remove unfit Service members from the active duty rolls. TDRL is the only current mechanism that provides an administratively effective way to return a Service member to duty following recovery from a temporary disability.

The TDRL was originally developed from a recommendation in the 1948 “Hook Commission” report, to make the first five years of **all** disability retirements subject to periodic physical examinations through age 60.¹ This was reflective of previous Army efforts advocating for a system that would allow “*reviewing the degree of disability at stated intervals after retirement with a view toward adjusting the amount of retirement pay to the changing degree of disability.*”² In Congress, this evolved into the creation of the TDRL for those who, in the words of the then Chairman of the Senate Armed Services Committee, “*are presently physically disabled for one reason or another, but whose permanent disability cannot be measured at the time.*”³

The overwhelming concern of the Hook Commission Report and much of the Committee Hearing testimony; centered on the need to retain Service members who might become able and deployable. These early debates clearly recognized that the degree of permanent disability to a Service member is often unknown during the period immediately following the injury due to the wide variation in the manner to which different individuals respond to treatment.⁴

The present statutory environment for the disability retirement system was established in the Career Compensation Act of 1949.⁵ This legislation applied disability retirement to all branches of service, covering both active duty and reserve personnel, and ***introduced into law the concepts of temporary disability and severance pay.*** A cursory review of the legislative history indicates that the legislation was enacted in response to perceived abuses:

¹ *Career Compensation for the Uniformed Forces, a Report and Recommendation for the Secretary of Defense*, Advisory Commission on Service Pay, December 1948, (page 46).

² DA Surgeon General Letter to ACSPER 17 October 1944 as cited in USAPDA memorandum to the General Counsel, 31 July 1974.

³ Hearing testimony before the Senate Armed Services Committee on H.R. 5007 the Career Compensation Act of 1949, July 5th, 1949 pg 291 (of combined hearing publication for June 16, 17, 20, 23, 28, 29, 30, July 5, and 6, 1949)

⁴ Ibid,

⁵ P.L. 81-351, codified at 10 USC Sec. 1201-1221, 1372-1373, 1401-1403. {Julie to confirm}

“For a great many years it has been the practice to retire an officer who is found physically incapable of military service, and pay him compensation equal to 75 percent of his base and longevity pay. No differentiation was made as to the actual degree of the disability, so long as it was sufficient to constitute an incapacity for active service. Nor did retirement practices extend to the enlisted grades, as a whole. The proposed legislation would relate the amount of compensation to the degree of disability, and would establish an incapacity of 30 percent as the minimum which would qualify the member for retirement. A lesser degree of incapacity is compensated by the granting of lump-sum “severance pay” instead of long-term retirement pay. Further, the principle for physical disability is extended to the enlisted grades on the same relative basis as is applied to the commissioned grades.”⁶

DoD implemented the disability portions of the Career Compensation Act through DoD Directive (DoDD) 1332.18, which gave broad direction to the separate Military Services to write regulations in fulfillment of the congressional mandate.⁷

Changes to the Military Disability Retirement System

Over the years Congress has made two significant changes to the military disability system: the presumption of fitness rule⁸ and adding the requirement that an individual’s condition be “stable” prior to being removed from the TDRL before the five year point. The John Warner National Defense Authorization Act for FY 2007, furthering consideration of extending this requirement for individuals on TDRL whose disabilities fall below the 30% rating and have less than 20 years of service, ultimately requested that DoD submit a report on the administration of these individuals on the TDRL. This topic is addressed in the second assessment required in this report.

The “presumption of fitness rule” was instituted by memorandum in 1973 by then-Deputy Secretary of Defense Kenneth Rush⁹ in response to the controversy surrounding the high percentage of general officers¹⁰ and medical officers being retired with disabilities compared to members of the general military population, and the *New York Times* disclosure that General John D. Lavelle, USAF retired at a 70 percent disability rating and shortly thereafter passed a Federal Aviation Administration flight physical.¹¹ To ensure that the situation would not reoccur, Congress amended Title 10 of the US Code with the following measure:

⁶ Sen. Report No. 733, 81st Congress, 1st Session, (1949); See Also “Hook Commission Report” entitled *Career Compensation for the Uniformed Forces, a Report and Recommendation for the Secretary of Defense*, Advisory Commission on Service Pay, December 1948.

⁷ See also 10 USC Sec. 1201 The Army regulations governing the disability retirement system are contained in Army Regulation 635-40; The Air Force regulations governing the TDRL and disability retirement are Air Force Instruction 36-3212; and the Navy appear in SECNAV Instruction 1850.4E.

⁸ See Disability Retirement Trends in the Uniformed Services 1972-1979; Bothwick & Heindl; Paper prepared for the Health Studies Task Force, Office of the Assistant Secretary of Defense (Health Affairs) as cited in “Military Disability in a Nutshell” by Maj. Chuck R. Pardue, *Military Law Review* Vol 109 1985 pg. 172

⁹ Memorandum for the Secretaries of the Military Departments, subject: Physical Disability Separations, Guidelines for Physical Disability Separation (Jan 29, 1973)

¹⁰ According to a

¹¹ *New York Times*, October 11, 1972

The Secretary concerned may not, with respect to any member who is in pay grade 0-7 or higher or is a Medical Corps officer or medical officer of the Air Force being processed for retirement under any provision of this title by reason of age or length of service –

- (1) retire such member under section 1201 of this title;
- (2) place such a member on the temporary disability retired list pursuant to section 1202 of this title; or
- (3) separate such member from an armed force pursuant to section 1203 of this title by reason of unfitness...unless the determination of the Secretary concerned with respect to unfitness is first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health and Environment.¹²

Assessment Results

Analysis of the data gathered indicates that the TDRL as a tool to return members to duty is of only minimal value. Of the total population entered onto the list, only 3.4 percent (575 of 17,054) have returned to duty. Further, of those that did return to duty, the majority did so within the first three years on the TDRL.

An examination of TDRL determinations between component members indicates that the determinations are relatively consistent with each group's representation on the TDRL. For example, the proportion of those separated with a rating of 0-20 percent are within one to two percent of the total population proportions between the components (i.e., the Active to Reserve proportion in the population is 91.3 to 8.7 percent; the proportion separated is 93 to 7 percent). This slight difference is balanced by the fact that the Reserve components have a slightly higher proportion of individuals receiving permanent retirement.

Table 2 presents the final dispositions for cohort years 2000, 2001, and 2002. This subset of the data shows the cohorts that have completed the five year tenure of the TDRL. The permanent retirement rate for those entering the TDRL is well over 50 percent. Combined with the number of individuals separated with benefits, the total exceeds 80 percent of those entered on the list. This figure is somewhat diluted when looking at the totals for all of the cohorts, given that the individuals in cohorts 2003-2005 have not yet reached a point where a final disposition has been made. (A complete table of outcomes is at Appendix A.)

¹² P.L. 94-225, Sec 2(a)

DoD Totals	2000		2001		2002		Interim	
	Count	Percent	Count	Percent	Count	Percent	Count	Percent
Placed on TDRL	2752		2536		2433		7721	
Active	2543	92.4%	2339	92.2%	2170	89.2%	7052	91.3%
Reserve	209	7.6%	197	7.8%	263	10.8%	669	8.7%
Officer	303	11.0%	225	8.9%	221	9.1%	749	9.7%
Enlisted	2449	89.0%	2311	91.1%	2212	90.9%	6972	90.3%
Returned to Duty								
Within 3 Years	64	2.3%	80	3.2%	55	2.3%	199	2.6%
Active	64	100.0%	73	91.3%	50	90.9%	187	94.0%
Reserve	0	0.0%	7	8.8%	5	9.1%	12	6.0%
Officer	9	14.1%	12	15.0%	8	14.5%	29	14.6%
Enlisted	55	85.9%	68	85.0%	47	85.5%	170	85.4%
During Years 4-5	34	1.2%	27	1.1%	39	1.6%	100	1.3%
Active	33	97.1%	24	88.9%	39	100.0%	96	96.0%
Reserve	1	2.9%	3	11.1%	0	0.0%	4	4.0%
Officer	3	8.8%	3	11.1%	2	5.1%	8	8.0%
Enlisted	31	91.2%	24	88.9%	37	94.9%	92	92.0%
Separated 0-20%	595	21.6%	602	23.7%	619	25.4%	1816	23.5%
Active	559	93.9%	563	93.5%	567	91.6%	1689	93.0%
Reserve	36	6.1%	39	6.5%	52	8.4%	127	7.0%
Officer	46	7.7%	31	5.1%	40	6.5%	117	6.4%
Enlisted	549	92.3%	571	94.9%	579	93.5%	1699	93.6%
Placed on PDRL	1608	58.4%	1443	56.9%	1377	56.6%	4428	57.4%
Active	1449	90.1%	1330	92.2%	1208	87.7%	3987	90.0%
Reserve	159	9.9%	113	7.8%	169	12.3%	441	10.0%
Officer	238	14.8%	138	9.6%	126	9.2%	502	11.3%
Enlisted	1370	85.2%	1305	90.4%	1251	90.8%	3926	88.7%

Table 2: Assessing the continuing utility of the TDRL in satisfying the purposes for which it was established

The data in Table 3, following, show a clear increase in the number of dispositions in Year 2 of each cohort's TDRL tenure. This is consistent with the requirement for a reevaluation of each individual's medical condition at the eighteen month point. From there, the numbers trend downward in concert with the declining population, until reaching the five year mark, where a final disposition is currently required by law. The higher number of dispositions in tenure years one and two indicate that the TDRL is fulfilling the purpose of providing time for individuals' medical condition(s) to stabilize in order to provide a fair and accurate disposition. Of the individuals who reach the five year point and receive a final disposition, there was not time to conduct a case-by-case medical review to determine if their condition was fully stable at time of separation.

Table 3 presents the number of dispositions (scale on the right) for all cohorts broken out by duration of time on the TDRL. The "# on TDRL" trend line (scale on the left) shows the magnitude of individuals remaining on the list over time.

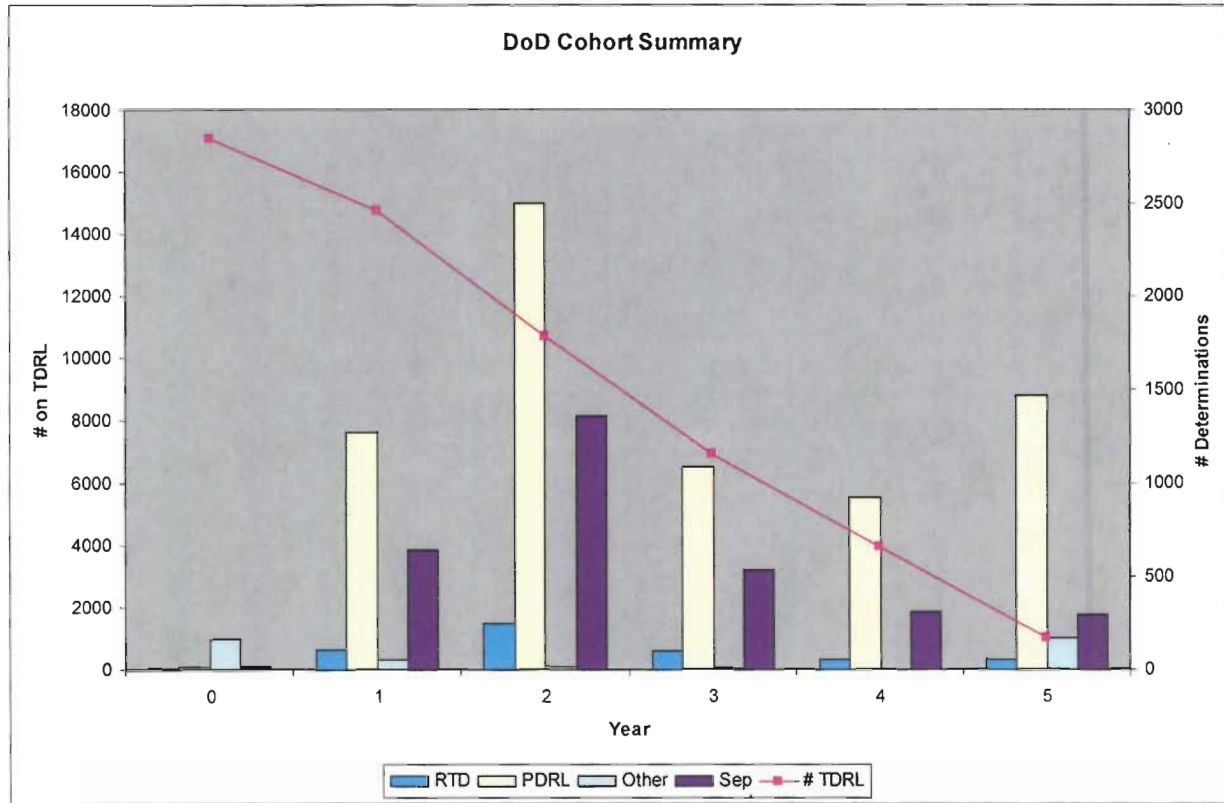


Table 3: Summary of Determinations

The table below provides the number of dispositions from 2000 to 2007 for individuals entered on the TDRL. It is not presented in cohort fashion, but as a total of the dispositions across the time span. The data further supports the concept of the TDRL as a tool to allow time for an individual's condition to reach a stable or manageable status. Fully half of the individuals departing the TDRL did so at the same rating they had when entered onto the list. The 30-35 percent range of individuals who had a decrease in their rating is consistent with usage of the list to allow time for improvement in medical conditions. The smaller amount of those with an increase in rating indicates that the list is still effective in protecting both the government and the individual from the risk of an incorrect, premature final rating.

Change in Disability Ratings (TDRL)	Totals		Proportion by Component	
	Active	Reserve	Active	Reserve
Decrease in Rating				
Total	6577	712	39%	35%
No Change in Rating				
Total	8346	1041	50%	51%
Increase in Rating				
Total	1850	289	11%	14%

Table 4: Change in Disability Ratings (TDRL)

(2) Assessing the need to require that the condition of a member be permanent and stable before the member is separated with less than a 30 percent disability rating prior to exceeding the maximum tenure allowed on the temporary disability retired list.

In 1985, Congress established the requirement that an injury or illness be “stable” before removing a Service member from the TDRL. Before 1985, a member who had a disability that was determined to be permanent even though the degree of disability could not be determined because it was not stable in nature was nevertheless required to be placed on permanent disability retired status. The Department of Defense Authorization Act for FY 1986¹³ changed this by permitting a permanently disabled service member to be placed on the temporary disability retired list if the disability was not stable. As explained in the House Report, “literally construed, current law would not permit the same result.”¹⁵ Additionally, the House Report noted that the 1986 Act changed preexisting law to “permit retirement or separation of a service member directly from the temporary disability retired list without the additional administrative step – then required by law – of reappointment or reenlistment on active duty” before retirement or separation.

The John Warner National Defense Authorization Act for FY 2007 considered extending the requirement to maintain individuals on the TDRL whose disabilities fall below the 30 percent rating and have less than 20 years of service, but ultimately requested only that DoD submit a report on the administration of these individuals on the TDRL. In the report, DoD expressed support for the concept of adding the terms “permanent and stable” to section 1210(e) of Title 10 Chapter 61 of the US Code for the sake of “consistency”.¹⁶ If adopted, the DoD could not remove a disabled individual who, upon reexamination, fell below the 30 percent rating from the TDRL unless the condition was determined to be stable.

While the intent of this requirement seems clearly aimed at the protection of Service members with conditions which are permanent in nature with a reasonable medical possibility that they will worsen – the medical interpretation of “stable” has led to some administrative variations across Services. Anecdotally there is evidence that differing interpretations of what is medically “stable” has resulted in variances between the Services’ administration of the TDRL. In the words of one Service representative, “every condition is unstable except death.”

Currently, individuals who are separated with less than a 30 percent rating are eligible to apply for treatment from the Department of Veterans Affairs (VA) for those unfitting conditions that led to their separation. Medically, the course of treatment initiated while on the TDRL can continue without interruption. It is also important to recognize a distinction concerning manageability within the concept of ‘stable’. There are conditions that may be considered inherently unstable (e.g., asthma, diabetes, blood pressure). However, when properly managed,

¹³ P.L. 99-145, §513, 99 Stat. 583, 627-628 (1985)

¹⁵ House Report No. 99-81 (Committee on Armed Services), p. 211, accompanying H.R. 1872, 99th Congress, 1st Session (1985) (emphasis in original).

¹⁶ Letter to Senate Armed Services Committee Chairman, Senator Carl Levin from Principal Deputy Under Secretary of Defense for Personnel and Readiness dated May 17, 2007.

these diseases, while permanent and potentially unstable, may not be a proximate cause for an individual to be retained on the TDRL.

In summary, the Military Departments should have the ability to remove an individual from the TDRL prior to reaching the allowable tenure, with a final disability rating of less than 30 percent, if the unfitting condition is manageable by the individual (i.e., daily medication, attending physical therapy sessions, etc.). Only those problematic conditions that require continued, frequent interaction with a medical professional should be accepted as rationale to continue an individual to full tenure on the TDRL if a final disability rating of less than 30% has been established.

(3) Assessing the future role of the temporary disability retired list in the Disability Evaluation System of the Department of Defense and the changes in policy and law required to fulfill the future role of the Temporary Disability Retired List.

Role of TDRL in the Disability Evaluation System

Service members who become physically unfit to perform military duties are processed into the DoD Disability Evaluation System. Each Service administers its own disability evaluation process. However, DoD regulations require that the process must include: a medical evaluation board (MEB); a physical evaluation board (PEB); an appellate review process; and a final disposition.

The disability evaluation process begins at a military treatment facility (MTF) when a physician medically evaluates a Service member's injury or condition to determine if the Service member meets the military's retention standards, and prepares a narrative summary describing the findings. This process is referred to as a MEB. Service members who meet retention standards are returned to duty. Those who do not are referred to the PEB.

This disability evaluation process has only four possible outcomes for a Service member:

1. Service member is found fit for duty;
2. Service member is separated from the service either with a lump sum severance payment or without benefits—the latter for those Service members whose disabilities were determined to be not in the line of duty;
3. Service member is placed on the PDRL and receives permanent disability benefits; or
4. Service member is placed on the TDRL.

To arrive at its findings and recommendations regarding eligibility for disability benefits, the PEB determines if Service members are fit for duty, if their injuries or conditions are compensable, and what disability rating their injuries or conditions should be assigned. The PEB also considers the stability of the condition in cases eligible for permanent disability retirement benefits. Service members with conditions that might improve or worsen are placed on TDRL and reevaluated by the PEB at least every 18 months to determine if their condition has stabilized. Those who continue to be unfit for duty after 5 years on TDRL are retired from the

military with permanent retirement benefits, discharged with severance pay, or discharged without benefits, depending on their condition and years of service.

TDRL and the Current Disability Evaluation System (DES) Pilot

The DoD and the VA are currently engaged in a pilot program that will evaluate and significantly improve the timeliness, effectiveness, simplicity, and resource utilization of the DES by integrating DoD and VA processes, eliminating duplication, and improving case management practices. The DES Pilot will, for a limited period of time, test a new DoD and VA disability system. The DES Pilot will be a Service member centric initiative designed to eliminate the duplicative, time-consuming, and often confusing elements of the two current disability processes of the Departments.

Key features of the DES Pilot include one medical examination and a single-sourced disability rating. The DoD administered, comprehensive, VA protocol-based, general medical and specialty medical examination will serve the needs of the Military Department PEBs in determining a Service member's fitness for continued Military Service and will serve the needs of the VA Rating Board in determining the appropriate disability rating to be awarded a Service member for military unfitting and member claimed medical conditions incurred or aggravated as the result of Military Service.

The disability rating awarded by the VA Rating Board, specifically for the military unfitting medical condition(s), will serve as the basis for determining a DES Pilot participant's final disposition (separation with disability severance pay or disability retirement) from Military Service.

The outcome and proposed expansion of the DES Pilot will have an impact on the usage and management of the TDRL. Moving to a single source medical examination conducted by the VA and providing Service members in the DES process earlier access to VA education and benefits create a situation where the concept of the TDRL could evolve to fit better under the VA.

TDRL and Post Traumatic Stress Disorder (PTSD)

The Veterans Benefits Administration Schedule for Rating Disabilities applies an automatic rating of not less than 50 percent for mental disorders due to traumatic stress, but requires that a follow-up examination be *scheduled* within the six-month period following the veteran's discharge or placement on the TDRL to determine whether a change in evaluation is warranted.¹⁷

Currently the TDRL is the only mechanism at the disposal of the DoD that supports continued contact and reassessments in cases where mental disorders due to traumatic stress are diagnosed and listed as an unfitting condition during the MEB process.

¹⁷ VBA 38 CFR Book C Schedule for Rating Disabilities; 38USC 1155; 53 FR 23, Jan 4, 1988 as amended at 61 FR 52700, Oct, 4 1996

The Acting Under Secretary of Veterans Affairs for Benefits stated that as of June 4, 2008, there were currently 37,460 veterans receiving disability compensation for PTSD.¹⁸ There is significant anecdotal evidence to suggest that these numbers will increase dramatically in the coming years for a number of reasons:

- Extended or multiple deployments for Service members¹⁹
- Administrative Changes in DoD²⁰
- Improving medical science related to traumatic brain injury (TBI), PTSD, and cognitive impairments

According to studies published in the November 2007 Journal of the American Medical Association (JAMA) involving nearly 90,000 Service members who completed both the post-deployment health assessment (PDHA) and the post-deployment health re-assessment (PDHRA) after return from Iraq:

- 20 percent of the active component and 42 percent of the Reserve Component were identified as needing mental health referral or treatment – most often for PTSD symptoms, depression, or interpersonal conflict.

While nearly half of these Service members showed improvement between the two assessments, more than twice as many Service members who did not have PTSD symptoms at the time of the first assessment became symptomatic during this same period.²¹

The processing of PTSD claims is governed by VA regulation which states that, in order for Service connection to be granted, there must be medical evidence diagnosing the condition, there must be medical evidence establishing a link between current symptoms and an in-Service stressor, and there must be credible supporting evidence that the claimed in-Service stressor occurred. The first two requirements involve medical assessments, while the third requirement generally involves investigation by VBA personnel into the nature of the stressor.²²

Although the above would seem to create a conflict between the 6 month PTSD re-evaluation schedule and the TDRL requirement for re-evaluation at least once every 18-month, it need not be so. The PTSD re-evaluation would be performed within the required 6-month period. Other

¹⁸ Testimony of Rear Admiral Patrick W. Dunne, USN (Ret.), Acting Under Secretary for Benefits Administration, Department of Veterans Affairs before the Senate Committee on Veterans Affairs, June 4, 2008

¹⁹ See National Center for Post-Traumatic Stress Fact Sheet on unique experiences of sustained conflict in Iraq and Afghanistan (http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_iraqafghanistan_wars.html) and Mental Health Advisory Team 5 (MHAT-V) Report referenced in testimony by Colonel Charles W. Hoge, M.D. Director of Psychiatry and Neuroscience, Walter Reed Army Institute of Research before the House Veterans Affairs Committee April 1, 2008.

²⁰ “The Infamous Question 21: Encouraging Soldiers to Take Care of their Health”, *Washington Post*, May 5, 2008 A16 referencing report by the Army inspector general last year documenting that soldiers are reluctant to seek mental health care treatment because they fear losing security clearances.

²¹ Testimony by Colonel Charles W. Hoge, M.D. Director of Psychiatry and Neuroscience, Walter Reed Army Institute of Research before the House Veterans Affairs Committee April 1, 2008.

²² Veterans Affairs Regulation 38 C.F.R. § 3.304(f)

conditions warranting re-evaluation would be re-evaluated within the 18-months of being placed on the TDRL, thereby meeting both administrative requirements.

Administrative Changes in DoD and Possible Redundancy of the TDRL

As previously mentioned, the TDRL currently plays an important role as a mechanism to return Service members to duty with minimal administrative obstacles and without the risk of loss of rank or rating to the member. Should the DoD choose to develop administrative procedures that remove those administrative and professional barriers by allowing Service members who are deemed “unfit” to continue to serve in non-combat capacities, the utility of the TDRL as a return to duty mechanism would be further diminished.

Likewise, if Congress supports DoD’s desire to implement the recommendations presented in the Dole/Shalala Report or develops a like mechanism to allow for flexibility in the disability ratings of Service members for a finite period of time immediately post separation, then the necessity for the TDRL as a DoD mechanism to protect the interests of Service members could be eliminated. This temporary flexibility was at the heart of the original Army proposal from which the TDRL developed, “*reviewing the degree of disability at stated intervals after retirement with a view toward adjusting the amount of retirement pay to the changing degree of disability.*”²³ This concept would require further evaluation, inasmuch as it would have to apply to all medically separated or retired individuals, not just those who were placed on the TDRL. Additionally, this concept would allow Service members to apply for VA compensation and benefits earlier than the current system.

Conclusions and Recommendations

The analysis conducted in developing this report indicates that the Military Departments within the DoD utilize the TDRL in a consistent manner across components and ranks. There are no marked discrepancies between the treatment of active vs. reserve component individuals, nor are there significant differences in the final disposition of individuals based on rank.

As previously stated, the primary intent of the list as initially envisioned has evolved from providing wounded, ill, or injured Service members an avenue to return to duty to primarily a supporting mechanism that allows individuals additional time to continue their recovery. This evolved usage is still consistent with the secondary desires of Congress in that it offers protection to both the Service member and the government against negative impacts brought about by rendering a final and permanent disposition prematurely.

The final disability rating assigned to individuals upon departure from the TDRL reveals that the list is being used in a manner that protects the interests of the individual and the government. Fifty percent of Service members transitioning from the TDRL from 2000 thru 2007 were discharged with the same level of rating at which they entered. Thirty-five to thirty-nine percent (varying by component) were released with a decreased rating, indicating that the medical condition leading to their placement on the TDRL had improved during the time they were on

²³ DA Surgeon General Letter to ACSPER 17 October 1944 as cited in USAPDA memorandum to the General Counsel, 31 July 1974.

the list. The remaining eleven to fourteen percent received a higher rating than at entry, indicating that the individuals benefited from their time on the TDRL and received a more accurate rating than they would have if placed directly on to the PDRL.

The need to require that the condition of a member be permanent *and stable* before the member is separated with less than a 30 percent disability rating, whether or not they have exceeded the maximum tenure allowed on the TDRL, has evolved over time with advances in the capabilities and availability of medical care. Individuals who are separated with less than a 30 percent rating are eligible to apply for treatment from the VA for those Service connected conditions that contributed to their being deemed unfit for continued service. Medically, any course of treatment initiated while on the TDRL can continue without interruption. While the impact of no longer having the more comprehensive individual and family health care provided to retirees is significant, care for the conditions incurred during their service to the nation is still readily available. It is also important to recognize a distinction concerning manageability within the concept of 'stable.' There are conditions, which left untreated, that can be unstable (e.g., asthma, diabetes, blood pressure). However, when properly managed, these diseases, while still permanent and potentially unstable, should not be a proximate cause for an individual to be retained on the TDRL.

Recommendations for modification or improvement

Usage patterns across DoD reveal that individuals remaining on the TDRL beyond three years have a strong probability (over 87 percent) of being placed on the PDRL. After the three year point, only 0.7 percent of the individuals entered onto the TDRL return to duty. This supports the possibility of shortening the allowed tenure on the TDRL from five years to three, with an allowance for Military Department Secretaries to have the flexibility to approve additional time in cases of unstable and unmanageable conditions which could be rated at less than 30 percent if the individual is separated. If the maximum allowed time on the TDRL is shortened, then the Military Departments should consider using their discretionary authority to shorten the period between the medical evaluations.

There is a need to establish standardized guidance regarding "permanent and stable," that recognizes the concept of "medical manageability." This guidance should derive from accepted medical principles and result in policy that provides a common definition of a stable condition that reflects modern medical treatment. This language should be developed by DoD and VA in consultation with the appropriate clinical and non-clinical practitioners and be prescribed jointly. As previously identified, nuances such as 'manageable' or 'controlled' can be used to identify situations wherein an individual can continue a prescribed course of treatment while reintegrating into their community or back into the military without placing them at risk of a degradation in medical condition. Existing medical terminology uses the wording "maximum medical improvement" to identify decision points and status during the course of care and recovery. Use of this phrase throughout Chapter 61 of Title 10, USC, instead of the word 'stable' could better reflect how an individual's condition is assessed by medical caregivers. Current DoD training standards and Military Department training programs and administrative implementation of tracking and support programs consistent with the intent of the TDRL will minimize variances in how the term (or terms) are used within the Departments.

The outcome and proposed expansion of the DES Pilot will have an impact on the usage and management of the TDRL. Moving to a single source medical examination conducted by the VA and providing Service members in the DES process earlier access to VA education and benefits create a situation where ownership of the concept of the TDRL could logically fall within the VA's purview. The VA currently has a process to conduct reevaluations for veterans to determine if there has been any change in the degree or severity of their medical condition. Expanding the population scope and identifying individuals currently being placed on the TDRL for mandatory periodic reevaluation could eliminate the need for DoD to maintain the TDRL while still achieving the present primary objectives of the list. The reevaluations will address both physical and mental health conditions, satisfying the need to track or monitor the status of individuals suffering from TBI or PTSD as well. This potential shift will require further examination to identify a mechanism to allow Service members to return to duty if their condition improves to a point where that is practical.

DoD Totals	2000		2001		2002		2003		2004		2005		Total	
	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent
Placed on TDRL	2752		2536		2433		2439		3301		3593		17054	
Active	2543	92.4%	2339	92.2%	2170	89.2%	2149	88.1%	2616	79.2%	2886	80.3%	14703	86.2%
Reserve	209	7.6%	197	7.8%	263	10.8%	290	11.9%	685	20.8%	707	19.7%	2351	13.8%
Officer	303	11.0%	225	8.9%	221	9.1%	198	8.1%	269	8.1%	263	7.3%	1479	8.7%
Enlisted	2449	89.0%	2311	91.1%	2212	90.9%	2241	91.9%	3032	91.9%	3330	92.7%	15575	91.3%
Returned to Duty														
Within 3 Years	64	2.3%	80	3.2%	55	2.3%	74	3.0%	108	3.3%	80	2.2%	461	2.7%
Active	64	100.0%	73	91.3%	50	90.9%	68	91.9%	95	88.0%	74	92.5%		
Reserve	0	0.0%	7	8.8%	5	9.1%	6	8.1%	13	12.0%	6	7.5%		
Officer	9	14.1%	12	15.0%	8	14.5%	7	9.5%	11	10.2%	6	7.5%		
Enlisted	55	85.9%	68	85.0%	47	85.5%	67	90.5%	97	89.8%	74	92.5%		
During Years 4-5	34	1.2%	27	1.1%	39	1.6%	13	0.5%	1	0.0%	0	0.0%	114	0.7%
Active	33	97.1%	24	88.9%	39	100.0%	12	92.3%	0	0.0%	0			
Reserve	1	2.9%	3	11.1%	0	0.0%	1	7.7%	1	100.0%	0			
Officer	3	8.8%	3	11.1%	2	5.1%	1	7.7%	0	0.0%	0			
Enlisted	31	91.2%	24	88.9%	37	94.9%	12	92.3%	1	100.0%	0			
Separated 0-20%	595	21.6%	602	23.7%	619	25.4%	464	19.0%	547	16.6%	327	9.1%	3154	18.5%
Active	559	93.9%	563	93.5%	567	91.6%	422	90.9%	442	80.8%	285	87.2%		
Reserve	36	6.1%	39	6.5%	52	8.4%	42	9.1%	105	19.2%	42	12.8%		
Officer	46	7.7%	31	5.1%	40	6.5%	24	5.2%	25	4.6%	12	3.7%		
Enlisted	549	92.3%	571	94.9%	579	93.5%	440	94.8%	522	95.4%	315	96.3%		
Placed on PDRL	1608	58.4%	1443	56.9%	1377	56.6%	888	36.4%	1021	30.9%	919	25.6%	7256	42.5%
Active	1449	90.1%	1330	92.2%	1208	87.7%	765	86.1%	750	73.5%	695	75.6%		
Reserve	159	9.9%	113	7.8%	169	12.3%	123	13.9%	271	26.5%	224	24.4%		
Officer	238	14.8%	138	9.6%	126	9.2%	92	10.4%	99	9.7%	93	10.1%		
Enlisted	1370	85.2%	1305	90.4%	1251	90.8%	796	89.6%	922	90.3%	826	89.9%		

Appendix A: Final TDRL Dispositions by Cohort