



DEPARTMENT OF THE ARMY
UNITED STATES ARMY PHYSICAL DISABILITY AGENCY
2530 CRYSTAL DRIVE
ARLINGTON, VIRGINIA 22202

AHRC-DZA

30 January 2012

MEMORANDUM FOR Presidents, U.S. Army Physical Evaluation Boards

SUBJECT: Assuring the Quality of Non-duty Related Adjudication

1. By regulation and United States Army Physical Disability Agency policy, each non-duty related case is to include a clear description of each medical condition that causes the Soldier to not meet medical retention standards. See AR 40-501, 9-12a and 10-25a(1); and [TAPD-Policy Memorandum #4. https://www.hrc.army.mil/site/active/tagd/pda/PM_4_RC_NDR_PEB.pdf](https://www.hrc.army.mil/site/active/tagd/pda/PM_4_RC_NDR_PEB.pdf). This memorandum does not change or alter either AR 40-501 regulatory provisions or TAPD- Policy Memorandum #4.
2. DoDI 1332.38, E3.P3.6.1 requires a finding of unfitness be made on the basis of objective evidence in the record as distinguished from personal opinion, speculation, or conjecture. When the evidence is not clear concerning a Service member's fitness, the PEB is to attempt to obtain additional evidence.
3. AR 40-501, Ch 3 provides the medical fitness standards for retention and separation, including retirement.
 - a. Medical conditions and physical defects are those which, individually or in combination:
 - (1) Significantly limit or interfere with Soldier's performance of their duties;
 - (2) May compromise or aggravate Soldier's health or well-being if they were to remain in the military. This may involve dependence on certain medications, appliances, severe dietary restrictions, or frequent special treatments, or include a requirement for frequent clinical monitoring;
 - (3) May compromise the health of well-being of other Soldiers; and/or,
 - (4) May prejudice the best interests of the Government if the Soldier were to remain in the military.
 - b. Any medical condition, injury or defect (individually or in combination) that prevents the Soldier from performing any of the functional activities listed under item number 5 on the DA Form 3349 (Physical Profile) is cause for referral. See AR 40-501, 3-41e(1).
4. A clear description of each medical condition that causes the Soldier to not meet medical retention standards is, for purposes of making a finding of fitness, objective evidence. When the case file does not include this clear description, the PEB cannot make a finding based on relevant evidence because there is insufficient evidence to make a finding. That is, the PEB's finding becomes "arbitrary." See DoDI 1332.38, E3.P3.6.1 (requiring a finding must be based on "objective evidence in the record" and only once that condition is met, the PEB applies a rebuttable presumption that the Soldier is fit under the rebuttable presumption that this is what the Soldier desires.)

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5. Policy: When the Army Reserves or National Guard has not included a clear description of each medical condition that causes the Soldier to not meet medical retention standards, the PEB is to refrain from making a finding of fitness or unfitness. The PEB will request additional information from the Army Reserves or National Guard. In the correspondence, the PEB is to request this clear description of each medical condition that does not meet medical retention standards. The PEB should use the attached template as a starting point for requesting additional information.

FOR THE COMMANDER:

/SIGNED/

Encl

DANIEL L. CASSIDY
COL, IN
Deputy Commander

Assuring the Quality of Non-duty Related Adjudication

The PEB does not find a clear description for each medical condition that causes the Soldier to not meet medical retention standards within the submitted documents. Therefore, there is insufficient information upon which the PEB may base its finding – be it fit or unfit. Address all checked items.

_____ 1. Diagnosis/es NOT Meeting Medical Retention Standards.

Provide clinical basis for each diagnosis.

Selection of Applicable AR 40-501, Chapter 3 provision. For each diagnosis list specific applicable AR 40-501, Ch. 3 provision. Summarize reason/s supporting selected provision. When referencing 3-41e, identify the specific subparagraph(s) that apply. Explain/discuss whether, as presenting in this Soldier, the condition (due to specified diagnosis): (1) significantly limits or interferes with Soldier's performance of their duties; (2) would compromise or aggravate Soldier's health or well-being if they were to remain in the military. (This may involve dependence on certain medications, appliances, severe dietary restrictions, or frequent special treatments, or include a requirement for frequent clinical monitoring); (3) may compromise the health or well-being of other Soldiers; and/or; (4) may prejudice the best interests of the Government if the Soldier were to remain in the military.

_____ 2. DA 3349, Physical Profile.

[TAPD-Policy Memorandum #4](#) requires a DA Form 3349, physical profile. The submitted profile does not appear to be complete, accurate, and/or timely. See AR 40-501, Ch 7. Verify that the DA 3349 (a) includes each diagnosis (referred to using lay terminology) causing profile limitations; (b) aligns the PULHES and profiled activities with the listed disqualifying (P3/4) diagnoses and non-disqualifying (P2) diagnoses; and, (c) accurately portrays Soldier's ability or inability to perform each of the ten functional activities. See AR 40-501, Chapter 8-20b (4d) (defining an austere environment as an area that regularly experiences significant environmental hazards with limited access to a reliable source of electricity and where force protection levels mandate prolonged use of body armor and/or chemical protection equipment).

_____ 3. Impact on Duty Performance.

Other than profile limitations (see 2., above) describe impact of diagnosis (including manifestations; treatment; etc.) on PMOS or AOC duty performance. Specific symptoms, physical findings, or comments by Unit leadership (through the DA Form 7652, Commander's Performance and Functional Statement) may provide information indicating whether the condition interferes with safe, reliable and/or effective duty. If the Soldier is not working in their PMOS, discuss whether Soldier is performing in civilian job closely related to their PMOS or AOC.

Assuring the Quality of Non-duty Related Adjudication (cont.)

_____ 4. Clarification required regarding designation as Non-Duty.

- a. Discuss how and where injury occurred; or, circumstances surrounding diagnosis of disease.
- b. Provide enough information to confirm the condition did not start while performing military duties; or on active duty.
- c. Provide enough information to confirm the condition did not permanently worsen while performing military duties; or, while active duty.

_____ 5. Competency Statement

Soldier has a behavioral health diagnosis. Therefore, indicate whether the Soldier is:

- a. mentally competent for pay purposes,
- b. capable of understanding the nature of, and cooperating in, PEB proceedings, and/or
- c. dangerous to themselves or others.