

REFERENCE

Army Regulation 635-40

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Personnel Separations

Physical Evaluation for Retention, Retirement, or Separation

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SUMMARY of CHANGE

AR 635-40

Physical Evaluation for Retention,
Retirement, or Separation

This Change 3 places AR 635-40 in the UPDATE format and incorporated all previously published permanent and interim changes into the text. These include permanent changes 1 (1 Aug 82), 2 (15 Feb 83), and interim changes I04 (14 Jul 84), I05 (7 Jun 85), I06 (1 Jul 85), and I07 (6 Sep 85). The prescribing directive on disability processing, DOD Directive 1332.18, is currently being revised at Department of Defense level and will probably require modifications to this regulation in the future.

Effective 13 December 1985

Personnel—Separations

Physical Evaluation for Retention, Retirement, or Separation

The original form of this regulation was first published on 15 February 1980. Since that time changes have been issued to amend the original. As of 27 September 1985, permanent changes 1 and 2 and interim changes 4 through 7 remained in effect. In this UPDATE printing, permanent changes 1 and 2 and a new change 3, effective 13 December 1985, have been incorporated into the body of text. The new permanent change supersedes the earlier interim changes and makes permanent many provisions originally initiated in those interim changes. The portions of the text that are revised by change 3 are highlighted in this printing.

By Order of the Secretary of the Army:

JOHN A. WICKHAM, JR.
General, United States Army
Chief of Staff

Official:

MILDRED E. HEDBERG
Brigadier General, United States Army
The Adjutant General

Summary. This regulation governs the Physical Evaluation for Retention, Retirement, or Separation of military personnel in the United States Army (to include U.S. Army Reserve and National Guard). Masculine gender pronouns used in this regulation include both male and female gender unless otherwise expressly stated.

Applicability. This regulation applies to all soldiers of the Army with the following limitations:

a. A soldier of the U.S. Army Reserve (USAR) or the Army National Guard (ARNGUS) may be processed only as prescribed in chapter 8.

b. Cadets of the U.S. Military Academy are not eligible for processing under this regulation. (See 10 U.S.C. 1217.) Disabilities incurred or aggravated while a member was a cadet or midshipman were incurred or aggravated while the member was not entitled to basic pay. These disabilities are, therefore, not compensable.

c. A soldier who is charged with an offense, or is under investigation for an offense that could result in dismissal or punitive discharge, may not be referred for disability processing. (See para 4-1.)

d. This regulation is binding on all echelons of command and all persons subordinate to HQDA, except as cited in

paragraphs a through c above. Exceptions to nonstatutory provisions outlined elsewhere in this regulation may be made by HQ, United States Army Physical Disability Agency (USAPDA).

Impact on New Manning System. This regulation does impact on the New Manning System. It specifies assignment procedures for soldiers undergoing disability processing and action taken by individual soldiers to continue to serve on active duty with a physical disability and/or assignment limitations designated by medical profile (app E).

Internal control systems. This regulation is not subject to the requirements of AR 11-2. It does not contain internal control provisions.

Supplementation. Supplementation of this regulation and establishment of forms other than DA forms are prohibited. The Per Diem, Travel and Transportation Committee (PDC) reviewed a previous edition of this regulation dated 25 February, 1975. PDC reviewed the edition as case PDC 6570 in accordance with DOD Directive 5154.3, dated 1 May 1958. This revision involves no changes requiring further review by the PDC.

Interim changes: Interim changes to this regulation are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proponent agency of this regulation is the Office of The Adjutant General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to Commander, United States Army Physical Disability Agency, ATTN: Plans and Programs Office, Walter Reed Army Medical Center—Forest Glen Section, Washington, DC 20307-5001.

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*This Change supersedes Interim Change 4, 14 July 1984; Interim Change 5, 7 June 1985; Interim Change 6, 1 July 1985; and Interim Change 7, 6 September 1985.

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Glossary

Chapter 1 General

1-1. Purpose

This regulation establishes the Army Physical Disability Evaluation System according to the provisions of chapter 61 of title 10 United States Code and DOD Directive 1332.18. It sets forth policies, responsibilities, and procedures that apply in determining whether a member is unfit because of physical disability to perform the duties of his office, grade, rank, or rating. If a member is found unfit because of physical disability, it provides for disposition of the member according to applicable laws and policies.

1-2. Applicability

(Moved to the title page.)

1-2.1. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1-3. Exceptions

This regulation is binding on all echelons of command and all persons subordinate to HQDA, except as cited above. Exceptions to nonstatutory provisions outlined elsewhere in this regulation may be made by HQ, United States Army Physical Disability Agency (USAPDA).

1-3.1. Responsibilities

Identification of responsible activities and agencies, along with their functional roles, appears in chapter 3 of this regulation.

1-4. Explanation of abbreviations and terms

See appendix A for terms and abbreviations not in AR 310-25 and AR 310-50. Abbreviations and special terms used in this regulation are explained in the glossary.

1-5. Objectives

The objectives of this regulation are to—

a. Maintain an effective and fit military organization with maximum use of available manpower.

b. Provide benefits for eligible members of the Army whose military service is ended because of a service-connected disability.

1-6. The Army Physical Disability Evaluation System

a. The Army Physical Disability Evaluation System consists of—

(1) Medical evaluation boards (MEBDs) (a function of the Army Medical Department).

(2) Physical evaluation boards (PEBs) and the Army Disability Review Council (DRC) (elements of the USAPDA).

b. The Army Disability Review Board (ADRB) and the Army Board for Correction of Military Records (ABCMR) are statutory boards established by the Secretary of the Army (SA). These boards are

technically not a part of the Physical Disability Evaluation System. They are closely related to the system, however, in their function of reviewing requests of retired and former Army members for specific reconsideration of previous disability decisions.

(1) The ADRB was established according to the provisions of section 1554, title 10 United States Code. The Board reviews cases of officers released, without pay, for physical disability. The board is organized and functions within the framework of the Army Council of Review Boards (ACRB). ACRB is in the Office of the Secretary of the Army (OSA). No review is authorized under this section of law unless application is filed within 15 years of the date of retirement or release of the former member.

(2) The ABCMR was established according to the provisions of Section 1552, title 10 United States Code. The Board provides the SA with the means for correcting an error or removing an injustice. Within 3 years of the first knowledge of an error or injustice, a member or former member may submit an application to the ABCMR according to AR 15-185 if he—

(a) Believes an error or injustice has occurred during his physical disability processing.

(b) Has exhausted all administrative and legal remedies offered by existing laws and regulations.

c. The Army Physical Disability Appeal Board (APDAB) and the Army Disability Rating Review Board (ADRRB) review all appeals properly referred to them. (See chap. 3.)

1-7. Prompt processing

Process each physical disability case as promptly as possible. Give due thought for accuracy, thoroughness, and rights of the member to a full and fair consideration. Extensions may be granted for good and sufficient reason only, as decided by the PEB president. When a member demands a formal hearing, it must be scheduled promptly. Permit rescheduling only when the PEB president rules it is needed.

Chapter 2 Policies

2-1. Standards of unfitness because of physical disability

The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, grade, rank, or rating, given due consideration to his or her availability for worldwide deployment under field conditions.

a. *Objectives of standards.* To ensure all members are physically qualified to perform their duties in a reasonably, satisfactory

manner, physical fitness retention standards have been set up in chapter 3, AR 40-501. These standards include guidelines for applying them to fitness decisions in individual cases. These guidelines will be used to refer members to a medical evaluation board (MEBD). (These standards are not all-inclusive.) The major objective in the use of such standards is to achieve uniform disposition of cases arising under the law. These retention standards and guidelines are not to be taken as a mandate that possessing one or more of the listed conditions or physical defects means automatic disability retirement or separation from the Army. The fact that the member has one or more defects sufficient to require his referral for evaluation, or that may be unfitting for members in a different office, grade, rank, or rating, does not justify a decision of unfitness.

b. *Considering the overall effect of disabilities.* The overall effect of all disabilities present in a member whose physical fitness is under evaluation must be considered. The effect will be considered both from the standpoint of how the disabilities affect the member's performance, and requirements that may be imposed on the Army to maintain and protect him during future duty assignments. A member may be unfit because of physical disability caused by a single impairment or physical disabilities resulting from the overall effect to two or more impairments even though one of them, alone, would not cause unfitness.

c. *Evaluating the member's fitness to perform duties.* All relevant evidence must be considered in evaluating the fitness of a member. For example, when a referral for physical evaluation immediately follows acute, grave illness or injury, the medical evaluation may have the greater weight. This is particularly true if medical evidence establishes the fact that continued service would be harmful to the member's health. A member may be referred for physical evaluation under other circumstances. If so, evaluations of his performance of duty by his supervisors (letters, efficiency reports, or personal testimony) may provide better evidence than a clinical estimate by a physician of the member's physical ability to perform the duties of his office, grade, rank, or rating. Thus, if the evidence establishes the fact that the member adequately performed the normal duties of his office, grade, rank, or rating until the time he was referred for physical evaluation, he might be considered fit for duty. This is true even though medical evidence indicates his physical ability to perform such duties may be questionable. On the other hand, despite the presence of physical deficiencies, inadequate performance, per se, should not be considered as evidence of physical unfitness for a member's office, grade, rank or rating unless a cause/effect relationship between the two factors exist.

d. *Deciding the member's unfitness to perform duties.* Initial enlistment, induction, or commissioning physical standards are not

relevant to deciding unfitness for continued military service. Once a member has been enlisted, inducted, or commissioned, the fact that he may later fall below initial entry physical standards does not, in itself, authorize separation or retirement unless it is also established that he is unfit because of physical disability as described above. A soldier who is not physically qualified to perform his or her duties worldwide under field conditions is unfit because of physical disability. Likewise, inability to meet physical standards set up for specialized duty such as flying, or duty aboard submarines, or for transfer between components or branches within the Army, does not, in itself, establish eligibility for disability separation or retirement.

e. Disabilities for which member may not be declared unfit. In spite of any other provision of this regulation, after a member has been enlisted, inducted, appointed or commissioned, he will not be declared unfit for military service because of disabilities known to exist at the time of his acceptance for military service that have remained essentially the same in degree since acceptance and have not interfered with his performance of effective military service.

2-2. Presumptions

The following presumptions will apply to physical disability evaluation:

a. Before and during active service.

(1) A member was in sound physical and mental condition upon entering active service except for physical disabilities noted and recorded at the time of entrance.

(2) Any disease or injury discovered after a member enters active service, while the member is entitled to receive basic pay and not due to the member's intentional misconduct or willful neglect, was incurred in line of duty (LD).

(3) If the foregoing presumptions are overcome by a preponderance of evidence, any added disability or death resulting from the preexisting injury or disease was caused by military service aggravation. (Only specific findings of "natural progression" of the pre-existing disease, based upon well-established medical principles, are enough to overcome the presumption of military aggravation.)

(4) Acute infections and sudden developments occurring while the member is in military service will be regarded as service incurred or service aggravated. (Acute infections are those such as pneumonia, active rheumatic fever (even though recurrent), acute pleurisy, or acute ear disease. Sudden developments are those such as hemoptysis, lung collapse, perforating ulcer, decompensating heart disease, coronary occlusion, thrombosis, or cerebral hemorrhage.) An exception is if a preponderance of evidence shows that no permanent increase in disability resulting from these causes occurred during active military service or that such conditions were the result of "natural progression" of preexisting injuries or diseases as in (3) above.

(5) The foregoing presumptions may be overcome only by a preponderance of evidence, which differs from personal opinion, speculation, or conjecture. When reasonable doubt exists about a member's condition, an attempt should be made to resolve the doubt by further clinical investigation and observation, and any other evidence that may apply. In the absence of such proof by a preponderance of evidence, resolve reasonable doubt in favor of the member.

b. Processing for separation from active service.

(1) A member being processed for separation for reasons other than physical disability is presumed fit for duty as shown by his continued performance of duty. Such a member should not be referred to a PEB unless his physical defects raise substantial doubt that he would be fit were he to continue the duties of his office, grade, rank, or rating. An enlisted member whose reenlistment has been approved before the end of his current enlistment is not processing for separation and the rule above does not apply.

(2) A member previously found unfit and returned to limited duty according to chapter 6, or prior authority, will be referred to a PEB for evaluation before separation. (See para 6-3.)

(3) A member being processed for separation for reasons other than physical disability may be referred to a PEB if the evidence shows that—

(a) The member was, in fact, physically unable to perform adequately the duties of his office, grade, rank, or rating even though he was improperly retained for a period of time.

(b) Acute, grave illness or injury, or other deterioration of a physical condition that occurred immediately or at the same time as the member's separation for reasons other than physical disability, rendered him unfit for further duty.

(4) Clear and convincing evidence is required to overcome the presumption of fitness if a member who is processing for nondisability (voluntary or mandatory) retirement is to be found unfit because of physical disability. In other cases, the member may be found unfit by a preponderance of evidence. These other cases include resignation, reduction-in-force, relief from active duty, administrative separation and discharge.

2-3. Conditions existing before active military service

a. According to accepted medical principles, certain abnormalities and residual conditions exist that, when discovered, impel the conclusion that they must have existed or have started before the individual entered the military service.

(1) Examples of these conditions are as follows:

(a) Scars.

(b) Fibrosis of the lungs.

(c) Atrophy following disease of the central or peripheral nervous system.

(d) Healed fractures.

(e) Absent, displaced, or resected organs.

(f) Supernumerary parts.

(g) Congenital malformations.

(h) Similar conditions in which medical authorities are in such consistent and universal agreement as to their cause and time of origin that no more confirmation is needed to support the conclusion of their existence before military service.

(2) Likewise, manifestation of lesions or symptoms of chronic disease from date of entry, or so close to that date that the disease could not have started in so short a period, will be accepted as proof that the disease existed before entrance into active military service.

(3) Conditions of infectious origin are to be considered as to the circumstances of infection and the incubation period.

(4) Manifestations of infectious disease within less than the minimum incubation period after enlistment will be accepted as proof of inception before military service.

b. Standard in-service medical and surgical treatment reducing the effect of the disease or other conditions incurred before entry into military service do not produce constitute service aggravation unless the treatment was required to relieve disability that had been aggravated by military service. (~~Conditions incurred before military service include post-operative scars and absent or poorly functioning parts or organs.~~)

~~*c.* Adverse effects directly attributable to accepted treatment, anesthetic, or operation performed or administered for a disease or medical condition existing before entry on active duty must be reviewed to decide if such effects represent service aggravation, under *b* above.~~

c. Unexpected adverse effects, over and above known hazards, directly attributable to accepted treatment, anesthetic, or operation performed or administered for a disease or medical condition existing before entry on active duty may be considered service aggravation.

d. See chapter 5 concerning expeditious discharge for disabilities existing before military service.

2-4. Line-of-duty (LD) decisions

a. For this regulation, LD decisions are considered to be in two categories—

(1) Whether the disability is the result of the member's intentional misconduct or willful neglect or was incurred during a period of unauthorized absence.

(2) Whether the disability was incurred or aggravated while the member was entitled to basic pay.

b. The first category is a matter to be decided by the commander. Resolve the decision according to policies and procedures prescribed in AR 600-33. Include copies of the LD decision (DA Form 2173 (Statement of Medical Examination and Duty Status) or DD Form 261 (Report of Investigation-Line of Duty and Misconduct Status)) in the official records of the case.

When a board or council has substantial evidence, however, showing that a prior decision may be incorrect for any reason, include such evidence in the case record. Include also a request that The Adjutant General review the decision before final processing at HQDA level.

c. In the second category, the medical officer concerned will make a professional opinion as to whether the disability was incurred or aggravated while the member was entitled to basic pay. The opinion is subject to review, change, or modification by the medical board, MTF commander, or adjudicative bodies in the physical disability evaluation system.

2-5. Use of the Veterans Administration Schedule for Rating Disabilities (VASRD)

a. The VASRD, modified by appendix B, does not relate to findings of unfitness for military duty. While a member may have physical disabilities ratable according to the VA Schedule, such disabilities, per se, in spite of degree, do not render him unfit because of physical disability within the meaning of the definition in appendix A the glossary. After a member's unfitness for military service has been established, however, follow the VA Schedule, as modified in appendix B, in rating his disabilities.

b. Appendix B supplements the VASRD, thereby ensuring uniform application of disability ratings in the Army.

2-6. Length of hospitalization

Providing definitive medical care to members on active duty requiring prolonged hospitalization who are unlikely to return to active duty is not within the DA mission. The time at which a member should be processed for disability retirement or separation must be decided on an individual basis. Take into account the interest of both the Government and the member. Do not retain nor separate members, however, solely to increase their retirement or separation benefits. Process members who are medically unfit and not likely to return to duty for disability retirement or separation when it is decided that they have attained optimum hospital improvement. (Optimum hospital improvement is defined in app A.) Subject to the requirements noted below, a member whose normal scheduled date of nondisability separation occurs during the course of hospitalization may, with his consent, be retained in the service until he has attained maximum hospital benefits.

a. Retain no member on active duty past the date set by statute or regulation for mandatory retirement or separation without the approval of HQDA.

(1) Reserve officers and warrant officers on extended active duty may be retained on active duty according to provisions of AR 635-100.

(2) Enlisted members on extended active duty may be retained on active duty according to provisions of AR 635-200.

(3) Non-Regular members on active duty for training may be retained according to provisions of AR 135-200.

b. MTF commanders concerned will notify HQDA(DAPC-PAS-DD), Alexandria, VA 22332, of the events and the requirement for retention of members beyond scheduled non-disability separation dates. Commanders will request needed orders for instructions.

2-7. Counseling

a. During disability evaluating processing, carefully counsel each member (the next-of-kin or legal guardian) on the significance of actions being taken in his case, their probable effect on his future, and his rights as to options available to him. Use clear, understandable language. Counsel the member also—

(1) Before, during, and after PEB consideration.

(2) At each later stage of processing.

(3) As he raises questions.

b. Counselors will cover such matters as—

(1) Legal rights.

(2) Effect of findings and recommendations.

(3) Retired or severance pay.

(4) Grade upon retirement.

(5) Potential veteran's benefits.

(6) Recourse to and preparation of rebuttals.

c. Counselors will assist the member in preparing rebuttals when needed.

d. Counselors will use the Disability Counseling Guide (app C) to assist them in providing thorough and detailed counseling to each member.

2-8. Temporary Disability Retired List (TDRL)

a. The TDRL provides a safeguard for the Government against permanently retiring a member who later fully recovers, or nearly recovers, from the disability causing him to be unfit because of physical disability. Conversely, the TDRL safeguards the member from being permanently retired with a condition that may reasonably be expected to develop into a more serious permanent disability.

b. Requirements for placement on the TDRL are the same as for "permanent" retirement. A member is also placed on the TDRL when his disability is decided not to be of a lasting nature. He must be unfit to perform the duties of his office, grade, rank, or rating at the time he is placed on the TDRL. Thus, a member who is fit for continued active duty at the time of his separation from active duty will not be placed on the TDRL. This is true no matter what the severity of his physical defects or the fact that they might become unfitting were the member to remain on active duty for a period of time.

c. The TDRL will be used in the nature of a "pending list" for members who are unfit because of physical disability. These

members have conditions that may be permanently disabling and meet the other requirements for disability retirement (chap. 7).

2-9. Continuance on active duty by members unfit because of physical disability

a. HQDA may defer the disposition of a member who, although unfit because of physical disability, can still serve effectively with proper assignment limitations. The member must consent to being deferred.

b. A member continued on active duty according to the provisions in chapter 6 must be unfit because of physical disability. He must have a basically stable condition or one for which accepted medical principles show slow progression. He must be able to maintain himself in a normal military environment without jeopardizing his health or the health of others. He also must not require an excessive amount of medical care.

c. A member who is unfit because of physical disability will not be continued on active duty solely to increase benefits. He will not be continued unless his employment is justified as being of value to the Army. Evaluate a member continued under these provisions periodically to ensure that further continuance or, conversely, separation is consistent with the best interest of the Government and the member. The member remains liable to complete any service obligation he has incurred. The exception is when the disqualifying condition has progressed to a point at which the member becomes unable to perform with limitations.

2-10. Limitation on appearance by members

A member or his representative will not be permitted to appear before the Disability Review Council (DRC), the Army Physical Disability Appeal Board (APDAB), or the Army Disability Rating Review Board (ADRRB).

2-11. Findings and recommendations of agencies reviewing disability cases

Review and appeal activities are bound by the regulations under which adjudicative activities function. A rare and unusual case may occur to which current regulations do not apply. If so, refer the case through channels to the office of the SA with a recommendation for disposition.

Chapter 3 Responsibilities and Functions

3-1. Secretary of the Army (SA)

The SA is responsible for prescribing regulations to carry out the provisions of chapter 61, title 10 United States Code. Unless otherwise specified in this regulation, the SA reserves all powers, functions, and duties of the Army Physical Disability Evaluation System.

3-2. Deputy Chief of Staff for Personnel (DCSPER)

The DCSPER has overall Army Staff responsibility for the Army Physical Disability Evaluation System.

3-3. US Army Physical Disability Agency (USAPDA)

The Commanding General (CG), USAPDA, under the General Staff supervision of the DCSPER, is responsible for operating the Army Physical Disability Evaluation System, to include—

a. Interpreting and implementing policies coming from higher authority.

b. Developing the policies, procedures, and programs of the system.

c. Coordinating with other military departments to ensure applicable laws, policies, and directives are interpreted uniformly. A uniform interpretation is needed so that a member of the Army will be granted benefits basically the same as a member of another Service under similar conditions.

d. Commanding and managing the subordinate elements of the USAPDA.

e. Reviewing PEB proceedings, using the DRC, a staff element of the USAPDA, ensuring that members are given uniform and fair consideration under applicable laws, policies, and directives.

f. Making the final decision whether a member is unfit because of physical disability except when such decisions are reserved to higher authority; when proper, making related determinations such as percentage ratings and dispositions. Included as higher authority are the Office of the Secretary of the Army (OSA) and the Office of the Secretary of Defense (OSD).

3-4. United States Army Military Personnel Center (MILPERCEN)

The CG, MILPERCEN is responsible for—

a. Final administrative actions in processing physical disability cases; issuing needed orders or other instructions for the SA, based on decision of the CG, USAPDA, or higher authority. (See chap. 4 and app E.)

b. Control and maintenance of the Temporary Disability Retired List (TDRL) to include—

(1) Timely scheduling of members for periodic examinations.

(2) Disposition of members based on decisions of the authorities cited in *a* above. (See chap. 7.)

3-5. The Surgeon General

TSG is responsible for setting up and interpreting medical standards for retaining members on active duty. (See AR 40-3 and AR 40-501.)

3-6. The Judge Advocate General (TJAG)

TJAG is responsible for giving opinions on, and interpreting, laws and regulations governing the Army Physical Disability Evaluation System.

3-7. Army Disability Rating Review Board (ADRRB)

The ADRRB is a component of the Army Council of Review Boards (ACRB). The ADRRB reviews disability percentage ratings on request of a member who was retired because of physical disability.

3-8. Army Physical Disability Appeal Board (APDAB)

a. The APDAB is a component of the ACRB. APDAB is established to review disability evaluation cases forwarded by the CG, USAPDA, as provided in chapter 4. APDAB will also review other cases referred to it.

b. In reviewing disability evaluation cases referred to it, the APDAB will decide whether—

(1) The member received a full and fair hearing.

(2) The evaluation proceedings conformed to current law and governing regulations.

(3) Findings and recommendations of the PEB, as changed or modified by the CG, USAPDA are supported by substantial evidence.

c. The APDAB will take one of the following actions and forward the case to MILPERCEN or other Army agency or activity:

(1) Concur with the decision of the CG, USAPDA.

(2) Concur with the recommendation of the PEB.

(3) Adopt the recommendations of the minority member of the PEB when the PEB recommendations were not unanimous.

(4) Concur with the requests contained in the rebuttal submitted by the member being evaluated.

(5) Specify new findings and recommendations or other proper action.

3-9. Disability Review Council (DRC)

a. The DRC will review all physical disability cases referred to the USAPDA. The DRC acts in an advisory capacity to the CG, USAPDA, rather than as an adjudicative body.

b. The DRC is responsible for ensuring that—

(1) Army physical disability cases are given uniform, and fair consideration under applicable laws, policies, and directives.

(2) PEBs uniformly apply Army policies.

c. After review, the DRC will send its recommendations to the CG, USAPDA. The DRC will not recommend revision of PEB findings except when—

(1) The evidence in the record is so clear and compelling as to require revision.

(2) Accepted medical principles prevent a reasonable possibility of the PEB findings and recommendations being correct.

3-10. Physical Evaluation Boards (PEBs)

a. PEBs are established to evaluate all cases of physical disability equitably for the member and the Government. The PEB is

not a statutory board. Its findings may be revised. It is a fact-finding board for—

(1) Investigating the nature, cause, degree of severity, and probable permanency of the disability of members who cases are referred to the board.

(2) Evaluating the physical condition of the member against the physical requirements of his particular office, grade, rank, or rating.

(3) Providing a full and fair hearing for the member concerned.

(4) Making findings and recommendations required by law to establish the eligibility of a member for disability retirement or separation.

b. *Composition.* PEBs will be staffed with mature persons of sound judgment, appointed by the CG, USAPDA for full-time duty from assigned personnel. These persons will be thoroughly familiar with board procedures. The CG, USAPDA also appoints part-time members with the consent of the installation or MTF commander where the PEB is located. Part-time members will supplement, or temporarily replace, full-time members to make prompt processing of disability cases easier. Each PEB panel reviewing cases will consist of at least two field grade officers and a medical member. The president and personnel management officer will be on active duty in the US Army, other than on active duty for training. They will be field grade officers other than Medical Corps. The medical member will either be a field grade officer of the US Army Medical Corps or a Department of the Army civilian (DAC) physician on duty with USAPDA. The medical member must not have served in any capacity with the MEBD that referred the member to the PEB. When a member of a Reserve Component (RC) is being considered, one of the members of the PEB must be a Reserve officer and otherwise qualified.

c. *President of PEB.* The appointing authority will name a senior commissioned officer as president of each PEB. The senior nonmedical member will act as president when the president is absent. The president has full responsibility for the board. He will ensure that laws, regulations, and DA adjudicative principles are followed.

d. *Counsel.* A member of the Judge Advocate General's Corps (JAGC) will be appointed as counsel to represent members at formal PEB hearings. He will not be a voting member of the PEB or an advisor to the PEB. He will represent the member, as requested and required, starting with the request for a formal hearing. He will counsel the member until attendant actions resulting from the hearing are completed. The appointed counsel will also advise Physical Education Board Liaison Officers (PEBLOs) of MTFs that refer cases to his PEB.

e. *Recorder.* The appointing authority will assign a permanent recorder for the PEB. This assignment will be primary duty. The recorder will be a commissioned officer

or warrant officer of any branch except the—

- (1) Medical Corps.
- (2) Dental Corps.
- (3) Army Nurse Corps.
- (4) Army Medical Specialist Corps.
- (5) Judge Advocate General's Corps.
- (6) Chaplain's Corps.

f. *Reporter.* The appointing authority will assign a permanent qualified reporter to the PEB.

g. *Support.* A PEB is a tenant of the installation where located. The CG, USAPDA enters into agreements providing for administrative and logistical support with installation and MTF commanders.

3-11. Health Services Command (HSC)

HSC is responsible for—

a. Ensuring that Army MTFs fulfill their responsibilities in connection with the Army physical disability evaluation system. These responsibilities are outlined in paragraph 3-12; section II, chapter 4; and AR 40-3.

b. Appointing MTFs responsible for accomplishing periodic medical evaluation for TDRL members. (See chap. 7).

3-12. Medical Treatment Facilities (MTFs)

Commanders of MTFs are responsible for—

a. A thorough and prompt evaluation of a member when his medical condition makes questionable his physical ability to perform duty.

b. The counseling of a member according to appendix C. For this purpose, the MTF commander will name an experienced, qualified officer or civilian employee (of equivalent grade) as the PEBLO at each MTF that refers cases to a PEB. The commander will name at least one additional qualified officer or civilian employee (of equivalent grade) as an alternate PEBLO. The commander will give the recorder of the PEB that adjudicates cases referred by the MTF the name and telephone number of the PEBLO and alternate PEBLO. The commander will select only personnel whose duties will not conflict with their counseling responsibilities. (Duties and responsibilities of the PEBLO are contained in app C.)

c. The completed MEBD proceedings referred to a PEB to assist the board in deciding if a member is physically capable of performing duties in keeping with his office, grade, rank, or rating.

3-13. Commanders

All commanders will—

a. Become thoroughly familiar with the purpose of, and the policies and procedures governing the Physical Disability Evaluation System.

b. Ensure that any physical defects impacting on an individual's performance of duty are reflected on the member's evaluation report.

c. Refer members to the servicing MTF for a medical evaluation when the member

is believed to be unable to perform the duties of his office, grade, rank, or rating.

d. Upon request of the MTF commander, provide the information, statements, and records on members of their command being processed for physical disability evaluation.

Chapter 4 Procedures

Section I

Referral for Disability Processing

4-1. Members charged with an offense

The case of a member charged with an offense, or is under investigation for an offense which could result in dismissal or punitive discharge, may not be referred for disability processing unless—

a. The investigation ends without charges.

b. The officer exercising proper court-martial jurisdiction dismisses the charge.

c. The officer exercising proper court-martial jurisdiction refers the charge for trial to a court-martial that cannot adjudge such a sentence.

4-2. Members whose sentence has been suspended

A member may not be referred for disability processing if he is under sentence of dismissal or punitive discharge. If the sentence is suspended, the member's case may then be referred for disability processing. A copy of the order suspending the sentence must be included in the member's records. If action to vacate the suspension is started after the case is forwarded for disability processing, notify the PEB serving the area promptly. Stop disability processing. Do not resume processing unless the PEB is certain that the suspension will not be vacated.

4-3. Enlisted members who may be separated under other than honorable conditions

a. An enlisted member may not be referred for physical disability processing when action has been started that may result in his administrative separation with DD Form 794A (Discharge Certificate (Under Other than Honorable Conditions)).

b. If the case comes within the limitations of a above, refer the case to the commander exercising general court-martial jurisdiction over the member. The commander may waive the limitation. This authority may not be delegated. Include a copy of the decision, signed by the general court-martial authority, in the case file when it is forwarded if the commander decides that referral to a PEB is proper. A case file may be referred in this way if the general court-martial authority finds that—

(1) The disability is the cause, or substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

(2) Other circumstances warrant disability processing instead of other administrative disposition.

c. Member being considered for separation because of unsuitability (chap. 13, AR 635-200) may be referred for disability processing upon approved recommendation of a medical evaluation board (MEBD).

4-4. Commissioned or warrant officers who may be separated under other than honorable conditions

a. A commissioned or warrant officer will not be referred for disability processing instead of elimination action that could result in dismissal or separation under other than honorable conditions. Officers in this category who are believed also to be unfit because of physical disability will be processed for both administrative and disability separation action at the same time.

b. Commanders exercising general court-martial authority will ensure that the foregoing actions processed together are properly identified and cross-referenced. They will then forward the administrative action to HQDA(DAPC-OPR-PS), Alexandria, VA 22332.

c. The CG, US Army Military Personnel Center (MILPERCEN) will refer the entire file, including both courses of action, to HQDA(DAPE-MPO), WASH DC 20310, for necessary review. The SA will decide the proper disposition of the case.

Section II Initiation of Medical Evaluation

4-5. Referral by HQDA

The CG, MILPERCEN, upon recommendation of The Surgeon General, may refer a member to a proper MTF for medical evaluation when a question arises as to the member's ability to perform the duties of his office, grade, rank, or rating because of physical disability.

4-6. Referral by commanders of MTFs

Commanders of MTFs who are treating patients in an assigned, attached, or outpatient status may start action to evaluate a member's physical ability to perform the duties of his office, grade, rank, or rating.

4-7. Referral by commanders

When a commander believes that a member of his command is unable to perform the duties of his office, grade, rank, or rating because of physical disability, he will refer the member for evaluation to the commander of the MTF who provides primary medical care to his command. The request for evaluation will be in writing. It will state the commander's reasons for believing that the member is unable to perform his duties. DD Form 689 (Individual Sick Slip) may be used for such referral (see AR 600-6). Commanders of Reserve units not on active duty

will be guided by chapter 8 and AR 140-120 in referring members for evaluation.

Section III Medical Evaluation

4-8. The MTF commander

The MTF commander having primary medical care responsibility will conduct an examination of a member referred to him for evaluation. He will advise the member's commanding officer of the results of the evaluation and the proposed disposition. If it appears the member is not medically qualified to perform duty or he fails to meet the criteria for retention (chap. 3, AR 40-501), the commander will refer the member to an MEBD. MTF commanders will be guided by instructions contained in AR 40-3 and AR 40-501 in making disposition of the member. The PEBLO will assist MTF commanders in processing the member's case according to appendix C.

4-9. Reporting disability evaluation cases

a. The medical report is the heart of the disability evaluation system. Incomplete, inaccurate, misleading, or delayed reports may result in injustice to the member or to the Government. In describing a member's condition, a medical diagnosis alone is not sufficient to establish that the individual is unfit for further military service. The history of the member's illness, objective findings on examination, results of X-ray and laboratory tests, reports of consultations, and subjective conclusions with the reasons are pertinent evidence. These data are essential to support findings and recommendations.

b. Apparent contradictions in the records must be thoroughly explained. Examples of contradictions are disagreement with a report of consultation, incomplete laboratory reports, faulty X-rays, and incomplete studies. The line of duty of a medical impairment may be questionable because of relatively short military service and the nature of the impairment, e.g., a mental disease. If so, provide the results of inquiry into the pre-Service background (family, relatives, medical, community) of the member in sufficient detail to overcome substantive question concerning line of duty. The condition of a patient following therapy, his response to it, the degree of severity of his disease or injury, and their effect on his functional ability must be described in detail. This will help the PEB to decide whether the member is physically unfit and to arrive at a proper disability percentage rating if the member is found unfit.

c. Examining physicians or medical boards will not qualify diagnoses by such terms as "fitting," "unfitting," "disqualifying," "ratable," or "not ratable." These decisions are exclusively within the province of adjudicative bodies. Reliance on accepted medical principles and expressions of medical judgment provide guidelines for adjudicating disabilities.

4-10. Absent without leave (AWOL) members

A member may not be processed through the physical disability system unless he is entitled to basic pay and under military control. In other words, he must be available to be notified of the findings of the PEB and to indicate his concurrence or nonconcurrence. Thus, if a member is AWOL, his case file may not be sent to a PEB. If he is found to be AWOL after his case file is so referred, the PEB must be promptly notified of the fact so that processing may be suspended. If the member returns within 10 days, notify the PEB so that processing may be resumed. Record any substantial change in the member's condition during his AWOL by an addendum to the original MEBD or prepare a new MEBD. Furnish the information to the PEB.

4-11. Medical evaluation boards (MEBDs)

Chapter 7, AR 40-3, provides complete information on appointment, composition, and proceedings of MEBDs. A MEBD refers a membersoldier to a PEB when, because of medical impairment, he or she may be unable to perform his or her duties worldwide under field conditions and optimum hospital benefits have been attained. When a member is to be referred to a PEB, it is essential that the MEBD thoroughly evaluate and report his condition. The MEBD should report abnormalities present and their impact on his ability to function. A correlation must be established between his abnormalities and inability to perform duties. This correlation is particularly important when a chronic condition is the basis for referral to a PEB and no change in severity of the condition has occurred. It is also important when referral of the case file to a PEB otherwise appears controversial. When initiating and processing actions for referral to a PEB, direct liaison with other agencies and activities to obtain needed information is authorized. MEBD proceedings from other than the Army MTFs must be forwarded through the designated Army facility (chap. 7, AR 40-3).

4-12. Conduct of MEBD proceedings

a. MEBD proceedings of disability cases are conducted according to the provisions of AR 40-3.

b. A decision is made as to the member's medical qualification for retention on the basis of criteria set forth in chapter 3, AR 40-501, and this regulation.

c. Examining officers and MEBD members will use, as a reference, the "VA Physician's Guide—Disability Evaluation Examinations." Recording of defects according to this guide is essential to provide adjudicative boards the information needed for evaluating disabilities. For psychiatric cases, a clear description in the statement of present condition will show how the member's symptoms affect his employability and ability to function. (For example, can the member work independently; can he work

with minimal supervision; or will he require close supervision? Will his mental impairment cause extensive, occasional, or minimal job instability?) For TDRL cases in which the member has not been able to sustain meaningful employment, a statement should be made as to whether such unemployment is due to the effect of the disease or other factors. If an accurate prognosis as to future industrial adaptability cannot be made, and should await future developments, these conclusions should be stated.

d. The member will be counseled according to appendix C.

e. The member will not be told that—

(1) He is medically or physically unfit for further military service.

(2) He will be discharged or retired from the Service because of physical disability.

(3) A given percentage rating appears proper.

(4) A line-of-duty (LD) decision is final unless final approval has been obtained according to AR 600-33.

4-13. Referral to a PEB

a. The MEBD will recommend referral of members who do not meet medical retention standards to a PEB. Those who apply for continuance on active duty under the provisions of chapter 6 will be included. (Do not refer members who request discharge under the provision of chap. 5 to a PEB.) A member being processed for nondisability separation will not be referred to a PEB unless he has a medical impairment or impairments that raise substantial doubt as to his ability to continue to perform the duties of his office, grade, rank, or rating. Members previously found unfit and retained in limited assignment duty status under chapter 6, or a previous authority, will be referred to a PEB.

b. A member may provide additional information to the MTF commander. The information may be from his commander, supervisor, or other persons who have knowledge regarding the effect his condition has on his ability to perform the duties of his office, grade, rank, or rating.

c. As soon as it appears that a case file of a member is to be referred to a PEB, the MTF commander will forward a request for a statement of service to the custodian of the member's official military personnel file. Ask the custodian to send the statement of service directly to the disability separation and retirement section at HQDA. Figure 4-1 shows the form letter to be used for the request. Forward a copy of the request with other documents to the PEB concerned. In cases where the member is serving on his initial RA enlistment, a statement of service verifying Army service is not required. A copy of the initial DD Form 4 (Enlistment/Reenlistment Document—Armed Forces of the United States) will be forwarded with other documents to the PEB concerned.

d. Administrative processing of members referred to a PEB will be according to appendix E.

4-14. Psychiatric patients requiring continuing hospitalization and spinal cord injury patients

AR 40-3 provides for transfer of psychiatric and spinal cord injury patients to a VA medical facility. The MTF commander will ensure disability counseling is completed as prescribed in appendix C.

a. Psychiatric patients requiring continuing hospitalization may be transferred after completion of MEBD action. Refer the medical board proceedings to the PEB immediately after transfer of the patient to ensure timely processing.

b. Spinal injury patients will be expeditiously transferred to VA Spinal Cord Injury Center, notwithstanding the completion of the medical board. The MTF that has responsibility for patients in the particular VA Spinal Cord Injury Center will coordinate the completion and processing of the spinal cord injury patient's medical evaluation boards.

4-15. Action following approval of MEBD report

The MTF commander will notify the unit commander of the planned referral of the member to a PEB and obtain from him a written statement whether any adverse personnel action is pending against the member. When referral of a case file to a PEB has been approved, the member will be counseled as provided in appendix C. If further action is not barred, the case file with commander's statement will then be forwarded to the serving PEB as indicated in table 4-1. The file will consist of the following documents:

a. Approved DA Form 3947 (Medical Board Proceedings). Include as inclosure 1, SF 502 (Clinical Record-Narrative Summary) and as inclosure 2, SF 88 (Report of Medical Examination) (an original and 5 copies).

b. All clinical and other medical records. Include those received from MILPERCEN, other service hospitals, the VA and civilian sources, if applicable. The MTF will retain X-ray films until requested by an adjudicative or review body. At that time forward the films without delay. Include SF 519A (Clinical Record-Radiographic Report) with the clinical records.

c. DD Form 722 (Health Record).

d. A reproduced copy of DA Forms 2 and 2-1 (Personnel Qualification Record, Parts I and II) for active duty personnel; DA Form 66 (Officer Qualification Record) or DA Form 20 (Enlisted Qualification Record) for RC personnel. (For reference only.)

e. A copy of the request for Statement of Service (fig. 4-1) or a copy of the initial DD Form 4-1 if appropriate.

f. If available, a statement explaining the reason for reduction to the lower grade when the member is serving in a grade below the highest grade held. When the information is available, include a statement

explaining circumstances precluding advancement to the grade of E-2 or E-3 under provisions of AR 600-200 if—

(1) The current grade is E-1, and the member has completed more than 6 months' service.

(2) The current grade is E-1 or E-2, and the member has completed more than 12 months' service.

g. A copy of the document reflecting the approved line-of-duty (LD) decision (AR 600-33) if the disability is the result of injury (including disease secondary to injury of disease due to misconduct). Provide either a DD Form 261 (Report of Investigation-Line of Duty and Misconduct Status), DA Form 2173 (Statement of Medical Examination and Duty Status), or similar LD reports from the Navy or Air Force. If neither form is available, the MTF commander will send a request for an LD decision well in advance of preparation of the MEBD report, to HQDA(DAAG-PES) WASH. DC 20314. Also, send a copy of the message to the member's commander at time of injury. Use DD Form 173 (Joint Message form). Forward the form by mail. Include a copy with the case file sent to the PEB. *Early request to DAAG is important because final disposition of the case is delayed until the LD question is resolved.* The message will provide the following information:

(1) Name, grade, and SSN.

(2) Date and place of injury.

(3) Short summary of circumstances of injury, including identity of MTF where the member was treated.

(4) Unit of assignment when the member was injured.

(5) Statement that LD determination is required for disability processing.

(6) Summary of action taken to obtain LD determination to include a list of contacts made to obtain the needed report.

h. Document authorizing the member's retention beyond scheduled separation or retirement date. (See AR 635-100, AR 635-120, or 635-200.)

i. Member's request for continuance on active duty under the provisions of chapter 6, if applicable. If member was continued on active duty under chapter 6, or an earlier regulation, include a copy of the approval document as evidence of waiver. If available, include a copy of the DA Form 199 (Physical Evaluation Board Proceedings) that caused the member to be continued on active duty.

j. Orders or training schedule under which the member was performing active duty, active duty for training, or inactive duty training when the member is subject to disability processing under chapter 8. If the member is retained for medical care beyond termination date of active duty for training, include a copy of the affidavit required by AR 135-200. If referral to a PEB occurs during rehospitalization for treatment of residuals of an old injury also provide a copy of the authorization for rehospitalization (para 4-2d(2), AR 40-3).

k. In mentally incompetent or deleterious type cases, a statement showing: Name, address, and relationship of next-of-kin (or court-appointed guardian); whether this person is available for counseling following PEB action; and whether the person has been advised of the PEB referral. If the next-of-kin is not known or cannot be located and no court-appointed guardian exists, provide a summary of attempts to identify or locate the next-of-kin.

l. Copy of request for VA hospital bed designation, if applicable.

m. Copy of orders moving patient to a VA hospital for continued hospitalization, if applicable.

n. Copy of letter(s) to proper State authorities for disposition of psychotic members ineligible for VA hospitalization, as applicable.

o. A statement from the custodian of the member's personnel records when needed to explain reasons for referring a member for disability processing. If referral immediately following an acute grave illness or injury without return to duty, a statement is ordinarily not needed. The statement is required, however, if the medical evaluation is obtained and the member is referred to a PEB with one of the following:

(1) Voluntary or mandatory retirement.

(2) Expiration of term of service without reenlistment.

(3) Expiration of term of service with bar reenlistment.

(4) Involuntary release.

(5) Qualitative management denial for reenlistment.

If the statement is not included, the PEB president may, if necessary, suspend processing until the statement is provided.

p. If applicable, letters, efficiency reports, and other documents from the member's commander, rater, or other knowledgeable individuals addressing the member's physical ability to perform the duties of his office, grade, rank, or rating.

4-16. Rehospitalization of disabled member

Evaluate a member who is rehospitalized while undergoing disability evaluation or awaiting final disposition to decide if his condition may change the findings and recommendations of the PEB. If the member's condition appears to alter the findings and recommendations, the MTF commander will notify the PEB president. Further adjudicative and review action may be suspended pending resolution. When the member has received optimum hospital improvement for disposition purposes, prepare an addendum to the original medical board. Forward the addendum to the PEB with any other pertinent records unless some other disposition is indicated. Notify the PEB if disability processing is to stopped.

Section IV Physical Disability Evaluation

4-17. Initial processing

a. Upon receipt of a case by the PEB, review the case file to ensure it is complete. If documents are missing, take action to complete the file. On completion of the review, refer the case to the board for evaluation.

b. The PEB may return a case to the MTF commander for reasons such as those stated below. Efforts should be made, however, to resolve the problem without returning the case. When circumstances permit resolution of the problem by discussion, prepare a memorandum for record and include it in the file as an exhibit. When return of the case to the MTF is necessary, clearly state the reason for its return in the letter of transmittal. Examples of reasons are as follows:

(1) Further physical examination, clarification, or preparation of additional records.

(2) Additional description and information by the medical board of the member's defects and their effect on his functional ability to perform duty.

(3) Further observation, evaluation, and reconsideration by a medical board.

(4) Additional information concerning member's ability to perform the duties of his office, grade, rank, or rating.

(5) The PEB finds out that the member has been AWOL for 10 days or more.

4-18. PEB decisions—common criteria

a. *General.* The voting members of a PEB will decide the findings and recommendations in each case on the basis of the following instructions. Majority vote will control. The board will decide—

(1) Whether the member is fit, or unfit because of physical disability, to perform the duties of his office, grade, rank, or rating worldwide under field conditions. If the member is found fit, no further decision will be made.

(2) Whether the disability is the result of intentional misconduct or willful neglect; whether it was incurred during a period of unauthorized absence. If the finding is affirmative, no further decision will be made.

(3) Whether the disability is permanent or may be permanent according to accepted medical principles.

(4) In the case of a member of the Regular Army, or any other member ordered to active duty for a period of more than 30 days (other than for training under U.S.C. 270(b)), whether the disability or aggravation was incurred while entitled to basic pay, and either—

(a) The member has at least 8 years of active Federal service for retirement.

(b) The disability is the proximate result of performing active duty.

(c) The disability was incurred in line of duty in time of war or national emergency.

(d) The disability was incurred in line of duty after 14 September 1978.

Entitlement to retirement because of physical disability requires that a member described above meet one of the requirements listed in (a), (b), (c), or (d) above.

(5) Whether the member who is eligible for processing under chapter 8 was—

(a) Ordered to active duty for 30 days or less.

(b) On active duty for training under 10 U.S.C. 270(b).

(c) On inactive duty for training.

(6) The percentage rating for each disability that may be rated; the combined disability rating according to the current VASRD as modified by appendix B.

b. *Additional documents.* When it is decided that more documents are needed for proper adjudication of a case under consideration, the PEB president will suspend action until the needed documents are obtained. The PEB, or the member, or counsel acting in the member's behalf may decide the need for more documents. Provide the member reasonable assistance in obtaining such documents. If needed documents cannot be obtained, prepare a memorandum for record. Include it in the case file as an exhibit. Adjudicate the case on the best evidence available.

c. *Decision on fitness.*

(1) The PEB is responsible for deciding whether the member is unfit because of physical disability to perform the duties of his office, grade, rank, or rating. Evidence on which this finding is made may consist of medical evidence if the decision follows acute, grave illness or injury, or if the member was continued on active duty under chapter 6 or an earlier regulation. Evidence of inadequate job performance because of physical disability may be needed to support a finding of unfitness. If the available evidence does not support a finding of unfitness because of physical disability, the member must be found fit.

(2) Changes in medications or other therapy for chronic conditions do not prove deterioration of a chronic condition. Unless recent, significant deterioration has occurred or unexpected adverse results are evident from the new treatment, such changes are not a basis for finding a member unfit.

d. *Findings and recommendations.* Except for LD decisions that are favorable to the member and a finding of fit, both of which are presumptive, all findings must be based on at least a preponderance of evidence. Recommendations must be supported by the findings. The PEB must ensure that the decision reached is supported by at least a preponderance of evidence.

e. *Existed prior to entry in service (EPTS) conditions.*

(1) *Unchanged physical defects.* A member will not be found unfit because of physical defects that—

(a) Were known to exist at the time of his acceptance for military service.

(b) Have remained essentially unchanged since acceptance.

(c) Have not interfered with his performance of effective military service.

(2) *Application of accepted, medical principles.* After a member is accepted for active duty, discovery of an impairment causing physical disability is not conclusive evidence that the condition was incurred after his acceptance. Due consideration must also be given to accepted medical principles in deciding whether a medical impairment was the result of, or aggravated by, military service while the member was entitled to basic pay. Do not exclude accepted medical principles in making these decisions even when there is no other evidence indicating the impairment was present before the member's entry on active duty. Give due consideration, however, to the member's length of service as to aggravation of the disability. When a decision or recommendation of a PEB is based primarily on accepted medical principle, cite the principle as part of the rationale.

(3) *Service aggravation.* The PEB may decide that a member's physical defect existed prior to entry on active duty (EPTS) or inactive duty for training, or resulted from some other nonservice connected condition (not in line of duty). If so, the board must further consider whether military service aggravated the unfitting defect. (See app A, service aggravated.) If the condition has become unfitting through natural progression, progression after 3 years will be considered as evidence of service aggravation. (See para B-11.)

If the member's military service worsens or speeds up worsening of the condition beyond the normal or anticipated rate, had he not been exposed to such service, a finding of aggravation must be considered. AR 600-33 contains guidance on service aggravation. When the PEB decides that a condition has been aggravated by service, the board will consider the degree of disability that is in excess of the degree existing at the time of entrance into service to have been incurred while the member was entitled to receive basic pay (sec I, app B).

(4) *Nonservice aggravation.* Recommend members who are unfit by reason of physical disability neither incurred nor aggravated during any period of service for one of the following dispositions:

(a) Enlisted members who are eligible for expeditious discharge under chapter 5, upon their application, may be processed under the provisions of that chapter.

(b) Enlisted members of the Army covered by this paragraph will be recommended for discharge without entitlement to disability benefits, subject to restriction in (5) below.

(c) Members who elect to apply and who meet the criteria for continuance of active duty as set forth in chapter 6 will be processed under the provisions of that chapter.

(d) Regular Army (RA) commissioned officers with less than 5 years of active commissioned service will be recommended for

discharge without entitlement to disability benefits; however, RA commissioned officers on active duty on 14 September 1981 who have completed 3 years of continuous active commissioned RA service will not be so discharged. RA warrant officers with less than 3 years active service since current appointment in the RA will be recommended for discharge without entitlement to disability benefits.

(e) RC members may be recommended for discharge without disability benefits, or may request transfer to the Retired Reserve instead.

(f) Officers and warrant officers of the Army of the United States (AUS) will be recommended for discharge without disability benefits.

(g) Retire under some other provision of law if eligible.

(5) *Involuntary release.* No member who is on active duty and is within 2 years of becoming eligible for retired pay will be involuntarily released from active duty because of physical disability before becoming eligible for that pay, unless his release is approved by HQDA. Forward such cases, properly annotated, to the CG, USAPDA.

f. Entitlement to benefits. These rules apply when deciding whether a member is entitled to disability retired or severance pay from the Army—

(1) A PEB decides that a member is unfit because of physical disability. The board must then decide whether he is entitled to disability retirement or severance pay (table 4-2). Entitlement to pay is a matter of law; retirement or severance pay may not be granted when not authorized by law.

(2) A member is eligible for consideration for physical disability benefits if his physical defects—

(a) Were incurred or aggravated while entitled to basic pay.

(b) Were not the result of intentional misconduct or willful neglect.

(c) Were not incurred during a period of unauthorized absence.

(3) The finding of unfitness may depend on the combined effect of two or more disabilities. If so, each disability must meet the test to qualify the member for disability retirement or severance pay. If only one of the disabilities that, in combination, render the member unfit does not meet the requirements for entitlement to benefits the member is not eligible for disability benefits from the Army. If the conditions surrounding the unfitting disability preclude payment of benefits, no other disability present may be rated and thus qualify the member for Army benefits. For example, a member may be found unfit because of a disability determined to be EPTS. He also may have a disability that is ratable but not unfitting. Thus, he may not be found unfit because of the first disability and, rated for the second disability. The rating for the second disability will not establish entitlement to disability retirement or severance pay. (Table 4-3 or 4-4 applies.)

(4) If the member is entitled to disability benefits, the PEB decides the rating for each compensable disability from the VASRD, as modified by appendix B.

(5) When a member is eligible for disability benefits, any other disability is compensable if—

(a) Incurred or aggravated while the member was entitled to basic pay.

(b) Incurrence or aggravation was not due to intentional misconduct or willful neglect.

(c) Not incurred or aggravated during a period of unauthorized absence.

Also, if table 4-3 applies, and the member has less than 8 years of service, each compensable disability must have been incurred in time of war or national emergency or between 15 September 1978 and 30 September 1979, or as the proximate result of performing active duty. If the PEB determines member's entitlements under table 4-4, a defect is compensable only if incurred because of injury that was the proximate result of performing active duty, or inactive duty training.

g. Application of LD policy. AR 600-33 states Army policy on LD decisions. It provides instructions for investigation, reporting, and approval of LD decisions. The brief instructions in this paragraph are to a PEB in deciding if LD decisions are sufficient for disability adjudication and provide authority for action when an LD finding appears improper.

(1) When a formal investigation is not required, the organization commander may make informal decisions on diseases and injuries. The medical officer must concur in the decisions. The LD approving authority must approve the decisions.

(2) The medical officer concerned may make LD decision on disease if the decisions do not involve misconduct, willful neglect, or absence without leave. For cases referred to PEBs, the MEBD will confirm the LD and record its decision on DA Form 3947 (Medical Board Proceedings). Decisions made under these conditions may be changed by PEBs. Decisions may change also on review or appeal. Such changes must be fully explained.

(3) PEBs need not routinely consider the validity of informal and formal LD investigations and reports. A substantial question may arise, however, on an informal or formal LD decision because of new information not previously considered. If so, the PEB will comment on the new information either in the remarks section of DA Form 199 or by attaching an exhibit. The PEB may question the LD decision because of new, substantial evidence, or an approved LD investigation report may be needed but may not be available. If so, the PEB will conditionally adjudicate the case as if a favorable decision had been made.

The following comments will be made in the remarks section of DA Form 199: "In the

absence of an approved LD report concerning your physical disability, your case has been processed as if a favorable determination has been made. Should an unfavorable line of duty determination result, you will not be eligible for entitlement to benefits under the Army disability system." Inform the member of the conditional processing. Also let him know the final processing at HQDA will be held in abeyance until the LD decision is resolved. Although this paragraph provides the PEB with guidance referring to the questioning of LD decisions, it is not intended that the appeal process of LD decisions be through formal PEB hearings, nor does this paragraph deny the member his right to a formal PEB hearing. AR 600-33 establishes appropriate appeal processes for LD decisions.

h. Rescinded.

i. Percent of disability. After establishing the fact that a member is unfit because of physical disability, and that he is entitled to benefits, the PEB must decide the percentage rating for each compensable disability. Ratings must reflect the degree of disability at time of rating. The VASRD, as modified by appendix B, is used in deriving percentage ratings. The first 31 paragraphs of the VASRD, which provides general policies, do not apply. These paragraphs have been replaced by section I of appendix B of this regulation. Raters and reviewers must be familiar with the VASRD, including introductory paragraphs to sections and italicized footnotes. Appendix B sets forth Army policies (including modifications) on use of the VASRD when rules or ratings provided by the VA Schedule are improper for Army use or do not provide a rating basis.

j. Deciding permanency of disability.

(1) Based on accepted medical principles, a disability is "permanent" if—

(a) The defect has become stable so that, with reasonable expectation, the compensable percentage rating will remain unchanged during the following 5-year period, or

(b) The compensable percentage rating is 80 percent or more and the disability will probably not improve so as to be ratable at less than 80 percent during the following 5 years.

A member who meets either of these requirements and is otherwise qualified will be permanently retired.

(2) Based on accepted medical principles, a disability will be considered as "may be permanent" if it has not stabilized and—

(a) The member may recover so as to be fit for duty, or

(b) The defect is expected to change in severity within the next 5 years so as to change the compensable percentage rating.

The member is placed on the TDRL if he is fully qualified for permanent retirement except that his disability "may be permanent." He may not be placed on the TDRL for any other reason.

k. *Armed conflict-instrumentality of war.* A retired member of a uniformed service is considered a "preference eligible employee" under Office of Personnel Management (formerly Civil Service Commission) rules if—

(a) Retirement was based on disability resulting from injury or disease received in line of duty as a direct result of armed conflict.

(b) Retirement was caused by an instrumentality of war and was incurred in line of duty during a period of war as defined below. An entry will be made in block 10A, DA Form 199, to reflect the decision of the PEB.

(1) *Armed conflicts.* A disability may be considered a direct result of armed conflict (app A) if—

(a) It was incurred while the member was engaged in armed conflict or in an operation or incident, involving armed conflict or the likelihood of armed conflict; while the member was interned as a prisoner-of-war or detained against his will in the custody of a hostile or belligerent force; while the member was escaping or attempting to escape from such prisoner-of-war or detained status.

(b) A direct casual relationship exists between the armed conflict or the incident, or operation, and the disability. A decision that a disability resulted from injury or disease received in line of duty as a direct result of armed conflict will be proper only when it is also decided that the disability so incurred in itself renders the member physically unfit.

(2) *Instrumentality of war.* A decision that a disability was caused by an instrumentality of war (app A)(see glossary) and incurred in line of duty will be proper only when it is also decided that the disability so incurred in itself renders the member physically unfit and was incurred during one of the periods of war as defined by law; as follows:

(a) *World War II.*

1. Period beginning 7 December 1941 ending 31 December 1946.

2. Any period of continuous service performed after 31 December 1946, and before 26 July 1947, if such period began before 1 January 1947.

(b) *Korean War.* The period beginning 27 June 1950 and ending 31 January 1955.

(c) *Vietnam Era.* The period beginning 5 August 1964 and ending 7 May 1975. (The "Dominican Intervention" occurred during this period.)

1. *Disability retired pay excluded from gross income.*

(1) *The Tax Reform Act of 1976 (TRA76).* Until modified by the TRA76, disability retired pay of certain persons was excluded from gross income.

TRA76 set up new rules on exclusion of retired pay applicable to persons who entered the service after 24 September 1975. (Those persons retired because of disability on or before that date are not affected.)

(2) *Three conditions for disability retired pay to be excludable from gross income.* Disability retired pay is that portion of retired pay based on a person's disability percentage rating. The person's disability retired pay must relate to one of three conditions. The person's disability retired pay is excludable from gross income if—

(a) On 24 September 1975, the individual was a member (including RC membership) of the armed forces of any country; the National Oceanic and Atmospheric Administration (NOAA), formerly Coast and Geodetic Survey; the US Public Health Service (US-PHS); or was under a binding written agreement to become such a member.

(b) The disability retired pay is received because of a combat-related injury. (Combat-related injury is defined in (app A)the glossary.)

(c) The person, on application, would be entitled to receive disability compensation from the VA.

(3) *Entries on DA Form 199.* If the PEB can establish the fact, from available records, that an individual whose case is being considered was, or was not, a member of one of the organizations listed above on 24 September 1975, the board will make the proper entry in block 10B, DA Form 199. If such a decision cannot be made, the PEB will enter a statement after the last entry in block 8 to reflect that fact and leave block 10B blank. The PEB will decide whether the disability for which the member is to receive retired pay was incurred because of a combat-related injury and make a proper entry in block 10C.

m. *Recording of rationale and minority reports.*

(1) *Rationale:* Include the rationale for the findings and recommendations on the DA Form 199. Include a short, concise statement of the reasons for finding a member fit or unfit, and if unfit, the basis for the rating. The rationale will support specifically the finding that the member was, or was not, capable of performing the duties of his office, grade, rank or rating. Unless the rationale supports the finding of unfitness, or degree of unfitness, do not refer to a member's hospitalization. A significant variance may occur between the diagnosis or degree of impairment described in block 8 of DA Form 199 and that reflected in the MEBD proceedings. If so, explain the variance completely in block 16.

(2) *Minority reports.* A PEB voting member may not agree with findings and recommendations of the other voting members. If so, he will prepare a sign a minority report, which becomes a part of the PEB proceedings. The minority report must explain wherein and why he differs with other members. Refer to the minority report in the remarks section of DA Form 199.

n. *Continuances.* A PEB may continue a hearing upon its own motion, at the request of the recorder, or at the request of the member or his counsel, if the board thinks a continuance is needed for a full and fair

hearing. Examples of proper reasons for continuance are the need for further medical evaluation and the need to obtain additional records, reports, or statements as evidence in the case. When a continuance is granted, use only one DA Form 199 in the case. Record data such as the date, fact, and time of recess and reconvening, and changes in membership in the transcript of proceedings when the event occurred. If a change of membership is involved, the record will show the reason for the change. The record will also show that the new member had become familiar with the records of the case and the transcript of testimony before proceeding with the hearing.

o. *Recording, assembly, and transmittal of reports of proceedings.*

(1) Record proceedings of PEBs on DA Form 199. Instructions for completion of the form are at appendix D. The recorder will initial erasures and corrections on both DA Form 199 and transcripts of formal hearings involving substantive matters.

(2) Assemble the records of PEB proceedings as indicated in table 4-5. Number pages of the transcript consecutively beginning with page 1.

(3) Transmit case records of PEB proceedings according to the distribution indicated in table 4-6.

p. *Reconvened and improperly constituted boards.*

(1) *Reconvened board.* Before final action on a case, the proceedings of a properly constituted PEB may be returned to the same board for further investigation, further consideration of findings, correction of errors, or other reasons. When proceedings are returned, the reconvened board will include as many members of the original PEB as possible. However, proceedings may be conducted properly even though no members of the original board are available. The board must be otherwise properly constituted. The new members must have acquainted themselves with the records of the case and the transcript of testimony before reconvening the board. When these requirements would be prejudicial to the member, convene a new board or transfer the case to another PEB. Proceedings will be the same (formal or informal) as were used by the original hearing. If a formal hearing is held, notify the member (his next-of-kin or legal guardian if he represents the member's interests) of the new hearing date. (See fig. 4-2 or 4-3.) Should the PEB reconsider the case and change its findings or recommendations, prepare a new DA Form 199. Refer the form to the member of his election. If a new form is not prepared, place a statement in block 16, DA Form 199. State that the case was reconsidered according to AR 635-40. Give the member a chance to consult with counsel and to rebut any proposed changes. If the member wants to submit more evidence, either documentary or testimonial, allow him a reasonable chance to do so. Despite the procedures employed, notify the member (next-of-kin or legal guardian) of the results if a change is made in the

disposition or benefits from those originally recommended. When new findings are made by the PEB, they become the only findings on which later action will be taken.

(2) *Improperly constituted boards.* Proceedings of an improperly constituted PEB are null and void. Whenever a hearing is discovered to have been conducted by an improperly constituted PEB, refer the record of the proceedings (less the findings and recommendation) of the hearing for a new hearing by a properly constituted board.

q. *Action when member is absent without leave (AWOL).* A PEB may receive information that a member whose case is in the disability system is AWOL. If so, suspend processing of the case. If the member returns to military control within 10 days, processing may be resumed. Processing will include consideration of any new or increased disability incurred during the period of AWOL. Should the member not return to military control within 10 days, return the case file to the MTF. If information that a member is AWOL is received after case file has been forwarded to HQ, USAPDA, the PEB will promptly notify CG, USAPDA.

r. *Disposition.* Recommend disposition of a case according to the rules stated in tables 4-3 and 4-4. (For RC members who are not on extended active duty, see chap. 8 for special instructions.)

4-19. Informal board

a. Each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. The rapid processing intended by the use of informal boards must not be permitted to override the fundamental requirement of consistently superior evaluation of each case. Examine all evidence in the case file. Obtain more evidence, including the official military personnel file (OMPF), if required. The PEB will consider each case using the policies of chapter 2 and the criteria provided in paragraph 4-18.

b. Record findings and recommendations of the informal PEB on DA Form 199 according to appendix D. If the member is on active duty, promptly forward the original, signed by the president of the PEB; the member's copy, and the MTF's copy to the MTF commander concerned (ATTN: PEBLO). If the DA Forms 199 are not received by the PEBLO, the PEB will prepare new copies and forward them promptly to the PEBLO. (See chap. 7 for instructions on handling PEB findings and recommendations when a member is on the TDRL.)

c. The PEBLO will inform the member of the informal PEB's findings and recommendations. The PEBLO will counsel each member according to appendix C. Explain choices of action listed in block 13, DA Form 199. The member is allowed 3 working days to decide on his election. If he does,

not concur in the informal board's findings and recommendations, he may demand a formal hearing with or without personal appearance. He may, if he wishes, also state in writing his reasons for nonacceptance. He may furnish such supporting evidence as he considers proper. The member will enter his election by checkmark in block 13. He will indicate his choice of counsel if he nonconcur and demands a formal hearing. He will date and sign the original and MTF copies of the DA Form 199. The PEBLO will complete block 14 of both copies. If the member has furnished his reasons for nonacceptance, and has provided additional letters, supervisor evaluations, or efficiency reports, the PEBLO will attach his statement and any additional supporting data to the DA Form 199, which will be returned to the PEB. If the member fails or declines to make an election, the PEBLO will prepare a brief statement describing the circumstances. The PEBLO will indicate the date on which the member was first informed of and counseled on the informal board's action. The PEBLO will forward the DA Form 199 and his statement to the PEB. In deleterious-type cases or others involving mental incompetence, the PEBLO will contact the next-of-kin or legal guardian, if one has been appointed, and request that person act for the member.

d. When the completed DA Form 199 is returned to the PEB, the recorder will take the following actions as applicable:

(1) If the member accepts the findings and recommendations of the informal PEB, assemble the records as required by table 4-5. Distribute the records as shown in table 4-6.

(2) If a member fails or declines to make an election within the prescribed period of time, the PEB will proceed as if the member had accepted the findings and recommendations. The PEB will process the case as described in (1) above.

(3) If the member nonconcur in the informal findings and recommendations and, as a part of his demand for a formal hearing, the member states the reasons for his election, the PEB may reconsider their findings and recommendations in the light of the member's reasons for nonacceptance. Should the PEB agree with the member and modify their findings and recommendations, the PEB will inform the member through the MTF commander, of the results. If the member accepts them, the case will be processed as in (1) above. Otherwise, refer the case for formal hearing. If the member, without stating his reasons for nonacceptance, demands a formal hearing without personal appearance, refer the case to the PEB for a formal hearing. Inform the appointed legal counsel of the pending action so that he may contact the member to decide what issues he wishes to have presented in his behalf. If the member, in demanding a formal hearing, has elected to be represented by individual counsel, make arrangements for the hearing with the individual counsel. If the member elects to be present

at the formal hearing, the recorder and appointed counsel will arrange for the hearing with the member and individual counsel, if any. If the member is at some location other than that of the PEB, his commanding officer will issue necessary TDY orders for travel of the member. The commanding officer will use locally available funds.

(4) Whenever more than one PEB is held on a case, attach a copy of the DA Form 199 for each hearing to the final DA Form 199. This copy will reflect and explain the multiple considerations. For example, a copy of an informal board's DA Form 199 attached to each copy of the formal board's DA Form 199 will record the member's demand for a formal hearing without further comment or explanation.

(5) In all informal cases, the PEBLO of the MTF having control of the member will be the counselor for the member. As such, he is primarily concerned with the member's interests. He should consult with, and obtain advice as needed, from the local legal assistance officer on the disability cases he handles. He should also consult with the local finance officer, as needed, when computing estimated monetary benefits. He may also seek advice from the legal counsel at the nearest PEB. The PEB counsel may also call on the PEBLO to assist in contacting and advising a member when necessary.

4-20. Formal board

a. *Formal hearing.* A member is entitled to a formal hearing if he demands it after informal consideration of his case by a PEB. He may waive this right by concurring in the findings and recommendations of the informal board. The right to waive a formal hearing may be exercised by next-of-kin or legal counsel if the member is incompetent. After demanding a formal hearing, a member may withdraw the demand and accept the informal action, in which case, the counsel will inform the PEB. The case will be forwarded to HQ, USAPDA. The member must decide whether to demand a formal hearing. Although he must be counseled on the right, the decision is his. If the member demands a formal hearing, he is entitled to counsel as provided in paragraph 3-10d and h below. A formal board will be convened when—

(1) A member (next-of-kin or legal guardian) demands it after electing not to accept the findings and recommendations of an informal board.

(2) The case file has been forwarded to MILPERCEN for issuance of retirement or separation instructions and the member demands a formal hearing before such action is final.

(3) After an informal board, the president of a PEB decides that a formal hearing is in the best interests of the member or the Government.

b. *Formal board membership.* A formal hearing will normally be conducted before a board made up of the same persons who considered the member's case informally. The purpose of a formal hearing is to allow

the member a chance to present his views, testimony, and new evidence. The board members must consider these matters with open minds in spite of their earlier decisions. For these reasons, the challenge of a voting member solely because he took part in the informal decisions ordinarily should be denied. If the member is able to prove that a member of the formal board is not impartial, that board member will be replaced. If a replacement for the successfully challenged member is not available, refer the matter to the CG, USAPDA. The CG, USAPDA will appoint another officer to the PEB panel for the formal hearing. If a voting member of the informal board is not available for the formal hearing, he may be replaced with another who is qualified to sit. The new member must acquaint himself thoroughly with all pertinent records before the formal hearing is convened.

c. Hearing room. No arrangement is prescribed for the hearing room. Local available space will dictate the arrangement. The minimum requirement is room for three board members, the recorder, the member whose case is to be heard, his counsel, and the reporter. Proper decorum consistent with the purpose of the hearing is important; however, every effort should be made to maintain a relaxed and courteous environment. Avoid an implication of litigation of the case.

d. Scheduling hearing. The president of the PEB will establish the date, time, and place of the hearing subject to the following:

(1) The member (his next-of-kin or legal guardian) will be allowed 3 working days after notice that a formal hearing is to be held to review all records assembled for use during the hearing. He may make any notes needed to prepare his case.

(2) The member may waive this 3-day period or any portion of it.

(3) If more time is required to prepare his case, forward a written request for an extension to the president of the PEB. The PEB, in turn, will indorse the request to the member indicating approval or disapproval of his request. In deciding whether to approve the request, the president must consider whether the reason for a delay is sufficiently deserving to offset the cost of delays in processing a disability case. Specify the date and time of the rescheduled hearing in the indorsement. If, in his judgment, the member and counsel are using delaying tactics, the formal hearing will be held with or without presence of member and/or selected counsel.

(4) Allow ample time for travel if the next-of-kin wants to be present at the hearing if the next-of-kin represents the member.

(5) The recorder of the PEB will—

(a) Notify the member (next-of-kin or legal guardian) by telephone or by written notice of the scheduled hearing. Use figure 4-2 or 4-3 as a guide.

(b) Notify the board members, witnesses, counsel, reporter, and interpreter (if needed) of the date, time, and place of the hearing.

(c) Arrange for the attendance of all available military witnesses or, under appropriate circumstances, obtain depositions and other evidence.

(d) Ensure that the member's records are furnished to medical witnesses for review before hearing.

(e) Present all available evidence and witnesses to the board.

(f) Perform such other duties as may be required by the president of the board.

e. Member's rights. Certain rights accrue to a member whose case is under review by a PEB. A counsel must be aware of these rights. When communicating with the member (next-of-kin or guardian), a counsel must be sure the member knows and understands the rights that apply to the circumstances of his case. Although certain rights apply in all cases, some are particularly applicable during formal hearings, especially when the member is present at the hearing. These rights are as follows:

(1) The Privacy Act of 1974 applies to information of a personal nature requested of the member in the course of a formal hearing. Completion and attachment to the case file of a copy of DA Form 4368-R (Data Required by the Privacy Act of 1974) is evidence that the member has been informed of the impact of the Privacy Act on his formal hearing.

(2) The member may testify as a witness, under oath, in his own behalf, in which case he may be cross-examined as any other witness.

(3) The member or his counsel may introduce witnesses, depositions, documents, or other evidence in his own behalf, and cross-examine witnesses who have been examined by the PEB.

(4) The member or his counsel may make unsworn statements, orally or in writing or both, without being subject to cross-examination.

(5) The member may remain silent. His choice not to make a statement or answer questions is not to be considered adverse to his interests.

(6) The member may decline making any statement touching on the origin or aggravation of any disease or injury he may have. He may not be questioned on the matter unless he, or his counsel, opens up such matters during his direct testimony before the PEB or such information is a matter of record in the MEBD or contained elsewhere in his medical records.

f. Failure to appear. If a member who has elected to appear at a formal hearing fails to do so, the president of the PEB will take the following actions:

(1) Suspend the hearing and determine the reason for the member's absence. Subject to the provisions of (2) below, if no reasonable excuse is apparent for the member's absence, the hearing may proceed. The president will include in the record a statement of circumstances. Should the member later appear before the hearing has been concluded, the president may recess the hearing. He

may permit the counsel to brief the member on proceedings up to that point. The hearing will then proceed.

(2) A formal hearing may not proceed if the member's individually selected counsel, if he has one, is absent, unless the appointed military counsel is present in open session.

g. Waiver of appearance. A member may waive, in writing, his appearance at a formal hearing. In such a case, the appointed military counsel, or individually selected counsel, if he has one, must be present. The counsel will represent the member during all open sessions of the hearing, and perform the duties required of a counsel during post-hearing actions.

h. Counsel. Each member will be represented by counsel at a formal PEB hearing, unless representation by counsel is specifically declined in writing for hearings at which the member will be present.

(1) *Representation.* The appointed PEB counsel, other military counsel if reasonably available and released by the counsel's command for this purpose, or civilian counsel of the member's choice will represent the member. A member may arrange for civilian counsel of his own choice at no expense to the Government. He may present his case without counsel. If he does, he must conform to the procedural rules set up. He must sign a statement specifically excusing appointed PEB counsel. The statement will be made a part of the record. Unless so excused, the appointed counsel must be present at the formal hearing. Appointed counsel will act as co-counsel when the member chooses another counsel unless excused by the member.

(2) *Duties.* The counsel safeguards the legal rights of the member. He remains in attendance at all open sessions of the board unless excused in writing by the member. His duties are to—

(a) Confer with the member and advise him of his rights.

(b) Prepare the member's case for presentation to the board.

(c) Request the recorder to arrange for the attendance of available witnesses or to obtain their depositions or other specifically desired evidence in support of the member's position.

(d) Examine and cross-examine witnesses and otherwise assist the member in presenting his case.

(e) Submit oral or written arguments.

(f) Counsel the member on the board's findings.

(g) Upon request, assist in the preparation of the rebuttal.

(3) *Mentally incompetent and deleterious-type cases.* The appointed legal counsel will serve as counsel when the next-of-kin (or legal guardian) acts for the member in a case of this type unless replaced by special counsel. In the absence of the next-of-kin, the PEB counsel must be present, even though special counsel is representing the member, unless excused by the next-of-kin or special counsel.

i. *Record review by member.* Make all records assembled for use during the hearing, including those furnished by HQDA and by other official sources, available to the member and his counsel for review. In cases involving mental incompetence or deleterious-type cases, only the counsel and, if present, the next-of-kin or legal guardian may examine the records. The member (next-of-kin or legal guardian) and counsel may make notes from the records to prepare the member's case properly. However, the president may withhold from civilian counsel, next-of-kin, or legal guardian, any security information.

j. *Challenges.*

(1) The recorder will announce the names and grades of the members of the board who are present. Then any member of the board or counsel who is aware of any facts that he believes to be grounds for challenge against himself or any other member, including the president of the board, will state such facts. If it appears a member is subject to challenge for cause, and the fact is not disputed, the member will be excused. The recorder is not subject to challenge.

(2) The statutory right to a full and fair hearing includes the right to challenge for cause. Grounds for challenge may be made by a statement of any fact indicating an officer should not sit as a member of the board in the interest of having the hearing and later proceedings free from substantial doubt as to legality, fairness, and impartiality. Not more than one member will be challenged at one time. Later challenges may be made against other members of the board after a ruling is made on a previous challenge.

(3) A challenge may be withdrawn at any time. If a challenge is not withdrawn, the board will give the member a chance to introduce evidence, examine the challenged member under oath, and make an argument. The PEB will decide if the challenge is relevant and valid. While deliberating and voting on a challenge, the board will be closed. The challenged member will not be present at the closed session and will not vote upon the challenges. If the challenged member is the president of the board, the next senior nonmedical board member will preside in the case. A tied vote will sustain the challenge. Upon reopening the board, the president of the board will announce whether the challenge has been sustained. This announcement will be reflected in the transcript of testimony. If a challenge is sustained, the proceedings will be suspended until a replacement for the challenged member is provided.

k. *Verifying member's rights.* When the hearing begins, the president of the PEB will assure himself that the member has been informed of his rights. If it appears the member has not been so informed, he will recess the hearing and allow the counsel time to advise the member.

l. *Evidence.*

(1) Before taking testimony, the recorder will submit to the board in open session all

relevant records, reports, and other written evidence. The PEB must consider all relevant evidence, and give such evidence the weight it thinks proper. However, a member is not required to make, or sign, a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interest made by a member before he is advised that he need not make such a statement, or any statement obtained under circumstances indicating that it was involuntary, is invalid. In the absence of special circumstances, the PEB may consider only official records, testimony of witnesses at the hearing, business entries, depositions, and affidavits. Special circumstances may include death, incompetence, or inaccessibility of a potential witness. However, the board may examine documents such as letters and efficiency reports for evidence that the member's condition does or does not affect his ability to perform the duties of his office, grade, rank, or rating.

(2) When documentary evidence is presented to the PEB, the service member (or counsel) may ask for the personal appearance of the author if he is within a reasonable distance. Whether the distance is reasonable will be decided by the PEB president. If the witness cannot appear in person, the service member (or counsel) may request a deposition. Likewise, a deposition may be taken from any witness whom the PEB refuses to summon or is not authorized to summon. A deposition may also be taken from any witness who is unable to appear in person. The weight to be given a deposition as evidence will be as given any other documentary evidence with due consideration for the source. If an opinion is expressed, due consideration will be given to how well the deponent qualifies as an expert in his field as compared to the quality of other evidence available to the PEB.

(3) The PEB president may decide that the witness who cannot appear in person to testify is within a reasonable distance. If so, he may authorize the service member's military counsel to take the deposition at the witness' location. The counsel may take the deposition either personally or by arranging with his representative. If the counsel is to take the deposition in person and TDY is involved, the counsel will provide the PEB president a summary of the information he expects to discover and how it relates to the case. If the PEB president approves the TDY, the PEB will pay costs from travel funds available to the PEB. The deponent may be at a greater distance so that the military counsel is unable to take the deposition in person, but another PEB may be within a reasonable distance. If so, the service member's counsel may request assistance from the PEB counsel near the deponent's location. Should expenditure of per diem or travel funds be involved, the counsel will make his request through the PEB president who is considering the case. The PEB president will forward the request for action to the president of the PEB where

the deponent is located. A summary of the information to be discovered will be included. If no expenditure of public funds is involved, the receiving PEB president will approve the request and refer it for action to the PEB counsel. If the requested action involves payment of TDY costs, expenses will be paid from funds available to the PEB that will take the deposition. If funds are not available, the PEB president may deny the request and return the action to the requesting counsel with a statement that needed funds are not available. A counsel may believe that a deposition is required and it cannot be obtained as described above. If so, he may make a request to the officer exercising general court-martial authority over the installation at which the PEB is located. If he approves taking the deposition, he will refer the request to the general court-martial authority in the area in which the deponent is located for action. The deponent will return the deposition through the referring general court-martial authority. Depositions may be taken on oral or written questions. Depositions will be prepared as provided in paragraph 117, Manual for Courts-Martial, United States, 1969 (Revised Edition).

m. *Administering oaths.* Voting members of a PEB, the recorder, counsel, and others who regularly take part in PEB evaluations and have no vested interest in the outcome of cases considered need not be sworn before performing their duties. Officers are required in their oath of office to "carefully and diligently discharge the duties of the office to which appointed." Civilian employees are sworn to perform their duties faithfully. A high standard of performance is to be expected, therefore, of individuals assigned to these duties.

(1) A member appearing in his own behalf is not sworn unless he elects to testify under oath. If he chooses to be sworn, use the oath or affirmation prescribed in (2) below.

(2) Witnesses will sometimes have a vested interest in a case, often adverse to the member's or the Government's interest. Because this partiality is not evident initially, any person who is to testify will first be sworn. The recorder will administer the following oath:

Do you (naming him) swear (or affirm) that the evidence you will give in the case now in hearing will be the truth, the whole truth, and nothing but the truth? So help you God.

If the affirmation is used, omit the final sentence of adjuration:

n. The board will summon available witnesses needed for the hearing. Either the member or the PEB may request attendance of a witness. Whether a witness is available depends on conditions described below.

(1) Members and employees of the armed services located at the same installation as the PEB are usually available. If available, the commander or supervisor will ensure that they appear.

(2) Members and employees of the armed services located at other installations may be available. The PEB president will decide whether the presence of such witnesses will contribute substantially to a full and fair hearing. If he decides the presence of such a witness is needed, the commander or supervisor may ensure his appearance if reasonably available.

(3) The member is responsible for attendance of witnesses who are not members or employees of the armed forces at no expense to the government. Additionally, he is entitled to present the testimony of any other member or employee of the Army or other armed services whom he obtains at his own expense, and who is given leave to attend.

(4) Witnesses summoned by the PEB who are members or employees of the armed services are entitled to travel expenses and per diem allowances authorized by Joint Travel Regulations. The commander of the command to which the witness belongs is responsible for these costs. If command funds are not available, and the PEB president still considers personal testimony by the witness essential, funds available to the PEB may be used to pay the costs.

o. Procedural objections. The member (his next-of-kin, legal guardian, or counsel) may object to any actions taken or proposed to be taken by the board or to the admission of evidence. When an objection is made, it will be recorded as part of the proceedings. The president of the board will rule on objections. If any board member dissents from the president's ruling, however, the board will be closed. The objection will be ruled upon by majority vote. Upon reopening of the board, the ruling of the board will be announced in open session and recorded as part of the proceedings.

p. Closed deliberations. Upon completing an open hearing, the board is closed for deliberation. The voting members decide the findings and recommendations according to policies stated in chapter 2 and criteria in this chapter.

q. Findings and recommendations.

(1) The board, upon completion of deliberations, will reopen and inform the member of the findings and recommendations. (In case of mental incompetence or in deleterious-type cases, the board will inform his counsel, next-of-kin, or court appointed guardian.) The member will be advised that the board's action will not become final until it has been reviewed and approved. He will also be reminded that he may, by rebuttal, request reconsideration of any finding or recommendation. If the member (his next-of-kin or legal guardian) is not present at the hearing, notice of the findings and recommendations will be in writing. Use the form letter shown in figure 4-4 or 4-5.

(2) The PEB may change, modify, or correct its findings and recommendations at any time before the record of proceedings is transmitted to the CG, USAPDA. When

such changes are made in previously announced findings or recommendations, the PEB will inform the member (his next-of-kin or legal guardian) in writing of them. The PEB will give the member another chance to accept or rebut the changes.

(3) If the member personally appeared before the board, as soon as the PEB has completed its action and his presence is no longer needed, excuse him. The president of the PEB will mail a copy of the DA Form 199 and transcript testimony to the MTF commander concerned.

r. Member's response. Except for mental incompetence or deleterious-type cases as provided in (2) below, whether or not the member personally appeared before the board, give him a chance to submit a written statement about the recommended findings of the PEB.

(1) This statement may take the form of a rebuttal to the recommended findings of the board or a statement to the effect that the member does not desire to make a rebuttal to the findings. Give member a period of 3 working days after receipt of his copy of the board proceedings to submit the rebuttal statement, unless the president of the PEB approves his request for an extension submitted within the 3-day period. Attach the statement or request submitted by the member to the record of the board proceedings. If the member has not submitted either his statement or a request for an extension of time within the 3-day period permitted plus required mailing time, the PEB will deem that the member has waived his right to a rebuttal. Forward the case to the CG, USAPDA with a statement as shown in figure 4-6 or 4-7. Send the member a copy of the statement.

(2) In cases involving mental incompetence or nonappearance because of the MTF commander's decision that it would be detrimental for the member to appear, the board will forward a copy of the record of its proceedings to the person previously notified of the hearing. Include the current DA Form 199 and a transcript of all testimony with a copy of the report forwarded. Exclude documents considered by the board, the original medical records, and any classified information. Forward the record by certified mail, return receipt requested. Use air mail when it will make prompt delivery easier. The letter of transmittal will advise the individual that—

(a) These findings are not final until approved after review.

(b) He may, within 7 days after receipt of the letter, submit a written statement concerning the recommended findings of the PEB. Grant no extension of time unless a written request is received and approved by the president of the PEB. The statement may be in the form of a rebuttal to the recommended findings of the board or a statement to which he does not desire to make a rebuttal. If a rebuttal is submitted within the allotted time, consider it before final disposition resulting from the review action.

(c) Upon failure to reply within the time allotted according to (b) above, the appointed military counsel will take proper action in behalf of the member on the recommended findings of the board. (Do not forward the record to the CG, USAPDA until a rebuttal or statement has been attached, or counsel has acted in behalf of the member (fig. 4-8).

(3) The member, or someone authorized in his behalf, may submit a statement or rebuttal to the recommended findings of the PEB. If so, the PEB president, within 3 working days, will respond to the member or his representative. If the statement or rebuttal does not affect the outcome of the case, the PEB will inform the member. The PEB will give the member reasons for the action as circumstances indicate. The purpose of the response by the PEB president is to let the member know that his statement or rebuttal has been received and considered. The response is also to help him understand why the PEB cannot react favorably to his request. Inform the member in a closing statement that his statement or rebuttal will be forwarded for review action. Include a copy of the response by the PEB president in the case file. Give a copy to the legal counsel of the member.

Section V

Review and Confirmation of PEB Action

4-21. General

a. The CG, USAPDA will review all cases forwarded by the PEBs.

b. The review conducted by the CG, USAPDA, using the DRC, will be confined to the case records and proceedings and related evidence. The review will ensure that—

(1) The person evaluated received a full and fair hearing.

(2) Proceedings of the medical board and the PEB were according to governing regulations.

(3) Findings and recommendations of the MEBD and PEB were just, equitable, consistent with the facts, and in keeping with the provisions of law and regulations.

(4) Due consideration was given the facts and requests contained in any rebuttal to the PEB findings and recommendations submitted by, or for, the individual being evaluated.

(5) Records of the case are accurate and complete.

4-22. Determinations

a. The CG, USAPDA—

(1) May concur with the findings and recommendation of the PEB or make only minor changes or corrections that do not affect the recommended disposition of the member or lower the combined percentage rating. He will then forward the case records to MILPERCEN, ATTN: (DAPC-POS-RD), for final action.

(2) May return the case to the proper PEB for reconsideration, clarification, further investigation, more facts, a formal hearing, or other action when the case records show such action is in the best interests of the member or the Government. He will provide a detailed explanation of the reasons for return of the case.

(3) May nonconcur with one or more of the findings and recommendations of the PEB.

(4) May refer the case to the APDAB. He will provide explanation of the reasons for referral. When the case is that of a general or medical corps officer, APDAB will return the case to the CG, USAPDA for disposition stated below.

(5) Will forward the case to the OSD for review or approval if the member is in pay grade 0-7 or above or is a Medical Corps officer. The final decision on disposition will be consistent with law and current policy. He will then forward the case file to CG, MILPERCEN for disposition.

b. The CG, USAPDA may not concur with one or more of the findings and recommendations of a PEB. If he does not concur, he will take one of the following actions:

(1) He may concur with the specific request by, or in behalf of, the member in his rebuttal; issue revised findings and recommendations, accordingly; forward the case file to CG, MILPERCEN for final action.

(2) He may issue revised findings providing for a change in disposition of the member or change in the member's disability rating.

(3) If the revision is for other than administrative correction; he will—

(a) Furnish the member (his next-of-kin or legal guardian) a copy of the revised findings by certified mail, return receipt requested. Send an information copy to the counselor concerned to assist in counseling the member. Include in the letter of transmittal a summary of the reasons for the change.

(b) Inform the member (his next-of-kin or legal guardian) that the member's concurrence with the review findings or rebuttal to the findings must be submitted within 7 days after receipt of the notice. Also, if the USAPDA review was of a case processed after an informal hearing by a PEB, he will give the member the option of requesting a formal PEB hearing. He will normally approve reasonable requests for extension of the 7-day period.

(c) Return the case records to a PEB if the member is eligible for and requests a formal hearing or if one is directed under the provisions of a(2) above. Processing will be according to paragraph 4-20.

(4) Duly consider the rebuttal if the member (next-of-kin, or legal guardian) elects to submit a rebuttal to the revised findings and recommendations of the USAPDA. In spite of the results under (3) above and (a), (b), or (c) below, he will inform the member of the final results of the review action either by letter or a copy of the letter containing the final decision. He

will transmit the case file to MILPERCEN or APDAB.

(5) After considering the rebuttal submitted by the member or in his behalf, he may—

(a) Accept the rebuttal; issue new findings and recommendations according to the rebuttal; forward the case to MILPERCEN for final action.

(b) Concur with the original recommendations of the PEB; forward the case to MILPERCEN for final action.

(c) Adhere to his revised findings and recommendations; forward the case to the Army Physical Disability Appeal Board (APDAB).

(6) The member may fail to submit any statement, either personally or through counsel, within the allotted 7 days after the date of the receipt of notice of the USAPDA revised findings and recommendations and right of rebuttal (or such extension of time as has been approved. The member may also not have requested more time. If so, the CG, USAPDA will deem that the member has waived his right to file a rebuttal to the revised recommendations. The substituted revised findings and recommendations by the CG, USAPDA become final. Forward the case to MILPERCEN for final action.

c. The CG, USAPDA will modify the findings and recommendations of a case when proper authority (AR 600-33) has made an unfavorable line of duty (LD) determination on the member's unfitting condition. He will notify the member that the modification resulted from a final LD decision by HQDA and that USAPDA may not consider an appeal to the LD decision. This does not preclude a full and fair hearing, if demanded, after proper counseling regarding the significance of the LD decision if the member has not had a formal PEB hearing.

d. If notice is received that a member whose case is in the disability system is AWOL, CG, USAPDA will suspend further action on his case. If the member has been AWOL for 10 days or more, CG, USAPDA will verify the fact of AWOL. He will return the case file, less PEB proceedings, to the MTF to which the member belongs. He will cancel PEB proceedings and notify the PEB and MTF concerned. If the case file has been forwarded to MILPERCEN, he will notify that office of the fact that the member is AWOL. Upon receipt of the case file from MILPERCEN (para 4-24f), CG, USAPDA will dispose of the case as indicated above.

e. After review, if the case file is to be forwarded to APDAB for appeal action; the CG, USAPDA will prepare a cover letter explaining the reasons for referral and note that final decision is deferred to the APDAB. Upon final decision of unfit and the member has requested Continuance on Active Duty (COAD) under chapter 6, APDAB will forward the file to CG, USAPDA according to paragraph 6-12.

f. If the case file is forwarded to DAAG, Casualty Branch, to await a final LD decision, CG, USAPDA will reflect in the cover letter the result of review subject to the final LD decision.

g. In all other cases, the CG, USAPDA will stamp the DA Form 199 "Approved for the Secretary of the Army" and the date of approval. He will forward the case file to MILPERCEN for issuance of disposition instructions.

4-23. Disposition of medical records

On completion of required review by the CG, USAPDA, medical records will be disposed of as follows:

a. If further review or appeal of the case is *not* involved, the CG, USAPDA will withdraw the medical records from the case file. He will return them to the MTF that referred the case file to a PEB.

b. If further review or appeal of the case is involved, the CG, USAPDA will send the medical records with the case file for the required review or appeal action. The review or appeal action may result in return of the case file to the CG, USAPDA for final action. If so, he will dispose of the medical records as indicated in a above.

Section VI Action by CG, MILPERCEN

4-24. Disposition instructions

a. CG, MILPERCEN will dispose of the case by publishing orders or issuing proper instructions to subordinate headquarters.

b. CG, MILPERCEN will return any disability evaluation case to the CG, USAPDA for clarification or reconsideration when newly discovered evidence becomes available and is not reflected in the findings and recommendations.

c. Action taken by the APDAB may change the disposition of the member or lower his disability rating. If so, CG, MILPERCEN will notify the member (his next-of-kin) by certified mail, return receipt requested. CG, MILPERCEN will furnish the CG, USAPDA and the PEB counsel, or the PEBLO identified in block 14, DA Form 199, a copy of the notice if the member has not had a formal hearing. The CG, MILPERCEN will advise the addressee that he has 7 days, or more time as may be authorized, from the date of receipt of the letter to file a rebuttal or to accept the recommended findings of the APDAB. The member or his counsel (next-of-kin or legal guardian) may fail to submit any statement within the allotted 7 days from the date of receipt of the letter shown on the certified mail return receipt, or within such additional time as has been allowed by CG, MILPERCEN. The member may not have requested more time. If so, the CG, MILPERCEN will deem that the member has waived his right to file a rebuttal to the new findings. The findings of the APDAB will be binding, unless otherwise directed by higher authority. The CG, MILPERCEN will take proper action to complete the case.

The PEBLO or legal counsel will counsel the member (next-of-kin or legal guardian) according to appendix C. The member (or his counsel) may file a rebuttal within the allotted time showing he disagrees with the action of the APDAB. If so, CG, MILPERCEN will return the complete proceedings and the rebuttal to the APDAB for reconsideration. The member (his counsel, next-of-kin, or legal guardian) may submit a statement that he does not wish to file a rebuttal, or he may file an answer showing he accepts the action of the APDAB. If so, CG, MILPERCEN will take final action by issuing orders or other instructions.

d. Revised or new findings of the CG, USAPDA or the APDAB may not affect the final disposition of the member or reduce his disability rating. If so, CG, MILPERCEN will take final action on the case by issuing orders or other instructions.

e. Based upon the final decision of the CG, USAPDA or the ADPAB, the CG, MILPERCEN will issue retirement orders or other disposition instruction as follows:

(1) Permanent retirement for physical disability. (See 10 U.S.C. 1201 or 1204.)

(2) Placement on the Temporary Disability Retired List. (See 10 U.S.C. 1202 or 1205.)

(3) Separation for physical disability with severance pay. (See 10 U.S.C. 1203 or 1206.)

(4) Separation for physical disability without severance pay (See 10 U.S.C. 630, 1162(a), 1165, or 1169.)

(5) Transfer of a member who has completed at least 20 years of Reserve Service, and otherwise qualifies for transfer as described in paragraph 8-7b, to the inactive Reserve on the member's request. (See 10 U.S.C. 1209.)

(6) Separation for physical disability without severance pay when the disability was incurred as a result of intentional misconduct, willful neglect, or during a period of unauthorized absence. (See 10 U.S.C. 1207.)

(7) Release from active duty and return to retired status of retired members serving on active duty who are found physically unfit.

(8) Return of member to duty when he is determined physically fit.

f. If MILPERCEN receives information that a member in the disability system is AWOL, suspend further action. If the member has been AWOL for 10 days or more, or on expiration of 10 days in an AWOL status, the CG, MILPERCEN will verify the fact of AWOL with the commander concerned. He will void the proposed disposition because of physical disability. He will inform the member's commander, if other than an MTF, the MTF concerned, and HQ, USAPDA that proposed disposition has been voided. He will then return the case file to HQ, USAPDA.

4-25: Disposition of medical records

When medical records are contained in cases received by HQDA (DAPC-

POS-RD), remove them and return them to the MTF that referred the member to a PEB.

Section VII

Action by Army Disability Rating Review Board

4-26. General

The Army Disability Rating Review Board (ADRRB) is a component of the Army Council of Review Boards (ACRB). The ADRRB reviews disability percentage ratings on request of a member who was retired because of physical disability.

4-27. Actions

a. The ADRRB may modify or amend a fully executed retirement order of a member cited in paragraph 4-26 if—

(1) The original order was based on fraud or mistake of law.

(2) The member was not granted a full and fair hearing when the member had made timely demand for such a hearing.

(3) Substantial new evidence exists which, by due diligence, could not have been presented before disposition and the evidence would have warranted assigning a higher percentage of disability if presented before disposition.

b. The person concerned, legal representative, or any informed DA authority may request relief on the grounds set forth in a above. Request relief by a petition filed within 5 years from the effective date of the disposition complaint. Address the request to the ADRRB. No special form is required; however, the petition will state the reason for requesting relief and the relief desired. If the petition is based on evidence that is not on DA records, forward the evidence upon which the petition is based as an inclosure.

c. The ADRRB will consider all petitions submitted according to b above in recommending whether the relief requested (or any other relief) should be granted. If the person concerned (or his legal representative) did not submit the petition, the ADRRB will give the member (or his legal representative) reasonable notice of the matter presented by the petition. The ADRRB will give him a chance to submit a statement or other evidence in rebuttal. The ADRRB will refer all petitions considered and the recommendation of the Board to the Director, ACRB.

d. The Director, ACRB may act for the SA on petitions submitted pursuant to b above if the recommendation of the ADRRB is unanimous. Refer other cases to the SA for action. The authority herein conferred is permissive only. It will not prevent the referral of a case to the SA for action.

e. In acting on a petition referred for consideration, the Director, ACRB may—

(1) Deny relief, set aside the final disposition or placement on TDRL directed in a case, and direct further retirement proceedings.

(2) Direct such action as is needed to effect the relief requested or any other action thought proper.

f. The filing of a petition for relief will not affect the directed disposition. Nor will it suspend its operation unless the SA or authority acting for the Secretary so directs. If operation of the directed disposition is suspended by proper authority, the suspension does not extend the time limit within which an application for review must be submitted to a statutory board.

Chapter 5 Expedient Discharge

5-1. General

This chapter provides for the expeditious discharge of an enlisted member who—

a. Does not meet retention medical fitness standards.

b. Is unable to perform the duties of his office, grade, rank, or rating because of physical disability neither incurred nor aggravated during a period in which he was entitled to basic pay.

5-2. Applicability

The provisions of this chapter apply to all enlisted members of the Army except the following:

a. Members who are mentally incompetent.

b. Members to whom disclosure of information on their condition would be harmful to their physical or mental health.

c. Members who will require continued hospitalization or institutional care after separation.

d. Members who refuse expeditious discharge.

e. Members who are eligible for, and request continuance on, active duty under the provisions of chapter 6.

f. Members who are ineligible for processing under this regulation as described in paragraph 1-2 on the title page of this regulation.

5-3. Procedures

a. A commander may believe a member of his command is unable to perform the duties of his office, grade, rank, or rating because of physical disability neither incurred nor aggravated during any period in which the member was entitled to basic pay. If so, the commander will refer the member for medical evaluation to the MTF providing primary medical care to his command. The request for evaluation will be in writing. The request will state the commander's reasons for believing—

(1) The member is unable to perform his duties.

(2) The physical disability was neither incurred nor aggravated during any period in which the member was entitled to basic pay.

b. An MEBD will be carried out according to AR 40-3.

c. The MEBD proceedings may recommend separation of a member because of physical disability incurred or aggravated when the member was not entitled to basic pay. Upon receipt and approval of the MEBD proceedings, the MTF commander will refer the case to his PEBLO. The PEBLO will explain the proceedings to the member, advise him of his rights, and offer him a chance for expeditious discharge provided that—

(1) The member agrees with the findings of the MEBD.

(2) The member is otherwise eligible for discharge.

d. The PEBLO will advise a member eligible for consideration for discharge of the following:

(1) He may not be separated if he does not agree. If he does not agree, the MTF commander will refer his case to a PEB for a decision as to whether he is fit or unfit because of physical disability. If he is unfit, the PEB will decide whether he is entitled to benefits administered by the Army.

(2) An MEBD has found that he is not medically qualified for retention on active duty; his condition is considered the result of a disability having no connection with his military service.

(3) If he agrees with the findings of the MEBD that his physical disability existed before military service and was not aggravated by his military service, he may apply for expeditious discharge under the provisions of this chapter.

(4) The PEBLO will forward his application and the approved MEBD's report to the separation authority. If the separation authority approves the action, he will order prompt separation.

(5) Any member of the Army discharged under the provisions of this chapter may not be considered for any disability benefits administered by the Army under chapter 61 of title 10 United States Code. He may, however, apply for compensation, pension, or other benefits administered by the VA. The VA will decide entitlement to these benefits.

e. The PEBLO will inform the member of the rights and conditions outlined above. If he declines the chance to apply for expeditious discharge, the PEBLO will notify the commander in writing. Such notice will state that the member has been fully informed of the circumstances, and his rights, and that he has declined to apply for expeditious discharge.

f. If the member wants to apply for expeditious discharge, the PEBLO will assist him in preparing an application on DA Form 2496 (Disposition Form) (fig. 5-1).

g. After the member completes the application, the PEBLO will return the case records to the MTF commander. The MTF commander will refer the records to the member's immediate commander.

h. The findings and recommendations of the MEBD indicating that a member should be separated under this chapter must be referred to the MTF commander for approval. The member must submit the required

application for expeditious discharge. The PEBLO will then forward the application and six copies of the MEBD report to the member's immediate commander for separation processing. The separation authority will be advised of any pending disciplinary or other action that may affect the member's disposition.

5-4. Authority to order discharge

A commander specified in paragraph 1-32a, AR 635-200, may approve or disapprove discharge of a member of his command processed under this chapter. He may delegate this authority to his deputy or assistant commander, chief of staff, deputy chief of staff for personnel, or his adjutant general. Authority may not be further delegated.

5-5. Action by commander authorized to effect discharge

a. Commanders authorized to effect the discharge of members under provisions of this chapter will effect such discharge within 72 hours of the order authorizing discharge. Commanders will counsel members to be discharged as prescribed in current regulations. Members will complete VA Form 21-526e (Veteran's Application for Compensation or Pension) or sign DA Form 664 (Serviceman's Statement Concerning Application for Compensation from the VA). The commanders will complete final separation processing according to current regulations. No medical examination will be done during separation processing unless there is reason to believe that material change has occurred in the member's physical or mental condition since his appearance before the MEBD.

b. Circumstances described in paragraph 1-2the applicability section of the title page of this regulation may develop making the member ineligible for processing under this regulation. If so, the commander authorized to order separation may disapprove the request for separation under this chapter. He may direct other proper disposition.

c. Unless otherwise indicated, the commander will issue DD Form 256A (Honorable Discharge Certificate) or DD Form 257A (General Discharge Certificate Under Honorable Conditions). (See AR 635-200.) DD Form 214 (Report of Separations from Active Duty) will be prepared in each case.

d. The commander will furnish the member one copy of the approved report of medical board proceedings (with copy of the report of the medical examination). He will file one copy in the Military Personnel Records Jacket, US Army (MPRJ).

e. The immediate commander will send one copy of each of the documents listed below through the commander of the MTF providing primary medical care for the headquarters discharging the member to the Cdr, US Army Recruiting Command, ATTN: USARCAO-M, Ft. Sheridan, IL 60037.

(1) DA Form 3947 (Medical Board Proceedings) with inclosures (SF 88 (Report of

Medical Examination) and SF 502 (Narrative Summary) prepared for MEBD).

(2) Attach SF 93 (Report of Medical History) Prepared for the separation action.

(3) SF 88 and SF 93 pertaining to entry (pre-induction, induction, enlistment, or call to active duty) examination.

f. A cover letter will cite this regulation as authority for the action. The letter will furnish the following information:

(1) The date on which the member was discharged.

(2) The date of the member's entry on active duty.

(3) The name and location of the medical facility that conducted the member's medical examination before his enlistment or induction.

Chapter 6 Continuance of Disabled Personnel on Active Duty

6-1. General

This chapter prescribes procedures under which certain members of the Active Army who are eligible for retirement or separation because of physical disability may be continued on active duty. Continuance on active duty will be upon approval of their application for waiver. The policies of paragraph 2-9 apply to all cases processed under this chapter.

6-2. Objective

The primary objective of this program is to conserve manpower by effective use of needed skills or experience. A member who is physically unqualified for further active duty has no inherent or vested right to be continued on active duty. Disapproval of such a request has no bearing on the disposition of a case processed under other chapters of this regulation.

6-3. Final retirement or separation

A member continued on active duty under the provisions of this chapter *may be found fit* at the time of final retirement or separation. When the member is processing for retirement or separation, his original unfitting condition will be reevaluated to decide whether the condition has increased in severity, remained unchanged, or has improved. After a written report is prepared by an MEBD, the MEBD will refer the member's case to a PEB. Normally, if the disabilities have remained the same or increased in severity, the PEB will find the member unfit because of physical disability. The PEB will find a member fit if his condition has improved or has been cured. The PEB may not judge a member unfit because of physical disability on the basis of how the disability may impact on his future ability to perform his duties. Nor may the PEB use that basis for rating a disability if the member is found unfit. Conditions that have remained unchanged or have increased in severity will result in a finding of unfit most

of the time. Members should be aware, however, that cases of medical officers and general officers and the cases of any other designated members may be reviewed by the Assistant Secretary of Defense (Health Affairs) (ASD(HA)). The review may affect the final decision on the member's unfitness.

6-4. Exception

Members who meet the criteria of paragraph 6-5 and have more than 18 but less than 20 years of active duty may request continuance under the provisions of this chapter. Such requests will be forwarded to HQDA regardless of the MEBD recommendation.

6-5. Qualification for continuance

To be considered for continuance on active duty under the provisions of this chapter, a member must be—

a. Found unfit by a PEB because of a disability that was not the result of intentional misconduct nor willful neglect, nor incurred during a period of unapproved absence.

b. Capable of maintaining himself in a normal military environment without his health or others being adversely affected.

c. Physically capable of performing useful duty in an MOS for which currently qualified or potentially trainable.

d. Capable of performing useful, active military service without undue loss of time from duty for medical treatment.

e. See paragraph 8-4e for RC personnel in an FTTD or ADT status not in Active Army.

6-6. Disqualification for continuance

Members may not request continuance on active duty under the circumstances shown below. Should an application be received from a member when one or more of these prohibitions apply, retain it as part of the file. The PEB will cite this paragraph by an entry in the remarks section of DA Form 199 (Physical Evaluation Board Proceedings) as the reason for not referring the records to HQDA for action under paragraph 6-11. PEBs will dispose of such cases under chapter 4. A request will not be considered under this chapter if—

a. The MEBD has stated that the member will be transferred to another MTF (e.g., VA hospital) for further long-term treatment or rehabilitation.

b. The member's mandatory retirement date or mandatory release date is within 6 months of the date the case file is received by the PEB.

c. A member is referred to a PEB because of inability to perform the duties of his MOS; in connection with referral to the PEB, the CG, MILPERCEN has decided that the member cannot be reclassified into any other MOS.

d. The unfitting disability was not incurred in line-of-duty as described in paragraph 6-5a.

6-7. Application for continuance

A member on active duty being evaluated for possible unfitness because of physical disability may submit an application through the MTF for continuance on active duty. The application must be submitted either when he is being evaluated by the MEBD or during counseling by the PEBLO after the informal PEB. If the member applies for continuance after the informal PEB, and MEBD addendum is required to provide assignment and duty limitations: The member may not submit the application directly to the PEB. If the member desires to continue on active duty, he will prepare his application (fig. 6-1) in six copies. The original will remain with the record set of the PEB's action. One information copy of the application will be forwarded to the appropriate addressee in a through e below. A copy will not be sent to USAEEA. The office will make the decision whether or not to continue the member.

a. HQDA(DAPE-GO), WASH DC 20310, for all general officers and all promotable colonels.

b. HQDA(DAPC-OPR-PA), Alexandria, VA 22332, for officers under OPMD control.

c. US Army Medical Department Personnel Support Agency, ATTN: SGPE-PS, WASH DC 20314, for AMEDD officers.

d. HQDA(DAJA-PT) WASH DC 20310, for JAGC officers.

e. HQDA(DACH-PEP) WASH DC 20310, for Chaplain's Corps officers.

f. Cdr. Enlistment Eligibility Activity, 9700 Page Blvd., St. Louis, MO 63132, for enlisted personnel.

6-8. Special counseling

a. *Application.* Before signing an application for continuance on active duty, the PEBLO will counsel the member. Counseling will include all of the information normally provided a member. In addition, counseling will include the probable effects of his application, and rights and benefits available to him. (See app C.) The member will be specifically informed that the PEB will—

(1) Complete his case, including a formal hearing if demanded.

(2) Provide a percentage rating.

(3) Recommend a disposition that will apply if his application for continuance on active duty is disapproved.

b. *Case file.* The member will also be told that—

(1) If his application is disapproved, the disapproving authority will forward the case file directly to MILPERCEN for separation or retirement action.

(2) The file may not be returned to the PEB for reconsideration except as provided in chapter 4.

6-9. Reclassification procedures (enlisted members only)

Policies and procedures of AR 600-200 apply when reclassification into another MOS is necessary.

6-10. Processing by MTF

Use policies and procedures prescribed in AR 40-3 in conducting examinations and in MEBD actions. When a member executes an application for continuance on active duty (as prescribed in para 6-7), the MEBD will indicate whether such continuance is medically inadvisable. If the board indicates that the member is medically qualified for continuance on active duty, it will specify assignment limitations. (See para 6-6d, AR 40-3, and chap. 9, AR 40-501, for special instructions.) After approving the MEBD proceedings, the MTF commander will refer the case to the proper PEB with the records specified in paragraph 4-15. He will also include the following records:

a. The member's application for continuance on active duty.

b. Whenever possible, the immediate commander's recommendation concerning the member. The immediate commander is the one under whose command the applicant was performing duty immediately before disability evaluation.

6-11. PEB processing

a. *Special handling for continuance on active duty.* The PEB will consider the case in accordance with chapter 4 for a member who has applied for continuance on active duty. The fact that a member has applied for continuance on active duty must not influence the listing of disabilities or percentage ratings. Policy requires that findings and recommendations of the PEB be as carefully decided as if the member had not applied for continuance. The PEB's function is to establish whether the member is physically unfit. Its action is one of a series of actions to confirm the member's unfitness and determine whether he is acceptable for continuance on active duty. The PEB recommends neither for nor against his continuance.

b. *DA Form 199.* Procedures for preparing DA Form 199 are listed below.

(1) After the last listed disability in block 8, enter the statement, "Member has applied for continuance on active duty. The recommended disposition in block 9 applies if member's application for continuance is denied."

(2) If the member submits an application for continuance on active duty after the informal PEB, amend all copies of DA Form 199 to reflect the above statement.

a. Furnish reproduced copies which include the statement to the member and MTF to replace previous copies.

b. Make no other change on the form solely because the member has elected to submit an application for continuance on active duty after the informal PEB.

(3) Enter a proper recommendation for separation or retirement in block 9. The recommendation will apply if the member's application is denied.

(4) Omit the statement ((1) above) if the member is found fit for duty.

(5) Forward the case to HQ, USAPDA for review as provided in table 4-6.

6-12. Review at HQ, USAPDA or APDAB

Procedures to follow when a case is being reviewed at HQ, USAPDA or APDAB are given below.

a. The review may confirm that the member is unfit because of physical disability, and no major modification is proposed. Upon review by APDAB cases will be forwarded to CG, USAPDA for final administrative action on the member's application. When the case is that of a general or Medical Corps officer, the CG, USAPDA will first obtain review of OASD(HA). CG, USARDA will then forward the case file for final administrative action on the member's application.

b. The review may not result in confirmation of the PEB's findings and recommendations. If so, resolve the differences before proceeding further. If unfitness is confirmed and other major issues are resolved (see chap. 4), forward the case file as provided in a above.

c. *The member may be found fit for duty.* If so, forward the original DA Form 199 and inclosures (less the medical records) to MILPERCEN, ATTN: DAPC-POS-RD, by letter, informing MILPERCEN of the action taken. The Chief, Operations Section, USAPDA, will notify the proper addressee in paragraph 6-7 that the member has been found fit for duty; that further action under this chapter will not be taken. Furnish the PEB and the MTF involved information copies of the letter forwarding the case file to MILPERCEN. MILPERCEN will refer the case file to HQDA(DASG-HCH-0) for profiling according to AR 40-501.

6-13. Action at HQDA or the US Army Enlistment Eligibility Activity (USAEAA)

a. The office (para 6-7) responsible for personnel management of the member will consider the case of a member—

(1) Who has applied for continuance on active duty (excluding those barred from consideration by para 6-6).

(2) Whose unfitness because of physical disability has been confirmed under paragraphs 6-11 and 6-12.

b. The member's application may be approved. If so, the approving office will notify the MTF commander of the action and furnish assignment orders or instructions. The approving office will furnish an information copy of the action to the PEB from which the case originated, the CG, USAPDA, and the member.

c. The member's application may be disapproved. If so, the disapproving office will notify the MTF commander promptly so that the member may be informed. The disapproving office will furnish HQ, USAPDA, ATTN: M&O, and the PEB originating the case with information copies of the letter of disapproval. The disapproving office will forward the original DA Form 199 and inclosures referred by HQ, USAPDA, less medical records, without delay to MILPERCEN, ATTN:

DAPC-POS-RD. MILPERCEN will take action required by chapter 4.

6-14. Disposition of records

a. If the member's application for continuance on active duty is approved—

(1) File the original of the DA Form 199, the medical board proceedings, and other inclosures to the DA Form 199 in the member's official military personnel file.

(2) Include a copy of the letter of approval.

(3) Exclude medical records, Health Record, and similar supporting documents.

(4) Return the records mentioned in (3) above, with the approval letter, to the MTF commander who sent the case to the PEB for disposition prescribed by other regulations.

(5) The MTF commander will provide the member a copy of the letter of approval.

(6) HQDA will retain the remaining copy of the DA form 199 and attachments as working file copy. HQDA will destroy them when they are no longer needed.

(7) The MTF commander will annotate copies of PEB and medical board proceedings retained at the MTF to reflect the approval action and file them.

(8) The MTF commander will forward the letter of approval to the member's military personnel office (MILPO) so it can be filed in the member's unit DA Form 201 (Military Personnel Record Jacket, US Army).

b. If the member's application for continuance on active duty is disapproved—

(1) The disapproving office will return the medical records, Health Record, and other medical supporting documents, with the letter of disapproval, to the MTF commander who sent the case to the PEB.

(2) The MTF commander will provide the member with a copy of the letter of disapproval.

6-15. Entries on medical and personnel records

Members continued on active duty under this regulation will have records annotated as prescribed below. The entries should ensure proper identification and assignment to those duties which the members are physically qualified to perform.

a. Members who do not meet retention medical fitness standards will have medical records coded with a "4" profile, code V, with specific limitations indicated. This limiting profile is normally assigned at the MTF.

b. An MTF may occasionally refer the case of a member with two or more medical impairments. No one of the impairments alone may make the member unfit because of physical disability. In combination, however, the impairments may make him unfit. If the PEB finds him unfit, the medical member, who is designated a profiling officer for this purpose, will change item 76, SF 88 (Report of Medical Examination). The medical member will enter a "4" in the

P factor, or under another proper factor of the profile serial, and code V.

c. The MTF commander will notify the member's Military Personnel Office (MILPO) of his latest profile status, physical category code, and assignment limitations. The MILPO will enter this information on DA Form 2 (Personnel Qualification Record—Part I) and 2-1 (Personnel Qualification Record—Part II). A brief nontechnical description of the defect will be recorded, together with the specific assignment limitation.

6-16. Use of members

Use members approved for continuance on active duty under this regulation in any element of the Army in the specialized fields for which they are qualified. Use members in fields in which they can perform duty effectively within specified limitations.

a. When indicated, retrain members before assignment. Members who are qualified for MOS training in any Army service school course for which a quota exists may be ordered to the proper school for such training. If more training is needed in an MOS for which no school quota exists, order the member to on-the-job training at the installation to which he is assigned.

b. Use members continued on active duty under this regulation in worldwide duty assignments or training in keeping with their capabilities and physical limitations. (See chap. 9, AR 40-501.) The approved medical board proceedings may contain a specific recommendation that a member who has been fitted with an artificial eye or limb be stationed within a reasonable distance of a MTF capable of servicing the prosthesis. If so, an assignment limitation to this effect may be imposed for a period not exceed 1 year from the date of approval of the application.

6-17. Disposition of members unable to perform their duty

Refer any member continued on active duty under the provisions of this regulation who is later found to be unable to perform effectively the duties to which assigned, because of physical disability, to an MTF. The MTF will reevaluate and process his case through the Physical Disability Evaluation System.

6-18. Reevaluation

a. *Periodic medical examination.* A member continued on active duty under this program must be reevaluated periodically. (See para 2-9c.) AR 40-501 establishes acceptable schedules. Exceptions to this policy are as follows:

(1) The condition causing the member's physical unfitness is such that more frequent examination is indicated.

(2) The member has been rehospitalized because of worsening of the unfitting condition.

(3) The member has been rehospitalized because of some other condition impacting on his ability to perform duty.

b. *Responsibilities of the managing physician.* The managing physician must give special attention to the unfitting condition as to the member's stability. He will—

(1) If severity increases, estimate the impact on the member's ability to perform duty.

(2) If degradation of the member's condition occurs so as to further impair performance of duty, note his findings and conclusions on the SF 88 (Report of Medical Examination).

(3) Notify the member's commander.

c. *Referral to PEB.* If the managing physician believes it is needed, or the member's commander requests it, an MEBD will be prepared. The MEBD will refer the case to a PEB for processing. If the member again submits a request for continuance on active duty, an advance copy of the application will be forwarded as stated in paragraph 6-7. A forwarding note will explain that the application is being resubmitted; that the case is being referred to a PEB because of worsening of the member's condition.

d. *Request for reenlistment.* An enlisted member whose term of service expires during the period for which continuance on active duty has been approved may request reenlistment with a waiver of his physical disqualification. The member will submit his request through command channels to Cdr Enlistment Eligibility Activity, 9700 Page Blvd., St. Louis, MO 63132. He will use DA Form 3072 (Request for Waiver of Disqualification for Enlistment/Reenlistment in the Regular Army for in Service Personnel) in support of the DA Form 3340 (Request for Regular Army Reenlistment or Extension). The member must support the request for waiver by a current DA Form 3947 (Medical Board Proceedings), SF 502 (Clinical Record—Narrative Summary), and SF 88. The DA Form 3947 contains a recommendation for, or against, reenlistment. (PEB consideration is not required unless reenlistment is denied. If reenlistment is denied the Cdr, MTF will forward the case to the supporting PEB as provided in chap. 4.) Request for reenlistment will be submitted between 4 and 6 months in advance of expiration of term of service (ETS). Cdr, USAEEA will approve or disapprove reenlistment.

e. A member may request extension of continuance on active duty. He will forward an application to the approving authority (para 6-7) 4 to 6 months before expiration of the period for which continuance was approved.

(1) *Officers.* An officer may apply by letter. He will attach a DA Form 3947, SF 502, and SF 88. The DA Form 3947 contains a recommendation for, or against, extension of the officer's continuance on active duty. The officer will forward the letter of application through his rater. The rater will comment on the officer's physical capacity to perform his assigned duties. The rater will recommend for or against extension of the officer's continuance on active duty.

(2) *Enlisted members.* An enlisted member may request extension of continuance on active duty. He will use the procedures of reenlistment described in *d* above.

f. An enlisted member whose request for continuance is denied by CDR, USAEEA will not be offered the opportunity to apply for additional continuance action during further processing of medical proceeding.

6-19. Disposition on end of continuance

Promptly refer to an MTF any member continued on active duty under provisions of this regulation if—

a. His continuance is ended.

b. He is denied reenlistment or extension of continuance by HQDA or USAEEA. The MTF will reevaluate or update the recent reevaluation and forward the case through the Physical Disability Evaluation System.

6-20. Duty during processing

Members being processed under this regulation may be placed on special duty (see AR 40-3) if assigned to the medical holding unit. If the member is attached to the medical holding unit, he may be returned to duty status with proper assignment limitations. These actions may be taken after PEB proceedings while the member is awaiting action by HQDA or USAEEA.

Chapter 7 Temporary Disability Retired List (TDRL)

Section I General

7-1. Scope

This chapter outlines responsibilities and procedures for administration and processing of members whose names are on the TDRL.

7-2. Reasons for placement on the TDRL

Place a member's name on the TDRL if he is qualified for disability retirement when—

a. His physical disability is not stable and he may recover and be fit for duty.

b. His physical disability is not stable and the degree of severity may change within the next 5 years so as to change his disability rating.

c. A member with a hereditary or congenital condition that is unfitting and known to be progressive will not be placed on the TDRL unless there is unstabilized service aggravation. If upon removal from the TDRL, there is no evidence of residual aggravation, the member may be found to be ineligible for disability benefits. However, paragraph 4-18e(3) applies.

7-3. Information reflected on the TDRL

The TDRL will list names of all members temporarily retired. The list, as a minimum, will reflect—

a. The identity of the member.

b. The date the member was placed on the TDRL.

c. The month and year in which the next medical examination is required.

7-4. Requirement for periodic medical examination and PEB evaluation

A member on the TDRL must undergo a periodic medical examination and PEB evaluation at least once every 18 months to decide whether a change has occurred in the disability for which he was temporarily retired.

a. Members who have waived retired pay to receive compensation from the VA continue to be retired Army members. These members must undergo examinations when ordered by CG, MILPERCEN, acting on behalf of the SA.

b. Members recalled to active duty while still on the TDRL must also undergo a periodic examination when ordered by CG, MILPERCEN.

7-5. Counseling

The PEBLO is responsible for counseling the member until the informal PEB is completed. The member may demand a formal hearing. If so, the regularly appointed PEB counsel is responsible for counseling unless the member elects a different counsel. Counseling will be in accordance with appendix C. A member on the TDRL is hard to counsel because he is not as readily available to the counselor as is a member on active duty. A reasonable effort should be made to counsel such a member either in person or by telephone or letter.

7-6. Prompt processing

To prevent the member suffering severe financial and other hardships, processing delays will be avoided. All portions of the medical examination will be conducted on a priority basis. All involved agencies and personnel will ensure that cases of members nearing expiration of 5-year TDRL tenure are identified and given priority handling.

7-7. Prompt removal from the TDRL

Medical examiners and adjudicative bodies will carefully evaluate each case. They will recommend removal of the member's name from the TDRL as soon as the member's condition permits. Placement on the TDRL confers no inherent right to remain for the entire 5-year period allowed by Section 1210 of title 10 United States Code.

Section II Administration

7-8. Individual TDRL file

CG, MILPERCEN will maintain an active file for each member on the TDRL. The file will contain the following:

a. Complete identification, grade, and a statement of total active service when placed on the TDRL; orders placing the member on the TDRL; the member's current mailing address.

b. Original copy of PEB proceedings with exhibits, less medical and health records; original reports of periodic medical examinations and evaluations.

c. Record of current location of clinical, medical, and health records to make the next periodic medical examination easier.

7-9. MILPERCEN's letter of instruction to the MTF commander on periodic medical examinations

a. *Procedural responsibilities.* MILPERCEN will issue a letter of instructions to the MTF commander responsible for the medical examination. MILPERCEN will coordinate with the United States Army Health Services Command (HSC) in issuing the letter. MILPERCEN will issue the letter 4 months before the month during which the examination is to be carried out. The letter will include—

(1) Name and address of the member requiring examination.

(2) A statement that the periodic medical examination is required during the month prescribed.

(3) Location of medical records, if known. (The MTF commander will obtain all medical records.)

(4) Instructions on completing the enclosed travel order as to the exact place and date of the examination.

(5) Authority for the MTF commander to arrange for the examination to be conducted. Another US Government MTF, a civilian medical facility, or civilian physician(s), including medical consultants, may conduct the examination. The examination will be conducted as close to the member's home as circumstances and requirements of the case permit.

(6) Specific guidance governing conduct of the examination needed.

b. *Preparation of orders.* MILPERCEN will prepare DD Form 1610 (Request and Authorization for TDY Travel of DOD Personnel (Civilian)). These travel orders will accompany the letter of instructions. Such orders permit payment for TDY only for the period needed to complete the TDRL examination. These orders do not provide for periods of medical treatment after the examination.

c. *Supporting documents.* These documents will accompany the letter of instructions.

(1) Proceedings of the PEB and supporting documents that placed the member on the TDRL.

(2) A copy of the letter notifying the member of the examination.

d. *Final TDRL examination.* MILPERCEN will initiate processing action no later than 6 months before the fifth anniversary date of the member being

placed on the TDRL. Tell the MTF commander and the member that the final examination must be expedited to ensure removal from the TDRL before the member's completion of 5 years on the list.

7-10. MILPERCEN's letter of instruction to the member

MILPERCEN will notify the member of the forthcoming medical examination and the name, address, and telephone number of the appointed MTF. The notice will be sent by certified mail—return receipt requested. MILPERCEN will inform the member that the MTF will contact and advise him of the name of the PEBLO who will assist him during and after the medical examination. MILPERCEN will inform him of his right to telephone the MTF collect to resolve any problem. Also, MILPERCEN will inform him that—

a. The MTF will arrange for and schedule the medical examination. Every effort will be made to schedule the examination for his convenience; however, the medical examination must be carried out within the month prescribed.

b. The MTF will forward—

(1) Travel orders issued by MILPERCEN if needed.

(2) Facts for obtaining transportation request and collection of approved travel expense.

(3) Per diem allowance if applicable.

c. Failure to make acceptable arrangements with the hospital for carrying out the medical examination during the required month may also result in stopping disability retirement pay.

d. Failure to report for scheduled medical examination may also result in stopping disability retirement pay.

e. He must inform the MTF of visits to civilian or military physicians or other Federal medical facilities for treatment while on the TDRL. He must give permission to obtain records of such visits if available.

7-11. Disposition of the TDRL member

a. *Action following periodic PEB evaluation or on fifth anniversary.* MILPERCEN will remove a member from the TDRL as described below on the fifth anniversary of the date his name was placed on the list, or sooner on the approved recommendation of a PEB.

(1) *Permanent retirement.* If the member meets the following criteria, his name will be removed from the TDRL, he will be permanently retired for physical disability, and he will be entitled to receive disability retired pay:

(a) He is unfit, and

(b) The disability causing his name to be placed on the TDRL has become permanent, and

(c) The disability is rated at 30 percent or more under the VASRD, or he has at least 20 years of service.

(2) *Separation.* A member's name will be removed from the TDRL, and he will be separated with severance pay if—

(a) He has less than 20 years of service, and

(b) He is unfit because of the disability for which he was placed on the TDRL, and either—

1. The disability has stabilized at less than 30 percent, or

2. The disability, although not stabilized, has improved so as to be ratable at less than 30 percent.

A former RA enlisted member who would be separated under this authority may request a waiver to reenlist. (See section X, chap. 4, AR 601-210.)

(3) *Fit for duty.* If a member is determined physically fit to perform the duties of his office, grade, rank, or rating (and is otherwise administratively qualified), the following apply:

(a) Former Regular Army (RA) officers and warrant officers, subject to their consent, will be recalled to active duty. Action will be started to effect reappointment to the active list in the regular grade held when placed on the TDRL, or the next higher grade. If the officer or warrant officer does not consent to be called to active duty, his status on the TDRL and his disability pay will be ended as soon as possible.

(b) Former RA enlisted members, subject to their consent, will be reenlisted in their regular component, in the grade held on the day before the date placed on the TDRL, or in the next higher grade. If the member does not consent to reenlistment, his status on the TDRL and his disability pay will be ended as soon as possible.

(c) Former members of the US Army Reserve (USAR), subject to their consent, will be reappointed or reenlisted in the USAR in the grade held on the day before the date placed on the TDRL, or in the next higher grade or transferred to the Retired Reserve, if eligible. A member may request active duty, if he desires, under USAR regulations.

(d) Former members of the Army National Guard of the United States (ARNGUS), subject to their consent, will be reappointed or reenlisted in the ARNGUS in the grade held on the day before the date placed on the TDRL, or in the next higher grade if the proper State authorities reappoint or reenlist them in the Army National Guard (ARNG) of the State concerned. If the member cannot be reappointed or reenlisted in the ARNG, subject to his consent, he will be reappointed or reenlisted in the USAR or transferred to the Retired Reserve, if eligible. A member may request active duty, if he desires, under ARNG regulations.

(4) *Permanently unfit.* Certain chronic medical impairments may improve or they may be aggravated. For this reason, even though the member's impairments are in complete remission, return to a military life may aggravate his condition.

(5) *Unfit—not in line-of-duty disability.*

(a) A member may recover from the disability causing his name to be placed on the TDRL. While on the TDRL, he may incur another unfitting disability, and he may be separated without benefits.

(b) The member mentioned in (a) above may be a member of the RA when placed on the TDRL and may have completed 20 years or more of active service. If so, he may request reappointment or reenlistment with a waiver of the unfit disability for voluntary retirement.

(c) The member mentioned in (a) above may be a member of an RC when placed on the TDRL. The member may have completed at least 20 years of service computed under section 1332 of title 10 United States Code. If so, he may request reappointment or reenlistment with a waiver for the purpose of transfer to the Retired Reserve or retirement if he is qualified.

b. *Periodic examination not performed.* MILPERCEN will take the actions described below when periodic examination cannot be carried out.

(1) *Member's failure to report or reply.* If a member fails to respond to correspondence on the medical examination or fails or refuses to submit to medical examination, MILPERCEN will make an effort to discover the reason. If such action cannot be justified and the fifth anniversary of placement on the TDRL has not been reached, MILPERCEN will notify the Chief, Retired Pay Division, US Army Finance and Accounting Center (USAFAC), so that retired pay may be stopped. MILPERCEN will keep the member's name on the TDRL until the fifth anniversary unless it is removed sooner by other action.

(2) *Unable to locate member.* When reasonable efforts to locate the member are unsuccessful, MILPERCEN will take the action prescribed in (1) above.

(3) *Member imprisoned by civil authorities.* A report by the responsible MTF commander may indicate that examination of a member is not possible because he is imprisoned and civil authorities will not permit his examination. If so, MILPERCEN will take the action prescribed in (1) above.

(4) *Removal on fifth anniversary.* Six months before the anniversary of placement on the TDRL, MILPERCEN will make a final attempt to contact a member ((1) and (2) above) or proper civil authorities ((3) above) and arrange a final examination. If this fails, MILPERCEN will forward the entire case file to the PEB nearest the member's last known location. The PEB will consider the case as provided in paragraph 7-20.

(5) *Removal of member's name from list.* MILPERCEN will remove the member's name from the TDRL and dispose of the case without the member's entitlement to benefits on the fifth anniversary of placement of his name on the list when—

(a) All efforts fail to obtain an examination and permit disposition of the member as provided in a above.

(b) A PEB can make no factual decision of entitlement to benefits without a medical examination.

7-12. Restoring eligibility

MILPERCEN may restore the member's eligibility to receive disability retirement pay if, after failure to report as ordered for the required periodic examination, he later satisfactorily meets the examination requirements. MILPERCEN will notify the Chief, Retired Pay Division, USAFAC, to restore disability retired pay retroactive to the date the member undergoes the examination provided he is still qualified for retention on the TDRL. The member's eligibility to receive retired pay may be made retroactive, not to exceed 1 year, if he can show just cause for failure to respond to official notice or orders. A member's name may have been removed from the list as provided in paragraph 7-11b(5). If so, the member may make application to the Army Board for Correction of Military Records (ABCMR).

Section III

Periodic Medical Examination

7-13. Responsible MTF

The commander of the MTF, notified as provided in paragraph 7-9, is responsible for reexamining the member. If the MTF was incorrectly selected or is not able to perform or coordinate the examination, the commander will promptly notify the CG, HSC (Patient Affairs Branch, Patient Administration Division). CG, HSC will arrange with MILPERCEN to transfer the case file to another MTF.

7-14. Selection of examining facilities

a. *Locations.* Upon review of the medical records, the MTF commander or his designee will arrange for the member's medical examination by a physician of the following locations. The locations are listed below in the order of preference.

(1) The MTF assigned responsibility for the examination.

(2) Other Federal medical facility at, or near, the member's home.

(3) Civilian-operated clinic or hospital at, or near, the member's home.

(4) Civilian physician at, or near, the member's home.

b. *Hospitalization.* Examination of a member on an outpatient basis is preferred. When hospitalization is foreseen, however, or when extensive tests or observations require hospitalization, the member will be ordered to report to the MTF designated, or more appropriate, to a Federal MTF near the member's home. If the medical examination can be carried out with the member in an outpatient status and examination requirements permit, the examinations may be conducted at a civilian medical facility or by civilian physicians at, or near, the member's home. If the member is hospitalized at the

time the examination is scheduled, a narrative summary from the hospital facility providing his care may suffice to meet the needs of a report of periodic examination.

c. *Costs.* The costs of medical examinations carried out at MTFs, including consultations from civilian sources, are payable from funds available to operate MTFs. Settle cost of medical examinations carried out at civilian MTFs or by civilian physicians at, or near, the member's home as shown in AR 40-3.

7-15. Medical records

The commander of the MTF responsible for the medical examination will promptly initiate a request for the member's medical records from information provided by MILPERCEN or by the member. He will ensure that the medical records are available to the examining physician before the periodic medical examination. The examining physician must return all records furnished with the report of medical examination to the MTF commander for forwarding to the proper PEB.

7-16. The MTF commander's responsibilities in notifying the member

The MTF commander will—

a. Coordinate the date, time, place, and other details of the medical examination with the member. The member may be employed and an absence from his job may be costly.

b. Provide travel orders, if required, with instructions for obtaining a transportation request or collecting approved travel expenses to include per diem.

c. Give the member the name and telephone number of the PEBLO with instructions to telephone collect or visit when information or assistance is needed.

d. Notify the member to report for a scheduled medical examination by certified mail, return receipt requested.

e. If the member does not admit receipt of notification or fails to report as directed, verify his mailing address, reschedule the examination, and send a second notice without delay using certified mail with return receipt requested.

f. Inform the member specifically in the second notice that failure to comply will result in stopping his Army retired pay.

g. If this fails to elicit a response within 60 days from date of first attempt to contact the member, notify HQDA(DAPC-MSS-RD), Alexandria, VA 22332 that the member cannot be located.

h. Retain records pending instructions from MILPERCEN.

7-17. Examination of the member

a. *Purpose of medical examination.* The purpose of the TDRL periodic medical examination is to—

(1) Determine the member's condition at the time of examination.

(2) Decide if a change has occurred in the disability for which the member was placed on the TDRL.

(3) Decide if the disability has become stable enough to permit removal from the TDRL.

(4) Identify any new disabilities incurred while the member has been on the TDRL.

b. Extent of the examination. The medical examination must be objective and complete. One or more physicians will conduct the examination. Proceedings of previous PEB actions and all medical records will be made available to the medical examiner. Diagnostic, laboratory, and radiological procedures, including photographs, should be used to the extent needed to establish and describe the member's current physical condition accurately. Detailed requirements for medical examinations for disability evaluations are contained in the Veterans Administration Physicians Guide—Disability Evaluation Examinations and the VASRD. (See AR 40-3.)

c. Consultants. Advice of professional consultants may be obtained whenever needed during periodic medical examinations. This may include forwarding case records to a specialized MTF for review and recommendations. A member may be transferred to another MTF for consultation only when the MTF commander directs such transfer. The MTF commander will promptly notify HQDA(DAPC-EPA-D) of the transfer by mail.

d. Members physically unable to travel or mentally incompetent. When the responsible hospital commander decides that a member is physically unable to travel (e.g., bedridden) or he is, or may be, mentally incompetent, he will make all reasonable efforts to have the member examined. Bringing the member to the hospital by ambulance or arranging for a visit by a physician to the member's residence is included when the effort is in the best interest of the Government. If the member is under medical treatment, current medical records from the MTF, or the physician treating the member, may provide enough clinical data for the report of periodic examination.

e. Members imprisoned by civil authorities. When a member is found to be imprisoned by civil authorities, the appointed MTF commander will request the confinement facility, or other proper authority, to have the member medically examined and provide a report of the member's current medical state. The report will be processed in the normal manner upon receipt. It will be forwarded to the PEB for adjudication. If an examination is impossible, or no report is received, the MTF commander will return the medical records to MILPERCEN with a summary of his efforts to obtain adequate information. MILPERCEN will take action prescribed in paragraph 7-11b.

7-18. Report of the medical examination

a. The report of periodic medical examination may be prepared using a letter or an

SF 502 (Clinical Record—Narrative Summary). The report must be factual, complete, and accurate. It must reflect the member's current state of health. Special regard should be given to his physical conditions present when he was placed on the TDRL. An accurate medical and other history of his condition since the last examination or placement on the TDRL must be included. The degree of severity of all impairments must be fully described. Include any impairments from which the member has recovered and new ones he has acquired while on the TDRL. The report must reflect the results of physical examinations, laboratory findings, and consultations, if any. When possible, a forecast of the course of the member's disease or impairment should be provided. Include also a relative estimate of changes since the previous examination. Include legible copies of X-ray reports; reports of electrocardiograms (ECGs), electroencephalograms (EEGs), and audiometric examinations; and unretouched color photographs of scars and other visible deformities that will help the PEB in reaching a fair judgment. Furnish single copies only. Include more information if it is needed for a full and fair evaluation of the case.

b. In addition to those diagnoses for which the member was first placed on the TDRL, the report will include a medical appraisal of all other important defects incurred, or discovered, after he was placed on the TDRL. The report must clearly show the etiology of defects found during the examination so a decision can be made as to whether they relate to a condition that existed or was incurred while the member was on active duty, or was incurred while the member was on the TDRL.

c. The examining physician should state whether or not, in his opinion, the conditions have become stable. If they have not, he should give his opinion as to the progress of the disability. He should suggest a time (not to exceed 18 months) for the next examination.

d. If disclosing information about his medical condition to the member would adversely affect his physical or mental health, note the fact in the report.

e. For members with psychiatric conditions, include a statement indicating whether the member is mentally competent for pay purposes; whether the member has the capacity to understand the nature of, and to cooperate in, PEB proceedings; and whether the member is a danger to himself or others. Appraisal of the individual's social and industrial impairment while on TDRL according to appendix B is essential.

f. The report requires only the signature of the medical officer or physician appointed to conduct the medical examination. Forward the report to the commander of the MTF for his review and approval. If the report is inadequate, correct deficiencies before forwarding it to the proper PEB.

g. The MTF commander will give the member a chance to review and comment

on the report of examination before forwarding it to the PEB. The member will sign the report of examination acknowledging that he has reviewed it. If the member does not agree with the report of examination, the MTF commander will review and act on the objections. The MTF commander has the right of final approval; however, any written appeal or objection, prepared by or for the member will be attached to the medical examination report.

7-19. Review and forwarding the report of the examination

The MTF commander, or his designee, will ensure the completed report clearly describes the member's present condition and functional impairments. He will return the report to the medical examiner if it is incomplete, not detailed enough, or not supported by documents furnished. MEBDs are not required for TDRL periodic physical examinations; however, the MTF commander may refer a TDRL examination to a MEBD, especially one presenting a problem or arousing dispute. If the report is complete, the reviewing officer will note his approval on the report and sign it. Forward the report, consisting of an original and 5 copies, and all medical and administrative case records, to the servicing PEB. Furnish the member's correct mailing address, area code, and telephone number to the PEB. Furnish a copy of the transmittal document to HQDA(DAPC-EPA-D), Alexandria, VA 22332.

Section IV Physical Disability Decision

7-20. PEB processing

a. General. Except as specified in this section, chapter 4 applies to PEB processing of TDRL cases. The PEB will resolve deficiencies in a report of periodic examination, to the extent possible, with the commander of the MTF concerned. A case file will not be returned to MILPERCEN because of deficiencies or need for further information except through HQ, USAPDA. The PEB will arrive at a decision as to whether the member is fit or unfit. The board will be guided by the duties expected of the member were he to be found fit, the retention medical standards in effect when he is being reevaluated, and Army policies set forth in this regulation. If the member is still physically unfit to perform the duties of his office, grade, rank, or rating when he is to be removed from the TDRL, the PEB will develop disability percentage ratings according to current policy and disability rating guidance.

b. Changes in member's condition while on the TDRL. The combined percentage rating approved at the time the member was placed on the TDRL cannot be changed by the PEB throughout the period the member is on the TDRL. A disability identified while the member is on the TDRL may have an etiologic relationship to a condition that existed during his active service. The

disability rating, based on any changes in the degree of severity of previously identified disabilities that might increase or decrease the combined percentage rating, will be adjusted only when the member is removed from the TDRL. A member placed on the TDRL may have an EPTS factor added, modified, or eliminated at the time of final disposition if additional evidence is obtained that was not previously available or was not apparent during the initial evaluation and placement on the TDRL due to fraud, mistake of law, or mathematical miscalculation.

When the member is recommended for retention on the TDRL, however, the PEB will make entries in proper items of DA Form 199, if applicable, to record newly identified conditions. DA Form 199 will reflect the member's condition at the time of the most recent periodic examination. Changes or additions made in blocks 8a and b must be explained following the entries. When a member is recommended for permanent retirement, entries must be made for all conditions present whether or not previously recorded. The PEB will explain in DA Form 199 the reason for variation between the original action (findings, recommendations, or ratings) causing the member's placement on the TDRL and current action removing him from the list. Explanations need not be lengthy, but must be understandable. Procedures for administrative relief pertaining to a correction or adjustment of the percentage of physical disability while a member is on the TDRL are contained in paragraph 4-27.

c. Informal PEB action and notice to member.

(1) *PEB action.* When removal from the TDRL is recommended, the PEB will notify the member of the board's findings and recommendations. The PEB will use certified mail, restricted delivery, return receipt requested. Figure 7-1 shows the form letter to be used for notifying the member. If the addressee is a next-of-kin, modify the letter as needed. The PEBLO of the MTF responsible for the periodic medical examination is responsible for counseling the member. Therefore, the PEB will provide the PEBLO a copy of the letter and DA Form 199 (with inclosures). The letter informs the member of his rights and responsibilities. It will give the name, location, and telephone number of the PEBLO should the member desire counseling. It will include a statement telling the member to forward two copies of DA Form 199. The member will sign the original (no inclosures) copy of the DA Form 199 and return it after giving his choice of options in block 3. (The carbon copy of the DA Form 199 (with inclosures) is the member's copy.)

(2) *Notice to member.* A member may be retained on the TDRL if disabilities causing him to be placed on the TDRL have not become stable. If the member has less than 20 years of service, his combined rating must be at least 30 percent. Otherwise, removal from the list and separation is required

whether or not the disabling condition has become stable. (If the member has been on the TDRL for more than 4 years, the PEB must recommend removal and final disposition.) Should the PEB recommend retention on the TDRL, the member may not appeal the recommendation since his status is not being changed. The PEB will inform the member of this fact (see fig. 7-2) and furnish a copy of the DA Form 199 (with inclosures) by ordinary mail. The PEB will send the PEBLO a copy of the DA Form 199 (with inclosures). The PEB will send the case file to the CG, USAPDA for review.

d. Formal hearing. The member may not accept the findings and recommendations of the informal PEB removing him from the TDRL. He may elect a formal hearing. If so, the case will be processed as prescribed in chapter 4. When the member elects to appear in person at the hearing, the recorder of the PEB will indorse the original travel orders according to AR 310-10. If a new fiscal year starts between the time the member completes his TDRL medical examination and his scheduled formal hearing, the PEB will indorse the orders using the new fiscal year fund cite. The new fiscal year fund cite can be obtained from the Chief, Disability Separation and Retirement Section, MILPERCEN. The PEB will inform the member, in writing, of the date, time, and place of the hearing, to include building and room number. The member may live in an area from which travel to the PEB is "local," as defined by paragraph M5200, Joint Travel Regulations. If so, the PEB will arrange locally for the member to appear before the PEB. The member may fail to appear as directed without notifying the board in advance that he would be unable to appear. In this case, the board will consider that he has waived his right to be present. The PEB will conduct the hearing without him. After a formal hearing when the member was present, the PEB counsel will inform the member of his rights and obtain his concurrence or nonconcurrence and rebuttal, before he departs, if possible. If the member fails to commit himself, or is not present, at the hearing, the PEB counsel will notify him of his rights by letter and send him his copy of the board proceedings.

e. Action when member does not respond to PEB. The PEB will notify a member, by mail, of the board's findings and recommendations that would result in removal from the TDRL. The PEB will inform the member that he has 7 days plus reasonable mailing time to concur or nonconcur. The PEB will use certified mail, restricted delivery, return receipt requested. The member will be informed that, if he does not respond within the stated time, the PEB will assume he has concurred. The PEB will forward his case file to HQ, USAPDA for review. If the certified mail receipt is received, but no response is made by the member, the PEB will forward the case file to HQ, USAPDA for review. In informal cases, a new original DA Form 199, or a signed duplicate, must

be prepared. In these cases, the PEB president will provide a brief statement that the member has not responded within the allotted time. He will attach the certified mail receipt as proof that the member was notified. If the member does not respond within the prescribed time, and the certified mail receipt is not returned, or if the correspondence is returned undelivered, the PEB will try to verify the member's address. The PEB will contact MILPERCEN, the MTF, the US Army Finance and Accounting Center, or the VA regional office. If a new address is obtained, the PEB will try to deliver the notice. If a new address is not available or delivery again fails, the PEB will prepare a summary of efforts to deliver the notice. The PEB president will forward the case file to USAPDA for review without further delay.

f. Disposition without final examination.

A case may be referred to a PEB as described in paragraph 7-11 without benefit of a recent examination. Findings and recommendations to dispose of the case will be based on available information of record. The member will be informed of the action by certified mail, restricted delivery, return receipt requested. The mail will be directed to the last known address. The PEB counsel will advise the member if he requests advice. If a response is not received within 7 days, plus mailing time, forward the case to the CG, USAPDA. Approved disposition of the members are as follows:

(1) When the PEB finds the member fit, remove him from the TDRL without benefits.

(2) When the PEB finds the member unfit, decide a percentage of disability on the assumption of the greatest improvement and—

(a) Recommend permanent retirement if the rating is 30 percent or more.

(b) Recommend permanent retirement if the proven rating is less than 30 percent and the member has completed at least 20 years of active Federal service.

(c) Recommend separation with severance pay if the rating is less than 30 percent and the member has completed less than 20 years of active Federal service.

7-21. Review of TDRL cases

When a PEB completes its action, forward the case file to HQ, USAPDA for review. Review and dispose of the case as prescribed in chapter 4 for active duty cases.

Chapter 8. Reserve Components

8-1. General

This chapter provides additional guidance for Army Reserve component (RC) members not on extended active duty for a period of more than 30 days who are eligible for physical disability processing according to table 4-4.

8-2. Applicability

a. *Disability from injury.* Members eligible for processing under this chapter are those who incur a disability from an injury determined to be the proximate result of performing—

(1) Active Duty (AD) or active duty for training (ADT) under a call or order that specifies a period of 30 days or less, to include full time training duty (FTTD) under Title 32 U.S.C. (502f, 503, 504, 505).

(2) Inactive duty training (IDT) (But not while en route to or from IDT).

(3) ADT under authority of section 270(b) of title 10 United States Code. This authority permits ordering a member to active duty for training for 45 days or less to satisfy Ready Reserve training requirements.

b. *Disability from disease.* The disabling condition may be the result of a disease rather than an injury. If so, the member is ineligible for disability processing under provisions of this regulation unless a medical authority has decided that the disease is the result of a service-connected injury incurred as described in a above. AR 140-120 or NGR 40-3 applies in other cases in which the disability is due to a disease.

c. *Hospitalization after AD or ADT.* AR 40-3 and AR 135-200 state the rules for hospitalizing RC members after AD or ADT for 30 days or less. Such members may be hospitalized beyond the last day of AD or ADT specified in official orders. The period of AD or ADT may not be extended for hospitalization or disability processing. However, such members may continue to be entitled to pay and allowances while hospitalized (see para 8-5) and during disability processing. Entitlement to pay and allowance is not essential, however, for consideration by a PEB.

d. *Proximate-result injuries sustained while hospitalized.* An injury incurred in line of duty while the member is hospitalized that results in a physical disability may be considered by a PEB. The injury may be compensated if it is found to be the proximate result of performing active duty. The injury must be incurred before the termination date of the member's ordered period of AD or ADT. Such an injury may be incurred after the termination date of the member's ordered period of AD or ADT. Such an injury may be incurred after the termination date of the member's ordered period of active service. If so, entitlement to disability compensation by the Army is proper only if a direct relationship exists between the original proximate-result injury and the second injury. The relationship must be clearly established. If not, decisions on such cases must be submitted, through channels, to the Comptroller General of the United States for consideration before final action. (MS Comp. Gen B-189540, 23 Feb 1978.)

e. *Treatment while training.* A member ordered to active duty for training for more than 30 days may be processed under chapter 4 even though his training period has

expired. He must have been retained in the MTF for further treatment as indicated in paragraph 4-2, AR 40-3. (This policy excludes member processed under 10 U.S.C. 270(b).) The member may have been released from his active duty for training status and may return to his home. He may later require rehospitalization and be considered disabled. If so, his case file may be referred to a PEB for a decision on processing and, if proper, he will be processed.

8-3. Hospitalization

Paragraph 4-2, AR 40-3, provides instructions on admission and treatment of RC members who require hospitalization because of injuries or diseases for which care is approved. Under certain conditions, special written authorization is required to obtain continued treatment. If treatment is provided during the period specified in ADT orders, a copy of the orders is enough. If treatment extends beyond the ADT period, the member must sign an affidavit as required by AR 135-200. If the member's ADT period has expired and rehospitalization for treatment of an injury is required, official approval for treatment is requested (see AR 40-3). Likewise, official approval is required for treatment of an injury incurred during inactive duty training (see AR 40-3). If an RC member is referred to a PEB for processing, his case file must include a copy of all papers supporting the fact that he is authorized care to assist in adjudication of his case.

8-4. Medical processing

a. A commander or other proper authority may believe that a member not on extended active duty is unable to perform the duties of his office, grade, rank, or rating because of physical disability. If so, the commander will refer the member for medical evaluation according to AR 140-120 or NGR 40-3.

b. The medical evaluation may indicate that the member may not be qualified to perform his military duties. If so, the commander will refer the member to an MEBD according to AR 40-3 and this regulation. (See para 4-15 for a list of required supporting documents.)

c. Upon the MEBD's decision and the medical reviewing authority's approval that the Reserve member has a condition listed in chapter 3, AR 40-501, and meets the requirements of paragraph 8-2, the commander will refer the member to a PEB. The MEBD findings may be that the patient's physical disability is the result of a disease not directly caused by injury. If so, the member will be processed according to AR 40-3 and AR 140-120 or NGR 40-3.

d. The member may be retained, with his consent, under control of the MTF during disability processing. If the PEB finds the member unfit, retain him under administrative control of the MTF pending receipt of the final decision. If the PEB finds the member fit, return him to his duty station unless his training period has expired. If this is the

case, permit him to return to his home. The MTF commander where the MEBD is held will notify proper authorities as to the disposition of the member's case. (See AR 40-3 and AR 140-120 or NGR 40-3.)

e. An RC member who is eligible may request continuance in the active Reserve under AR 140-120, or NGR 40-501. If continuance is approved, do not refer the case file to a PEB. The US Army Reserve Component Personnel and Administration Center (RCPAC) or the National Guard Bureau (NGB) may deny continuance. If so, the member's case file may then be referred to a PEB for disability processing. Once a case has been referred to a PEB, a request for continuance in the active RC under AR 140-120 or NGR 40-501 may not be considered.

8-5. Pay and allowances

Paragraph 80254 and table 8-2-4, Department of Defense Military Pay and Allowances Entitlements Manual, set forth the conditions under which a member of the RC is entitled to pay and allowances while disabled.

8-6. PEB processing

Chapter 4 applies in PEB processing except as indicated below. The PEB must establish the fact that—

a. The member's status and entitlements to processing have been documented and are attached to the file.

b. The member's LD has been decided. If the LD decision is pending, the PEB will process the case as if a favorable decision has been made. A comment will be entered on the DA Form 199 to the effect that the case has been processed in the absence of a favorable LD decision.

c. Each disability listed on DA Form 199 resulted from an injury incurred as the proximate result of performing active duty or inactive duty training.

8-7. Disposition

a. A member not on extended active duty who is unfit because of physical disability—

(1) May be permanently retired or have his name placed on the temporary disability retired list (TDRL), if—

(a) He has at least 20 years of active Federal service in the uniformed services, or

(b) His disability is rated at 30 percent or more.

(2) May be separated with severance pay if—

(a) His disability is rated at less than 30 percent, and

(b) He has less than 20 years of active Federal service in the uniformed services.

(3) May forfeit severance pay; be transferred to the inactive Reserve; and, if otherwise qualified, receive nondisability retired pay upon becoming 60 years of age if—

(a) He has completed at least 20 qualifying years of Reserve service for retirement.

(b) He requests transfer to the retired Reserve.

(4) Will forfeit all rights to receive retired pay at age 60 despite his length of service if he accepts disability severance pay instead of transfer to the inactive Reserve.

(5) Will be separated without benefits if—

(a) The unfitting condition is due to intentional misconduct or willful neglect, or

(b) The unfitting condition was incurred during a period of unapproved absence.

b. MILPERCEN (DAPC-POS-RD) will notify these members of their options and of conditions contained in a(3) and (4) above. The letter will provide enough detail (verified years of active service for severance pay and Reserve years of service for retirement) to help reach a proper decision. An election once made is final and conclusive. It may not be changed. MILPERCEN will permit the member 7 days plus mailing time to make his decision. If he does not respond, MILPERCEN will place a statement in the case file that he was notified and failed to respond, and separate him with severance pay.

Table 4-1
Location of Physical Evaluation Boards and areas serviced

Instructions

CONUS Hospitals. Medical board proceedings, and supporting records, which recommend referral to a Physical Evaluation Board, including results of TDRL examinations, will be forwarded to the president of the supporting PEB at one of the locations listed below as determined by the CG, USAPDA.

Fort Gordon, GA 30905

Fort Sam Houston, TX 78234

Presidio of San Francisco, San Francisco, CA 94129

Walter Reed Army Medical Center, WASH, DC ~~200~~220307-5001

Oversea Hospitals. Members assigned in an oversea command and those on the TDRL who are residing in an oversea area will be processed by a PEB in CONUS as shown below. Medical board proceedings and supporting records, which support referral to a PEB, will be forwarded promptly to the PEB designated below:

Cases originating in:	Will be forwarded to the president of the PEB at:
Alaska, Far East, and Pacific	Presidio of San Francisco, San Francisco, CA 94129
South America and Caribbean Area	Fort Gordon, GA 30905
Europe, Africa, and Middle East Area	Walter Reed Army Medical Center, WASH, DC 200 220307-5001

Table 4-2
Eligibility index table

Rule	If the member is physically unfit by reason of physical disability and—	The action is—
1	The disability was the result of his intentional misconduct or willful neglect, or was incurred during a period of unauthorized absence.	Discharge without benefits under this regulation (10 USC 1207).
2	He is a member of the Regular Army.	Go to table 4-3
3	He is a non-Regular Army member of the Army called or ordered to active duty for a period of more than 30 days (except under 10 USC 270(b)).	Go to table 4-3
4	He is a non-Regular member of the Army on active duty for 30 days or less, inactive duty training, or is on active duty for training under 10 USC 270(b) for any period of time (see note).	Go to table 4-4

Note: See **appendix A-glossary** for definition of active duty and inactive duty training.

Table 4-3

Eligibility index table for regulars and members on active duty for more than 30 days except under 10 USC 270(b) (Rules 2 and 3, Table 4-2)

Rule	If the member is entitled to basic pay, and the disability was incurred while he was entitled to basic pay.	And if he has at least 20 years of service.	And the percentage of his disability is—	And based upon accepted medical principals the disability is—	Member has at least 8 years of service.	Disability is proximate result of performing active duty.	Disability was incurred in LOD in time of war or National Emergency between 15 Sep 1978 & 30 Sep 1979 (note 1).	The action is—
1	No							Discharge under other than chapter 61, 10 USC. (Note 2.)
2	Yes	Yes	0-100	Perm				Permanent retirement under 10 USC 1201.
3	Yes	Yes	0-100	May be Perm				Temporary retirement under 10 USC 1202.
4	Yes	No	30-100	Perm	Yes			Permanent retirement under 10 USC 1201.
5	Yes	No	30-100	May be Perm	Yes			Temporary retirement under 10 USC 1202.
6	Yes	No	30-100	Perm	No	Yes		Permanent retirement under 10 USC 1201.
7	Yes	No	30-100	May be Perm	No	Yes		Temporary retirement under 10 USC 1202.
8	Yes	No	30-100	Perm	No	No	Yes	Permanent retirement under 10 USC 1201.
9	Yes	No	30-100	May be Perm	No	No	Yes	Temporary retirement under 10 USC 1202.
10	Yes	No	30-100		No	No	No	Discharge with disability severance pay under 10 USC 1203.
11	Yes	No	Under 30		Yes	No	No	Discharge with disability severance pay under 10 USC 1203. (Note 3 & 4).
12	Yes	No	Under 30		No	Yes	No	Discharge with disability severance pay under 10 USC 1203. (Note 3 & 4).
13	Yes	No	Under 30		No	No	Yes	Discharge with disability severance pay under 10 USC 1203. (Note 3 & 4).
14	Yes	No	Under 30		No	No	No	Discharge under other than chapter 61, 10 USC.

Notes:

1. P.L. 94-412, 14 September 1976, terminated all national emergencies on 14 September 1978. P.L. 95-377 and Executive Order 12082, both dated 19 September 1978, continue the same disability separation and retirement practices that were dependent on existence of a national emergency for the period beginning 15 September 1978 and ending 30 September 1979.

2. See chapter 5.

3. If a Reserve member is eligible under 10 USC 1209 (has more than 20 years of satisfactory Federal service), he may elect to be transferred to the Retired Reserve instead of being separated with disability severance pay.

4. To receive severance pay, a member must have at least 6 months' service for retirement on date of separation. Less than 6 months results in a 0 multiplier in the severance pay formula.

Table 4-4

Eligibility index table for nonregular members on active duty for 30 days or less; inactive duty training or active duty for training under 10 USC 270(b) (Rule 4, table 4-2)

Rule	If the disability was due to an injury—	And was the proximate result of performing active duty or inactive duty training	And the member has at least 20 years of active Federal Service	And the percentage of his disability is—	And based upon accepted medical principles, the disability is—	The action is—
1	No					Discharge under other than chapter 61, 10 USC. (Note 1.)
2	Yes	No				
3	Yes	Yes	Yes	0-100	Perm	Permanent retirement under 10 USC 1204
4	Yes	Yes	Yes	0-100	May be perm	Temporary retirement under 10 USC 1205
5	Yes	Yes	No	30-100	Perm	Permanent retirement under 10 USC 1204
6	Yes	Yes	No	30-100	May be perm	Temporary retirement under 10 USC 1205
7	Yes	Yes	No	Under 30		Discharge with disability severance pay under 10 USC 1206 (note 2).

Notes:

1. See chapter 5.
2. If member is eligible under 10 USC 1209 (has more than 20 years of satisfactory Federal service), he may elect to be transferred to the Retired Reserve instead of being discharged with severance pay.

Table 4-5
Assembly of case records by PEB

Section I—Information Proceedings

Documents are to be assembled in the following order, availability based on type case.

	ORIG	DRC	MBR	MTF	HR	PEB
DA Form 199 (PEB Proceedings)	X	X	X	X	X	X
DA Form 3947 (Medical Board Proceedings) with attached SF 502 and SF 88 (Exhibit A)	X	X	X	X	X	X
Copy of letter appointing PEB (Exhibit B)	X	X ^d				
Documents such as letters, efficiency reports or personal statements that provide evidence of physical ability or inability to perform military duties adequately	X	X				
Other documents accepted as exhibits.	X	X				
DA Form 199 (For each prior informal PEB if more than one was in current action).	X	X			X	X
Report of LD (DD Form 261 or DA Form 2173, or copy of msg to TAG requesting LD determination) and appeal, if any.	X	X				
Statement from member's unit commander that member is not pending unfavorable action (AR 600-31), or statement from General Courts-Martial authority as prescribed in paragraph 1-2.	X	X				
DA Form 2—Part I and DA Form 2-1—Part II (Personnel Qualification Record)(copy only.)	X					
DA Form 20 (DA Form 2) (Enlisted Qualification Record) or DA Form 66 (DA Form 2-1) (Officer Qualification Record (copy only).	X					
Rebuttal or statement instead of rebuttal by member, next-of-kin, legal guardian, or counsel, and action by PEB.	X	X				
Statement by recorder when member fails to respond to notification of PEB action.	X	X				
Request of member for PCS pending DA action if copy is available to PEB.	X					
Application for Continuance on Active Duty (COAD) under chapter 6, if member applied. If on COAD, a copy of letter of approval and DA Form 199 resulting in COAD.	X	X				

Section II—Formal Proceedings

Documents are to be assembled in the following order.

DA Form 199 (PEB Proceedings) (Attach transcript of formal hearing as continuation pages).	X	X	X	X	X	X
Documents submitted and accepted as exhibits.	X	X				
Copy of letter appointing PEB (Exhibit B).	X	X	X			
Notification of member, next-of-kin, or legal guardian of PEB action in a formal hearing.	X	X				
Rebuttal or statement instead of rebuttal by member, next-of-kin, legal guardian, or counsel and action by PEB.	X	X				
Statement by recorder when member fails to respond to notification of PEB action.	X	X				
Informal PEB proceedings with exhibits.	X	X				
Medical and health records or copy of request for designation of VA bed. (When member is scheduled for transfer to a VA facility, the PEB will return medical and health records to the medical facility that convened the medical board. If member is scheduled for transfer to a VA hospital and approved LD determination is not available, attach copies of all clinical records cover sheets, (DA Form 3647, or one of its variants) to PEB proceedings.)	X					
Copy of Privacy Act of 1974 statement signed by member.	X					

Table 4-6
Distribution of PEB proceedings and allied records (Note 1)

Section I. General

Original To CG, USAPDA	Copy 1 To CG USAPDA	Copy 2 Retained by PEB	Copy 3 To MTF (Notes 2 & 3)	Copy 4 To member	Copy 5 To health record
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Notes:

1. Records are listed in table 4-5.
2. Commander of the medical treatment facility which forwarded the case to the PEB.
3. For TDRL cases, commander of the medical treatment facility responsible for the TDRL periodic examination.

(office symbol)

(date)

SUBJECT: Request for Statement of Service for
Physical Disability Action

Department of the Army
U.S. Army Military Personnel Center
ATTN: DAPC-POS-RD
200 Stovall Street
Alexandria, VA 22332

OR

Commander
U.S. Army Enlisted Records and
Evaluation Center
ATTN: PCRE-RC
Ft. Benjamin Harrison, IN 46249

Commander
U.S. Army Reserve Components
Personnel and Administration Center
9700 Page Boulevard
St. Louis, MO 63132

Appropriate State Adjutant General

1. (Name, Rank, SSN) . . . is being medically evaluated. He will probably be referred to a Physical Evaluation Board in the near future.

2. Before final disposition can be made by HQDA, an official statement of service is required. Please prepare a statement of service and forward it promptly to HQDA (DAPC-POS-RD), 200 Stovall Street, Alexandria, VA 22332. The statement is needed for issuing timely separation or retirement orders if the member is found unfit because of physical disability.

FOR THE COMMANDER:

(Signature)

Figure 4-1. Request for statement of service

(office symbol)

(date)

SUBJECT: Notice of a Formal Physical Evaluation Board
(rank, name of service member
street address
city, state 00000)

- 1. You are hereby notified of a formal hearing of your case before the US Army Physical Evaluation Board. The hearing will be on, at a.m. in . . . (location)
- 2. The information in the paragraph indicated by an "X" below applies. It is consistent with the elections you made on regarding the findings and recommendations of the informal hearing of your case.

You requested regularly appointed counsel to represent you,, U.S. Army Physical Evaluation Board, Forest Glen Section, Walter Reed Medical Center, Washington, DC 20012, has been appointed to advise you in preparing your case. He will assist in examining and cross-examining witnesses, and in conducting your case before the Board. A postponement cannot be granted solely on the grounds that you have not contacted counsel. Your failure to get in touch with regularly appointed counsel may result in your case being submitted to the board with little or no argument on your behalf. You must communicate with him within 3 working days after receipt of this letter. Before signing the attached acknowledgment, call him collect, . . . (area code) (phone number)

In your elections, you indicated that you will have counsel of your own choice. Counsel may be either civilian, military, or both. The securing of such counsel must not result in expense to the Government or in unreasonable delay of the formal board proceedings. Military counsel of your choice must be reasonably available., U.S. Army Physical Evaluation Board, (location), will, unless properly excused, act as associate counsel. You, or your counsel, must communicate with the associate counsel within 3 working days after receipt of this letter. Before signing the attached acknowledgment, call collect, . . . (area code) (phone number)

3. You and your counsel are entitled to examine all written evidence. You may examine and cross-examine witnesses, and present your case orally or in writing. If you have selected a counsel of your own choice, complete the attached statement authorizing him access to your medical records. Give the statement to your counsel.

4. The Recorder will notify the following witnesses:

5. At your request, the Recorder will arrange to secure the attendance of other witnesses who are members or employees of the Army or other Armed Service, if they are reasonably available. You are responsible for the attendance of witnesses who are not members or employees of the Army or other Armed Services.

6. Please complete and sign the attached acknowledgment and return it within 3 days after receipt.

FOR THE PRESIDENT:

- 2 Encl
- 1. Acknowledgment
- 2. Self-addressed envelope

Figure 4-2. Notice to member of formal PEB

President
U.S. Army Physical Evaluation Board
(address)

1. I acknowledge receipt of the notice that the US Army Physical Evaluation Board will hold a formal hearing of my case on
2. I do not require any more time to prepare my case.
 I request more days to prepare my case. (A written request, stating my reasons for this extension of time is attached.)
3. I (My counsel) have (has) communicated with the regularly appointed counsel (associate counsel), as required in paragraph 2 of the letter of notice.
4. I desire that the Recorder arrange for the attendance of witnesses whose names and addresses are listed below. They are members or employees of the Army or other Armed Services. (If there are none, so state.)

(date)

(signature)

(grade)

Figure 4-2. Notice to member of formal PEB—continued

(date)

Dear (Next-of-kin, legal guardian):

The Army Physical Evaluation Board (PEB) will convene on at a.m. (designated place), to evaluate the physical condition of your (relationship) (grade, name, service number)

The member's physical condition precludes his personal appearance. He will not be present at this hearing. . . . (grade, name, address) . . . has been appointed military counsel to represent . . . (first name) You may attend the hearing if you desire. You and your counsel are entitled to examine all written evidence, to examine and cross-examine witnesses, and to present other evidence orally or in writing. You may communicate with the military counsel at any time.

The board will call the following witnesses: (If there are none, so state.)

The recorder will arrange to secure attendance of other available witnesses whom you desire, or under appropriate circumstances, obtain their depositions and other evidence. Following the formal hearing, you will be notified of the board's findings. You will be required to indicate whether you concur with those findings or desire to submit a rebuttal. The rebuttal may be prepared by you or, on your request, by counsel.

The PEB is a board of officers appointed to determine the following facts about each member referred to it:

Whether the member is fit for duty, or is unfit for further military service by reason of physical disability.

Whether the disability is, or is not, the result of intentional misconduct or willful neglect.

Whether the disability is, or is not, the proximate result of the performance of military duty.

A percentage of disability, when applicable.

Please complete the inclosed letter. Indicate your desires and intentions. Return the original and one copy of this notice in the self-addressed envelope. If your reply is not received by the PEB within 7 days of the date of receipt of this letter, it will be presumed that you will not attend the hearing and that you are satisfied with the appointed military counsel.

Sincerely,

(signature of PEB president)

2 Encl

1. Reply form letter
2. Self-addressed envelope

Note: This letter WILL NOT be in pre-printed or mimeographed form and will be signed by the president of the PEB.

Figure 4-3. Notice to next-of-kin (legal guardian) of formal PEB hearing

President
Physical Evaluation Board
Address

Dear Sir:

Reference is made to the formal Physical Evaluation Board hearing that will convene to consider my case. The following statements indicate my wishes in the matter:

I will be present on when the Board considers this case. My appearance will be at my own expense.

I do not wish to be present when the Board considers this case.

I request that . . . (*name of appointed counsel*) . . . represent in this matter. His name and address are as follows:

I request the recorder arrange for the attendance of military witnesses whose names and addresses are listed below. I understand that arranging for the attendance of other witnesses and their expenses are my responsibility.

(signature of next-of-kin)

Figure 4-3. Notice to next-of-kin (legal guardian) of formal PEB hearing—continued



(office symbol)

(date)

SUBJECT: Proceedings of Formal Physical Evaluation Board

TO . . . (Name, grade, and address of member)

1. Enclosed is a copy of the proceedings of the recent hearing in your case. The copy is forwarded for your information and retention. You are requested to reply within 3 working days after you receive this letter. Check one of the comments in the attached letter prepared for you. Enter the date and sign in the space provided. Return the copy in the self-addressed envelope furnished for this purpose.

2. You may not agree with the recommended findings of the board. If not, you may prepare a letter of rebuttal, stating your reasons for disagreement. This letter of rebuttal must be prepared in two copies. Address it to the Army Physical Evaluation Board. Mail the letter to this office within 3 working days. Should you need more time for valid reasons, you may request a reasonable extension in the reply below. The counsel who represented you at the hearing may assist you in this matter.

3. If, within the 3 working days allowed, you do not submit a rebuttal, or request an extension of time, it will be assumed that you agree with the recommendation of the Board. Your case will be forwarded to Headquarters, Department of the Army, for review and action.

FOR THE PRESIDENT OF THE PHYSICAL EVALUATION BOARD:

3 Encl

- 1. PEB proceedings
- 2. Reply form letter
- 3. Self-addressed envelope

SUBJECT: Acknowledgment of Formal Physical Evaluation Board Proceedings

TO: President, U.S. Army Physical Evaluation Board, Letterman Army Medical Center, San Francisco, CA 93129

I have read the findings and recommendations of the Physical Evaluation Board proceedings and your letter explaining my rights. My decision is shown in the proper box below.

- I agree with the recommendations.
- I do not agree with the recommendations; however, I do not wish to submit a rebuttal.
- I do not agree with the recommendations and inclose a letter of rebuttal.
- I do not agree with the recommendations and request until to submit a rebuttal. My reason for the requested delay is as follows:

(date)

(signature)
(SSN)
(grade)

Figure 4-4. Notice to member of result of PEB action (formal board)

(office symbol)

(date)

(address)

Dear . . . (Next-of-kin, legal guardian):

This Physical Evaluation Board considered the physical condition of your . . . (relation), (grade and name) . . . on . . . (date) . . . (Grade and name) . . . Judge Advocate General's Corps, the appointed military counsel, represented your . . . (relation's) . . . interests before the board.

As recorded on the attached DA Form 199 (Physical Evaluation Board Proceedings), (relation) was found unfit because of physical disability. It is recommended that (he/she) be (separated/retired) from the Army. (If separation is recommended, add a statement as to whether the member is entitled to severance pay.) (If retirement is recommended, add a statement giving the percentage ratings). The findings and recommendations will be reviewed at Headquarters, Department of the Army, and are not final until approved.

The purpose of this letter is to inform you of your . . . (relation's) . . . rights and request your decision on these rights in his/her behalf. You may concur with the findings and recommendation of the board. You may submit a written rebuttal to the finding and recommendation of the board, explaining why you do not agree. This board and the reviewing authority will consider your rebuttal. You may also request more time in which to prepare your response if this time is insufficient. You are allowed 7 days plus mail time in which to reply. A form on which you may indicate your choice by checking a block is inclosed. Please be sure to sign the form.

If your reply is not received within the allotted time, the appointed military counsel will take proper action in behalf of your . . . (relation) . . .

Sincerely yours,

(signature of recorder)

3 Encl

- 1. PEB proceedings
- 2. Reply form letter
- 3. Self-addressed envelope

Note:

- 1. Develop and prepare proper letter for the case.
- 2. Do not use a preprinted form letter.
- 3. Inclosure 2 will be a form reply (figure 4-5a or 4-5b) as to whether the member is entitled to benefits.

Figure 4-5. Notice to next-of-kin (legal guardian) following formal board action

(Use when PEB recommends severance or retired pay)

(date)

President

Re: (grade and name)

U.S. Army Physical Evaluation Board

(SSN)

Address

I have read the DA Form 199 (Physical Evaluation Board Proceedings) and your letter explaining the rights of my . . . (relation) . . . regarding your findings and recommendations. My decision is shown in the proper box below.

I agree with the findings and recommendations of the board.

I do not agree with the findings and recommendations of the board. I have attached a rebuttal explaining my reasons.

I request until . . . (date) . . . to prepare and submit a rebuttal. If my rebuttal is not received by that date, I understand the appointed counsel may submit a rebuttal in behalf of my . . . (relation) . . . if the counsel thinks it necessary.

(signature)

(address)

Figure 4-5a. Reply to notice letter by next-of-kin

(Use when PEB recommends separation without benefits)

(date)

President

U.S. Army Physical Evaluation Board

Address

I have read the DA Form 199 (Physical Evaluation Board Proceedings) and your letter explaining the rights of my . . . (relation) . . . regarding your findings and recommendations. I understand that this action, if approved at Headquarters, Department of the Army, will result in separation of my . . . (relation) . . . without compensation from the Army for his disability.

My decision regarding this action is shown in the proper box below.

I agree with the finding and recommendation of the board and waive the right to rebuttal.

I do not agree with the finding and recommendation of the board. A rebuttal explaining my reasons is attached.

I request until . . . (date) . . . to prepare and submit a rebuttal. I understand if my rebuttal is not received by that date, the appointed counsel may submit a rebuttal in behalf of my . . . (relation) . . . if he thinks it necessary.

(signature)

(address)

Figure 4-5b. Reply to notice letter by next-of-kin

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(PEB letterhead)

(office symbol)

(name and rank of member)
(SSN)

(date)

SUBJECT: Waiver of Right to Rebut

Commander
U.S. Army Physical Disability Agency
Forest Glen Section--WRAMC
Washington, DC 20012

1. A copy of the formal PEB proceedings in the case of the above named member was forwarded to the member by certified mail. The attached receipt shows the copy was properly delivered.
2. The member has been properly advised of his rebuttal rights. However, he has not responded within the allotted time, or requested an extension of time. According to established policy, the member is considered to have waived his right to rebut. The member's counsel has submitted a (rebuttal or statement instead of rebuttal) in the member's behalf. The (rebuttal or statement) is attached. The member's counsel has not submitted a rebuttal or statement in the member's behalf.
3. Procedural requirements have been met. The case file is forwarded for review and disposition.

FOR THE PRESIDENT:

Encl

(signature)
(recorder)

Figure 4-6. PEB forwarding letter when member fails to rebut

(PEB letterhead)

(office symbol)

(name and rank of member)
(SSN)

(date)

SUBJECT: Nondelivery of Member's Copy of DA Form 199

Commander
U.S. Army Physical Disability Agency
Forest Glen Section--WRAMC
Washington, DC 20012

1. A copy of the formal PEB proceedings in the case of the above named member was forwarded to the member by certified mail. The copy was returned undelivered. Further efforts to locate the member and deliver the member's copy have failed. A signed receipt for certified mail has not been returned. The member has not responded, exercising his right to rebuttal. Efforts to locate the receipt have failed.
2. According to established policy, every reasonable effort has been made to effect delivery and obtain the member's response. (The member's counsel (has) (has not) submitted a (rebuttal or statement instead of rebuttal) in the member's behalf.) (The rebuttal or statement is attached.)
3. Procedures required have been performed. The case file is forwarded for review and disposition.

FOR THE PRESIDENT:

Encl

(signature)
(recorder)

Figure 4-7. PEB forwarding letter when member's copy cannot be delivered

(office symbol)

(name and rank of member)
(SSN)

(date)

SUBJECT: (Rebuttal) (Statement) in Behalf of Member

President
U.S. Army Physical Evaluation Board
Address

1. In view of the member's medical condition, (he) (she) is unable to comment on the finding and recommendation of the formal PEB. Thus, this (rebuttal or statement) is submitted in behalf of the member (in response to the PEB's action) or (because the PEB has been unable to contact the member or obtain his rebuttal to the formal PEB's finding and recommendation).

2. As counsel for the member, I have carefully studied the evidence and proceedings. I feel that (complete as proper to the case).

(counsel's signature)

Figure 4-8. Counsel's rebuttal or statement in member's behalf

DISPOSITION FORM

For use of this form, see AR 340-15; the proponent agency is TAGO.

REFERENCE OR OFFICE SYMBOL

SUBJECT

Request for Expeditious Discharge
for Physical Disability

TO Cdr,

FROM

DATE

CMT 1

(Official designation of MTF)

1. I request discharge for physical disability based upon the findings and recommendations of a medical evaluation board (MEBD). The MEBD considers me unqualified for retention in the military service because of physical disability that was found to have existed prior to my entry into active service (EPTS). The MEBD found the disability neither incident to nor aggravated by, my military service.

2. I have been fully informed and understand that I am entitled to the same consideration and processing as any other member of the Army separated for physical disability. I understand this includes consideration of my case by the adjudicative system established by the Secretary of the Army for processing disability separations. However, I elect not to exercise this right. I also understand the Veteran's Administration (VA) will determine entitlement to VA benefits.

3. If this application is approved, I understand I will be separated by reason of EPTS physical disability. I also understand that I will receive a discharge in keeping with the character of my service, as decided by the officer designated to effect my separation.

(Witness-PEBLO)

(Soldier's Signature)

(Date)

(Grade)

DA FORM 2496
AUG 80

PREVIOUS EDITIONS WILL BE USED

U.S. GOVERNMENT PRINTING OFFICE 1983-381-646/8580

Figure 5-1. Application for expeditious discharge

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SUBJECT: Request for Continuance on Active Duty

TO: (Proper addressee in para 6-7)

If I am determined unfit because of physical disability, I . . . (name) . . . hereby apply for continuance on active duty. I apply for assignment to duties that I am able to perform within the limitations imposed by my physical disabilities. I request continuance instead of immediate evaluation and processing for disability retirement or separation action.

I also understand that--

a. I must be able to maintain myself in a normal military environment without the environment adversely affecting my health or requiring excessive medical care.

b. My disabilities will be periodically reevaluated to decide whether further continuance on active duty would be in the best interests of the Government or me.

c. Should I later incur a service obligation, I remain liable to complete such obligation in spite of my condition. Only when my disabilities progress to a point that I am no longer able to perform duty with proper limitations am I no longer liable.

d. At the time of my final retirement or separation from active duty, I will be evaluated under the regulations in effect when I am finally retired or separated, and I may be found fit.

e. I will not be separated without proper examination and physical disability evaluation processing.

I request consideration for assignment to one of the following installations. (I have listed three in the order of my preference.)

a.

b.

c.

(signature)

(typed name)
(grade and SSN)

Figure 6-1. Application for continuance on active duty

(office symbol)

(date)

SUBJECT: Recommended Findings of Physical Evaluation Board

LTC Douglas Q. Jones
 USA, Retired
 132 Jay Street
 Pnoka City, CA 01234

1. A Physical Evaluation Board (PEB) has informally reviewed the report of your recent periodic medical examination and other available records. The PEB recommends that your name be removed from the Temporary Disability Retired List (TDRL). Inclosed is the original and one copy of DA Form 199. This form reflects the findings and recommendations of the board.
2. Pay special attention to blocks 8 and 9 of the form. The entries in block 8 reflect the PEB's judgment of your present disabilities and how severe they are; whether the disabilities were incurred under conditions permitting compensation; and the percentage rating for each disability. If block 8 contains no entry, it means that the PEB considers you no longer unfit because of physical disability. Block 9 shows the findings as to whether you are fit or unfit because of physical disability. If you are unfit, block 9 shows the combined rating for your disabilities determined under the rating system. It also shows the recommended disposition of your case consistent with Army policies. Block 10 is blank since this decision was made when you were placed on the TDRL.
3. Army procedures for removing a member from the TDRL require you to show whether you agree with the findings and recommendations entered on the DA Form 199. Please read carefully the statements following each box in block 13 on the reverse of the form. Check the one that shows your decision. Before doing so, however, read the paragraph below informing you of your rights. If there is anything you do not understand, please contact the Physical Evaluation Board Liaison Officer (PEBLO) whose name appears at the end of this letter. (You may telephone collect.) You should contact the PEBLO promptly. You must sign and mail the original of the inclosed form within 7 days after receiving this notice.
4. To help you in reaching a decision, you should be aware that--
 - a. You may not be separated or retired because of physical disability without a "full and fair hearing" if you demand it. The Army calls this a formal hearing. This hearing is to give you the chance to make the PEB aware of facts that you believe may have a bearing on the outcome of your case.
 - b. If you demand a formal hearing, you may choose to be present or not. If you choose to be present at the hearing and do not live near the PEB, the Army will pay your transportation costs to and from your home. The Army will also pay reasonable living costs while you attend the hearing.
 - c. If you demand a formal hearing, the Army will provide you an Army attorney to counsel and represent you. He will be thoroughly familiar with the physical disability system. You may, if you wish, provide your own counsel at your own expense. If you do not attend the hearing and do not select your own counsel, the Army attorney will represent your interest.
5. The findings and recommendations of the PEB will be reviewed before final approval and disposition of your case. If any modifications are proposed that would reduce the percentage ratings assigned or change disposition of your case, you will be informed so that you can rebut the proposed change.
6. Please review again the entries on the DA Form 199. Obtain advice from the PEBLO named below if needed. Then check the box in block 13, which shows your decision. Retain the carbon copy of the form for your file. Mail the original DA Form 199 within 7 days. If we do not receive your reply within a reasonable time, we will assume you agree with the findings and recommendations. Final action will be completed.

FOR THE PRESIDENT:

2 Encl

(recorder)

1. DA Form 199 (Dupe)

2. Return envelope

CF: PEBLO (name)

(MTF and address)

(phone: area code & number)

Figure 7-1. Recommended findings of Physical Evaluation Board

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(office symbol)

(date)

SUBJECT: Retention on the Temporary Disability Retired List (TDRL)

1. This Physical Evaluation Board (PEB) has reevaluated your physical condition. Based on the thorough review of your most recent medical evaluation and all other available medical records, the PEB recommends that you be retained on the TDRL with reexamination during the month of

2. While you are retained on the TDRL, your disability rating remains unchanged. Therefore, no appeal of these proceedings is authorized. Should Headquarters, US Army Physical Disability Agency modify the recommendation, you will be notified and advised of your appeal rights.

FOR THE PRESIDENT OF THE PHYSICAL EVALUATION BOARD:

1 Encl
Cy DA Form 199

Figure 7-2. Notice of Retention on TDRL.

Appendix A References

Section I Required Publications

AR 40-3

Medical, Dental, and Veterinary Care, (Cited in paras 3-5, 3-11, 4-8, 4-11, 4-12, 6-10, and 8-2.)

AR 40-501

Standards of Medical Fitness. (Cited in paras 2-1, 4-8, and 4-12.)

AR 135-200

Active Duty for Training and Annual Training of Individual Members. (Cited in paras 2-6 and 4-15.)

AR 140-120

Medical Examinations. (Cited in paras 4-7 and 8-2.)

AR 310-10

Military Orders. (Cited in para 7-20.)

AR 310-25

Dictionary of United States Army Terms. (Cited in para 1-4.)

AR 310-50

Catalog of Abbreviations and Brevity Codes. (Cited in para 1-4.)

AR 600-33

Line of Duty Investigation. (Cited in paras 2-4, 4-12, 4-15, 4-18, and 4-22.)

AR 600-200

Enlisted Personnel Management System. (Cited in paras 4-15 and 6-9.)

VOL I, 8th9th Ed, International Classification of Diseases.

(Cited in app B.)

VA Physicians Guide—Disability Evaluation Examinations.

(Cited in para 4-12.)

VA Schedule for Rating Disabilities.

(Cited in para 2-5 and app D.)

Section II Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 600-6

Individual Sick Slip

AR 601-210

Regular Army and Army Reserve Program

AR 630-10

Absence without Leave and Desertion

AR 635-100

Officer Personnel

AR 635-200

Enlisted Personnel

DOD Military Pay and Allowances Entitle- ment Manual

United States Code

Titles 10 and 32

Tax Reform Act of 1976

Joint Travel Regulations

DOD Directive 1332.18

Uniform Interpretation of Laws Relating to the Separation from the Military Service by Reason of Physical Disability

Section III Required Forms

DA Form 2

Personnel Qualification Record. (Cited in para 4-15.)

DA Form 2-1,

Personnel Qualification Record Part II. (Cited in para 4-15.)

DA Form 199

Physical Evaluation Board Proceedings. (Cited in paras 4-15 and 4-18.)

DA Form 664

Service Member's Statement Concerning Application for Compensation from the Veterans Administration. (Cited in para 5-5.)

DA Form 2173

Statement of Medical Examination and Duty Status. (Cited in para 4-15.)

DA Form 3340

Request for Regular Army Reenlistment or Extension. (Cited in para 6-18.)

DA Form 3947

Medical Evaluation Proceedings. (Cited in paras 4-15 and 4-18.)

DA Form 4368-R

Data Required by the Privacy Act of 1974. (Cited in para 4-20.)

DD Form 173

Joint Message Form. (Cited in para 4-15.)

DD Form 214

Certificate of Release or Discharge from Active Duty. (Cited in para 5-5.)

DD Form 261

Report of Investigation—Line of Duty and Misconduct Status. (Cited in paras 2-4 and 4-15.)

DD Form 1610

Request and Authorization for TDRL Travel of DOD Personnel. (Cited in para 7-9.)

SF 88

Report of Medical Examination. (Cited in para 4-15.)

SF 502

Clinical Record—Narrative Summary. (Cited in para 4-15.)

Section IV Referenced Forms

DA Form 201

Military Personnel Records Jacket.

DD Form 256A

Honorable Discharge Certificate.

DD Form 257A

General Discharge Certificate.

DD Form 689

Individual Sick Slip.

DD Form 794A

Discharge Certificate [Under Other Than Honorable Conditions]

Appendix B Army Application of the Veterans Administration Schedule for Rating Disabilities

Section I General Rating Policies

B-1. Contents of section I

Section I replaces or modifies certain of the VASRD paragraphs that pertain to VA determination of service-connected disabilities, internal VA procedures or practices, and other paragraphs that do not apply to the Army. Rating policies that apply to the Army but are not made clear by the VASRD are addressed.

B-2. Purpose of the Veterans Administration Schedule for Rating Disabilities (VASRD)

Congress established the VASRD, or the VA Schedule, as the standard under which percentage rating decisions are to be made for disabled military personnel. Such decisions are to be made according to Title IV of the Career Compensation Act of 1949 (Title IV is now mainly codified in chap 61 of Title 10, United States Code). Not all the general policy provisions as set forth in paragraph 1-31 of the VA Schedule apply to the Army.

B-3. Essentials of rating disabilities

a. *The VASRD.* The VA Schedule is primarily a guide for evaluating disabilities resulting from all types of diseases and injuries encountered as a result of, or incident to military service. Percentage ratings in the VA Schedule represent the average loss in earning capacity resulting from these diseases and injuries. The ratings also represent the residual effects of these health impairments on civil occupations. Because of differences between Army and VA applications of rating policies, differences in ratings may result. A member may submit evidence, in support of his appeal, in cases of such a difference in rating.

b. *Medical treatment at the time of voluntary/mandatory separation/retirement.* Many medical and surgical procedures are performed when a person is nearing the end of his military career. These are intended to improve a member's health, not to render him unfit. The principles of paragraphs 2-3b and c must be considered at the termination of service as well as for EPTS conditions. Corrective treatment and convalescence will not be considered as a valid contribution to disability unless unexpected adverse effects occur that are disabling, or contribute to disability and are ratable.

c. *Failure to comply with prescribed treatment.* There are many conditions such as neuropsychiatric disorders, asthma, hypertension, epilepsy, diabetes, certain injuries, etc., that may be improved sufficiently by

treatment to prevent disability, or to significantly decrease it. If a member refuses to submit to accepted prescribed treatment, any unfitting disability that results from such ~~referral/refusal~~ will not be rated unless refusal resulted from impaired judgment or lack of insight that is part of his condition.

d. *Objective medical findings and disability ratings.* Physical laboratory X-rays and other findings that are not, in themselves, ratable. A rating for a disability must be based on demonstrable impairment of function unless otherwise provided for in this regulation.

B-4. Total disability ratings

Consider total disability to exist when a member's impairment is sufficient to make it impossible for an average person to follow a gainful civilian occupation. Thus, in cases in which the VASRD does not provide a 100-percent rating under the appropriate (or analogous) VA Code, a member may be assigned a disability rating of 100 percent if his impairment is sufficient to render it impossible for him to be gainfully employed.

B-5. Convalescent ratings

Under certain diagnostic codes, the VA Schedule provides a convalescent rating to be awarded for specified periods of time without regard to the actual degree of impairment of function. Such ratings do not apply to the Army since the purpose of convalescent ratings is accomplished by other means under disability laws. Convalescence will ordinarily have been completed by the time optimum hospital improvement (for disposition purposes) has been attained.

B-6. Rating of disabilities aggravated by active service

When considering EPTS cases involving aggravation by ~~action~~active service, the rating will reflect only the degree of disability over and above the degree existing at the time of entrance into the active service, less natural progression occurring during active service, with consideration for time in service as required in section IV, paragraph 4-18e(3) and (4). This will apply whether the particular condition was noted at the time of entrance into the active service or is determined upon the evidence of record or ~~acceptable~~accepted medical principles to have existed at that time. Therefore, it is necessary to deduct from the present degree of disability, if ascertainable, the degree of the disability existing at the time of entrance into active service and also the natural progression that has occurred during active service in terms of the rating schedule.

a. If the disability is total (100 percent) and *service aggravation has occurred*, the EPTS factor will be recorded but no deduction in compensable rating will be made.

b. ~~If the disability at the time of evaluation is no greater than EPTS, the condition cannot be considered aggravated and will be "NR" (Not Ratable). (Zero ratings do not apply in this instance.) (Rescinded.)~~

c. If disability at the time of entrance into the service is not ascertainable in terms of the VA Schedule, no deduction will be made.

B-6.1 EPTS-Not Service Aggravated

If the disability at the time of evaluation is not greater than EPTS, the condition cannot be considered service-aggravated and will be rated NR (not ratable). (Zero ratings do not apply in this instance.)

B-7. Use of VA Code Numbers

The VA code numbers appearing opposite the listed ratable disabilities are numbers for only showing the basis of the evaluation assigned and for statistical analysis. Use great care in the selection of the applicable code number and in its citation on the rating sheet. The written diagnosis entered on the rating form should include any description considered necessary to indicate the extent of severity or etiology of the condition. In the selection of code numbers, injuries generally will be represented by the number assigned to the residual condition on the basis of which the rating is determined. When disease conditions exist, give preference to the number assigned to the disease itself. If the rating is determined on the basis of residual conditions, the number appropriate to the residual condition will be added, preceded by a hyphen. Thus, atrophic (rheumatoid) arthritis rated as ankylosis of the lumbar spine would be coded "5002-5289." In this way, the exact source of each rating can be easily identified. In the citation of disabilities on rating sheets, the diagnostic terminology may be any combination of the medical examiner's or VA Schedule terminology that accurately reflects the degree of disability. Residuals of diseases or therapeutic procedures will not be cited without reference to the basic disease. Hyphenated codes are used in these circumstances:

a. When the VA Schedule provides that a listed condition is to be rated as some other code; e.g., myocardial infarction rated as arteriosclerotic heart disease (7006-7005) or nephrolithiasis rated as hydronephrosis (7508-7509).

b. When the schedule provides a minimum rating and the disability is being rated on residuals; e.g., multiple sclerosis rated as incomplete paralysis of all radicular groups (8018-8513).

c. When an unlisted condition is rated by analogy; e.g., spondylolisthesis rated as sacroiliac injury and weakness (5299-5294). When an unlisted disease, injury, or residual condition is encountered, requiring rating by analogy, the diagnostic code number will be "built-up" as follows: The first two digits will be selected from the part of the schedule most closely identifying the part, or system, of the body involved; the last two digits will be "99" for all unlisted conditions. This procedure will facilitate a close check of new and unlisted conditions, rated by analogy.

B-8. New growths, malignant

The following policies apply to malignant new growths except as modified by notes for specific tumors in section II of this appendix. Special consideration must be given to determination of fitness or unfitness, since many members are not disabled by these diseases, their treatment, or the outcome. The following are *general guidelines*; exceptions will arise that require judgment based on individual circumstances.

a. A member with a diagnosed malignant tumor that has metastasized, and has not favorably responded to therapy, will be permanently retired, if unfit, at 100 percent. In such cases, metastasis may be defined as a distant spread of the tumor or as local invasion that renders treatment noncurative.

b. A member with a diagnosed malignant tumor that has not metastasized and has responded favorably to therapy to the extent no current evidence of disease exists will not be found unfit unless he is functionally unfit because of residual condition due to the direct effect of the tumor or due to the treatment of the tumor. If found unfit, he may be placed on the TDRL, if appropriate.

c. When chemotherapy is used as a *definitive treatment* or as part of such treatment, a member may be retained on active duty, placed on TDRL or permanently separated, as indicated by individual circumstances.

d. When chemotherapy is used as an *adjuvant* and no evidence of an unfitting residual malignant tumor exists, its use ordinarily will not influence the disposition of a case unless adverse effects are encountered.

Section II Rating Principles

B-9. Contents of section II

Contents of section II contain principles for rating disabilities. These instructions are derived from and supplement the VASRD where additional guidance or clarification is needed for processing Army disability cases. Occasionally, a medical condition which causes or contributes to unfitness for military service is of such mild degree that it does not meet the criteria even for the lowest rating provided by the VA schedule under the applicable code number. A zero percent rating may be applied in such cases even though the lowest rating is 10 percent or more, except when "minimum ratings" are specified.

B-10. Application of specific parts of the VA Schedule

Instructions and explanatory notes that follow are cited according to paragraph and code numbers in the VASRD. Only those portions requiring special comment or those that have been the cause of misunderstanding in the past are included. Comments and rating instructions also supplement the VA Schedule in those instances in which recent medical advances are inadequately covered. Revisions of the VASRD, after publication of this appendix, that address these specific

areas will take precedence unless found to be inappropriate to Army requirements. EPTS, when discussed hereafter, is subject to the provisions of section I, paragraph B-6.

5000. Osteomyelitis.

a. Minimum rating of 20 percent for active osteomyelitis does not apply when amputation of the part would be ratable at only 10 percent. In this case, the amputation rule does not apply. The following are examples:

(1) Active osteomyelitis, middle finger, rate 10 percent (amputation rule applies),

(2) Active osteomyelitis, little finger, distal to P.I.P., rate 10 percent (amputation rule does not apply).

b. Saucerization or sequestrectomy does not necessarily equate with stabilization or a cure.

c. Rate osteomyelitis extending into a major joint in accordance with amputation rule.

5002. Rheumatoid Arthritis.

a. *Active process*, rate under 5002, 5004, 5009, and 5017 based on clinical and laboratory features.

b. *Chronic residuals*, a rate under appropriate limitation of motion codes (5200 series) based on X-ray evidence plus clinical features.

c. Apply bilateral factor, if proper.

d. Do not combine ratings for active process (5002) with ratings for residuals (5200 series).

e. Rate lung involvement separately under 6802 and enteropathies separately under 7300 series.

5003. Arthritis, degenerative, hypertrophic.

These are rated as follows:

a. Each major joint (or grouping of minor joints) with objective limitation of motion plus X-ray evidence—10 percent. (The bilateral factor applies).

b. X-ray evidence of two or more major joints or groups of minor joints, plus occasional exacerbations of incapacitating symptoms—*total 20 percent*. X-ray evidence alone without symptoms—10 percent. No bilateral factor applies.

c. If the limitation of motion of affected joints warrants rating under 5200 series or 9905, rate accordingly; bilateral factor applies.

d. If more than two major joints or groups of minor joints are involved, rate separately and combine the ratings for those joints which would merit a rating under the 5200 series or 9905.

e. For rating purposes, combinations of interphalangeal, metacarpal phalangeal and metatarsal phalangeal joints are groups of minor joints equivalent to a major joint. Likewise, each segment of the spine (cervical, thoracic lumbar) and both sacroiliac joints together constitute groups of minor joints. The lumbosacral joint is a major joint.

5004-5009 and 5013-5024, *Arthritis, miscellaneous*. Rate all of the septic, infectious, or other arthritides on the basis of associated system symptoms according to VASRD code 5002. Reiters syndrome, spondylitis, transplantation antigen-related arthritis, or arthritis secondary to bowel disease are examples.

5051-5056. *Prosthetic implants*. These do not necessarily render members unfit. If a member is unfit at the time of a medical board, it may be appropriate to place on the TDRL. If unfit on reevaluation, consider permanent rating based on residual impairment. (Amputation rule applies.)

5126-5151. *Multiple finger disabilities*. A convenient method of computation has made the difficulty often encountered in rating multiple finger disabilities simpler. One may calculate an "average amputation level" for fingers involved by assigning graded values for each finger according to the level at which it was amputated. Graded values may also be assigned for the severity of the finger's ankylosis. The disability may then be rated according to the notes of instruction in the VASRD. The method is as follows:

a. *Step one*. Determine the grade value of each of the affected fingers from the chart below.

Defect of Individual Finger: Amputation through distal phalanx or distal joint—except the thumb—other than negligible tip loss
Rated as: Favorable ankylosis (Note c following code 5151, VASRD)
Grade: 1

Defect of Individual Finger: Amputation middle phalanx or distal phalanx of thumb
Rated as: Unfavorable ankylosis (Note b following code 5151, VASRD)
Grade: 2

Defect of Individual Finger: Amputation through proximal phalanx or proximal I-P joint
Rated as: Amputation (Note a following code 5151, VASRD)
Grade: 3

Defect of Individual Finger: Amputation of entire digit, with amputation or resection of more than one-half of the metacarpal
Rated as: Single finger amputation with metacarpal resection (code 5152-5156)
Grade: 4

b. *Step two*. Find the average grade value by dividing the total values for the individual fingers by the number of fingers involved. Round off fractions to the nearest whole number.

c. *Step three*. From the second and third columns of the chart above, determine:

(1) The correct category of the defects—favorable ankylosis, unfavorable ankylosis, amputation.

(2) The correct grade value for the average grade of the disabled hand. The proper code number rating can then be determined within that category according to the number of fingers involved. Example: An

evaluee has had his thumb amputated through the middle phalanx; the index and little fingers, through the middle phalanges; and the entire ring finger, including more than one-half of the metacarpal.

Grade value for the thumb	2
Grade value for the index finger	2
Grade value for the little finger	2
Grade value for the ring and metacarpal	4
Total value	10
Total value ÷ Number of fingers involved = Ratable value	
10 ÷ 4 = 2½ = 3	

Referring to the chart above, grade 3 is ratable as unfavorable ankylosis. Unfavorable ankylosis of four fingers—thumb, index, ring, and little—is ratable under VA code 5127 at 60 percent for major hand, or 50 percent for minor hand. Figure B-1 illustrates these values.

5205–5208. Ankylosis or limitation of motion of elbow and forearm.

a. 5025. When a rating for unfavorable ankylosis is not based upon the additional finding of complete loss of supination or pronation, the rating may be combined with 5213, subject to the amputation rule. If less than complete loss of supination or pronation occurs, 5205 may be combined with 5213, but not to exceed the rating for unfavorable ankylosis under 5205.

b. 5206–5208. These codes will combine with 5213 but not to exceed the rate for unfavorable ankylosis under 5215. If current results are unsatisfactory, rate equivalent to amputation of humerus below insertion of deltoid or flail elbow, whichever is proper. If the member is placed on the TDRL, rate residuals as indicated when his condition is stabilized.

5209–5212. Other impairments of elbow, radius, and ulna. Do not combine these codes with 5213.

5213. Impairment of pronation and supination.

a. Limitation of either pronation or supination may be rated. Never rate both in the same arm, however. Full pronation is the position of the hand flat on the table. Full supination is the position of the hand palm up. In rating limitation of pronation, the “arc” is from full supination to full pronation. The “middle” of the arc is the position of hand, palm vertical to the table.

b. An inconsistency exists in the schedule for the ratings for the major arm when “hand fixed near the middle of the arc of moderate pronation” is rated 20 percent, while limitation of pronation with “motion lost beyond middle or arc” is rated 30 percent. Cases in which this conflict arises should be resolved in the member’s favor.

c. “Motion lost beyond last quarter of arc” means that the forearm can be pronated from 0 degrees through 40 degrees but no further. (See para 71, VASRD, and the illustration of forearm motion (fig. B-2).)

5205–5213. Absence or limitation of motion of elbow and forearm.

a. 5205 may be combined with 5213; subject to the amputation rule.

b. 5206–5208. These codes will combine with 5213 but not to exceed the rating for unfavorable ankylosis under 5205.

c. 5209–5212. Do not combine with 5213 (impairment of pronation and supination).

5251–5253. Limitation of extension and flexion of the thigh. Ratings allowable under these codes may not realistically reflect the degree of disability because of basic or related disability of the sacroiliac region, pelvis, acetabulum, or head or femur. More suitable ratings may be selected from VA code 5250 (hip, ankylosis of), VA code 5255 (femur, impairment of, with hip disability) or VA code 5294 (sacroiliac injury). (See para 67 of the VA Schedule for comments on pelvic skeletal fractures.)

5255–5262. Defects of long bones of the lower extremity. Apply these codes (malunion with adjacent joint disability) when correct to avoid multiple codes and ratings. When both a proximal and a distal major joint are affected, however, an additional rating may be indicated for the less disabled joint. These codes are often appropriate when joint surfaces are included in the fracture lines.

5257. Knee, other impairments. Patellectomy, chondromalacia, osteochondritis dissecans should be rated under 5003. Exceptions are cases in which objective findings warrant rating under code 5257.

5258–5295. The spine.

a. The joints of the cervical, dorsal, and lumbar segments of the spine are each regarded as a group of minor joints. The combination of sacroiliac and lumbosacral joints are also regarded as a group of minor joints. Each group of joints is ratable as one major joint only when separate ratings are justified by X-ray evidence of pathology in addition to—

(1) Limitation of motion or muscle spasm.

(2) Other evidence of painful motion of the individual segments involved.

b. Arthritis impingement on nerve roots produces degeneration of the nerve function or frequent, prolonged attacks of neuralgia. These attacks are distinguished from brief episodes of radiating pain. The arthritic impingement should be rated as one entity under codes for neurologic conditions. The exception is a case in which the limitation of spinal motion justifies an additional rating.

5285. Residuals of fracture of vertebra.

a. The need for a member to wear some type of brace to restrict lumbar or dorsolumbar movement is not similar to the requirement for a jury mast type of neck brace for abnormal mobility after cervical

fracture. When no cord involvement is evident, the disability should be rated according to the degree of limited motion with brace in place.

b. The addition to the rating of 10 percent for demonstrable deformity of a vertebral body is intended only for a substantial degree of deformity (i.e., greater than 50 percent compression). It should not be added in those instances of insignificant deformity such as slight shortening of the anterior vertical dimension of the body. When a successful spinal fusion has been performed because of the deformity for increasing the degree of instability has usually been removed, or so far, reduced, that the additional of 10 percent of the rating is not justified.

**Table B-1
Conversion Table**

1 centimeter	= 0.3937 inch
1 inch	= 2.54 centimeters
1 square centimeter	= 0.1550 square inch
2 square centimeters	= 0.3100 square inch
3 square centimeters	= 0.4560 square inch

Diameter of Circle	Area of Circle	
	Square Centimeters	Square Inches
1 centimeter	0.7854	0.1216
2 centimeters	3.1416	0.4869
3 centimeters	7.0686	1.0956
4 centimeters	12.5664	1.9478
½ inch*		0.19635
1 inch		0.7854
1½ inches		1.76715
2 inches		3.1416

*Size of the average diagnostic burr hole.

5296. The skull.

a. Table B-1 may be helpful as a reference in determined proper ratings.

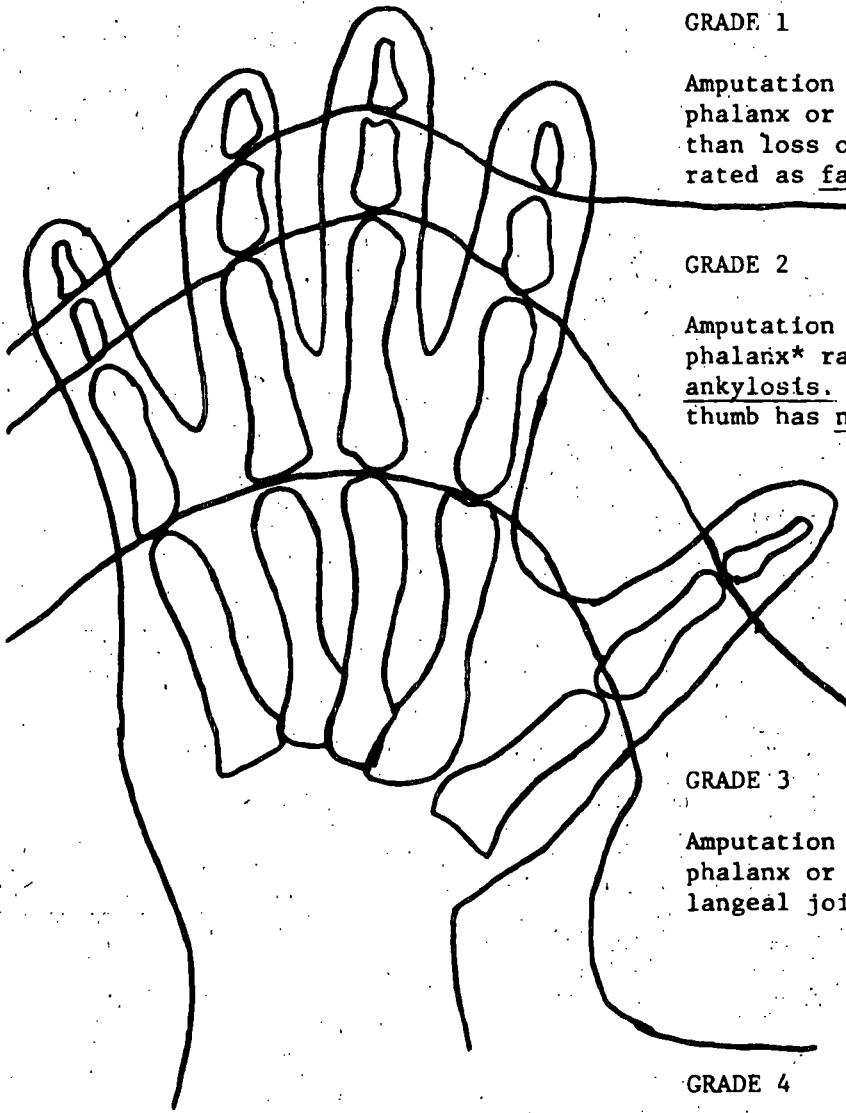
b. Considering total bone loss for multiple areas such as in trephining, the rating should not be assigned based upon “coin measurement.” The rating should be assigned on the basis of the aggregate area loss.

c. Ratings will be made based on the defect present at the time of evaluation.

5297. Removal of ribs. This requires the complete removal of the ribs from the vertebral angle to the costocartilaginous junction. Removals to a lesser degree are rated as rib resections.

5299 and 5294. Spondylolisthesis and arthritis of lumbosacral spine. These defects will be rated by analogy to code 5295 only when the degree of severity meets criteria in ratings in excess of 10 percent under this code. In cases other than traumatic spondylolisthesis, subtract EPTS factor for spondylolysis when EPTS disability can be determined. Reference aggravating factors when present.

5301–5326. Muscle injuries. In rating combinations of muscle injuries do not exceed the amputation rule. Avoid pyramiding; do



GRADE 1

Amputation through the distal phalanx or distal joint (other than loss of negligible tip) rated as favorable ankylosis.

GRADE 2

Amputation through the middle phalanx* rated as unfavorable ankylosis. (*For rating purposes thumb has no distal phalanx.)

GRADE 3

Amputation through the proximal phalanx or proximal interphalangeal joint rated as amputation.

GRADE 4

Amputation or resection of metacarpel bones, more than one-half of the bone lost.

Figure B-1. Rating of multiple finger disabilities

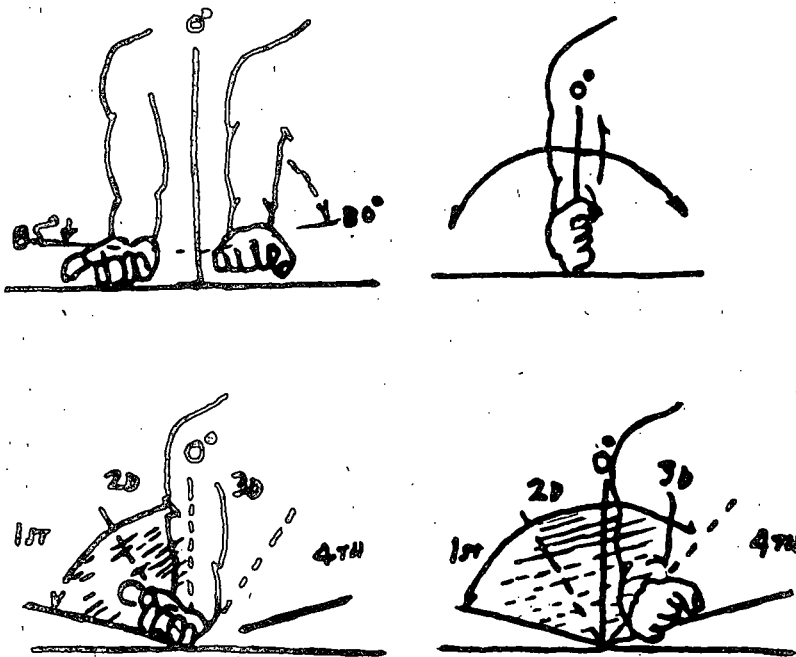


Figure B-2. Illustration of forearm motion

not rate both an ankylosed joint and an injured muscle acting on that joint. Do not combine ratings for bone and joint impairment with muscle and/or nerve impairments.

6000-6092. Diseases of the eye.

a. The general principles of rating disability of the eye in the VASRD are based primarily on impairments of:

- (1) Distant visual acuity.
- (2) Visual fields.
- (3) Extra-ocular muscle function.

b. Combined ratings affecting the same eye cannot exceed the 40 percent rating for enucleation of that eye, except that cosmetic, facial disfigurement with or without prosthesis in place is ratable separately and can be combined with loss of vision or enucleation.

c. Ratings for defects in visual fields or diplopia require appropriate measurements as outlined in the VASRD, pages 76-77, and must be submitted and interpreted by the medical board.

d. Rate retained foreign bodies as continued active pathology under 6009 unless specifically determined by ophthalmology to be innocuous.

e. Hereditary, congenital, and other EPTS defects, such as retinitis pigmentosa, keratoconus, and amblyopia; few, if any, of these defects are aggravated by normal military service, including training exposure to toxic or irritant substances. Such conditions known to be naturally progressive will be given final disposition. Only service-related progression will be considered in computing a rating.

f. Glaucoma, simple, primary noncongenitive. The minimum rating applies if the diagnosis is satisfactorily established, whether or not visual acuity or field of vision has

been affected. The rating is for the disease rather than for functional impairment of an individual organ. The rating applies whether the disease process involves one or both eyes.

g. Aphakia is not unfitting, as such. MOS and other service determinants must be considered.

h. Scotoma, pathological. The rating is 10 percent whether unilateral or bilateral. It is to be combined with other ratings with the reservation that the rating for one eye may not exceed 30 percent unless there is enucleation or a serious cosmetic defect. Central scotoma cannot, however, be combined with central visual loss.

i. The AMA "Guides to the Evaluation of Permanent Impairment" may be used for additional guidance in determining ratings for diplopia, loss of visual fields, and scotomata.

6200-6297. Diseases of the ear.

a. The general scheme for rating diseases of the ear are based on:

- (1) Infection.
- (2) Disturbance of balance.
- (3) Impairment of auditory acuity and tinnitus.
- (4) Disfigurement.

Since the above entities give rise to distinct separate impairments, separate rating and combining of distinct disabilities do not constitute pyramiding.

b. AR 40-3 specifies the requirements on evaluation and disposition of individuals with deafness. Included is the requirement for pure tone audiometry as well as speech reception threshold and discrimination testing.

6309. Rheumatic fever. Rate residual impairments under the proper code. When a member is determined to be unfit because of recurrence of disease, and he has no residual functional impairment, consider using the zero-percent rating (see VASRD para 31).

6350. Lupus erythematosus, systemic. Rate connective-tissue diseases (vasculitis, collagen diseases, immune complex diseases, etc.) and other disseminated diseases, not elsewhere covered, under this code.

6600-6603. Diseases of the trachea and bronchi. Unless contra-indicated, pulmonary function tests must confirm the clinical diagnosis and severity under these codes. If the member's condition is subject to significant variation over time, a single clinical and pulmonary function evaluation may not be adequate. Response to therapy is to be considered in all cases. The following pulmonary function tests values will serve as guidelines in determining ratings.

Chronic obstructive pulmonary disease (COPD)—before bronchodilators: FEV 1%, 55 or less
Rating: Severe

Chronic obstructive pulmonary disease (COPD)—before bronchodilators: FEV 1% 55-65
Rating: Moderate, moderately severe

Chronic obstructive pulmonary disease (COPD)—before bronchodilators: FEV 1% 65-75
Rating: Mild

Chronic obstructive pulmonary disease (COPD)—before bronchodilators: FEV 1% 75 or better
Rating: Normal

Note: (Compare with after bronchodilators)

Chronic restrictive pulmonary disease: Vital capacity—50% or less
Rating: Severe

Chronic restrictive pulmonary disease: Vital capacity—50-65%
Rating: Moderate, moderately severe

Chronic restrictive pulmonary disease: Vital capacity—65-80%
Rating: Mild

Chronic restrictive pulmonary disease: Vital capacity—80% or better
Rating: Normal

Note: The AMA "Guide to the Evaluation of Permanent Impairment," while differing slightly from the above values, is otherwise helpful in interpreting clinical and functional values.

6730-6732. Active tuberculosis. Active tuberculosis will be rated under code 6730. All periods of time specified in the VASRD for the management of tuberculosis, active or inactive, apply to the VA and do not apply to the Army. Treatment and clinical response will serve as the criteria for disposition. Rating for residuals will be based on functional impairment.

6803-6806, 6808. *Mycotic pulmonary infections*. Rate active disease by analogy to code 6821.

6807. *Aspergillosis of lung*. This code refers only to invasive aspergillosis or to aspergillosis. Rate active or recurrent allergic aspergillosis by analogy to code 6602 (asthma) raised to next higher level. Rate permanent residuals of allergic aspergillosis analogous to code 6802.

6810. *Pleurisy, serofibrinous*. If significant ventilatory impairment is present, rate as analogous to code 6811.

6815. *Pneumonectomy*. See note (2), which follows code 5297 in VASRD. This note provides further rating guidance in cases of this type.

7000 series. Cardiovascular disease.

a. *Avoid pyramiding*. Only one rating should be given for all manifestations of cardiovascular-renal disease when, according to accepted medical principles, the conditions have the same origin or cause. For example, hypertension, arteriosclerosis, and end organ nephropathy are so closely associated that they may be regarded as one clinical entity. The disability should be rated under the code representing the predominant signs and symptoms. Sometime the related manifestations in another body system will be so severe as to increase the member's overall impairment to the point that the next higher percentage under the selected code will be justified. The note in the VASRD under code 7507 is pertinent in this case. Enlargement of heart will be determined by objective evidence using appropriate measures other than electrocardiogram.

b. *Valvular heart disease*. Valvular heart disease not of arteriosclerotic or hypertensive origin should be rated as rheumatic heart disease, code 7000.

c. *Rheumatic heart disease*. Assuming the existence before service of a ratable degree of rheumatic heart disease is sometimes justified, even though its presence was not previously recorded. Rateable rheumatic heart disease may exist prior to service even though its presence was not previously recorded. Accepted medical principles must be applied to determine the extent of disability that existed prior to service, natural progression and service aggravation.

7005-7017. Diseases of the coronary arteries and surgical procedures.

a. In assigning ratings under these codes the criteria are as follows:

(1) *The 100% rating*. When more than sedentary employment is precluded.

(2) *The 60% rating*. When more than light manual labor is precluded.

(3) *The 30% rating*. When more than ordinary manual labor is precluded.

b. Criteria of function impairment for rating purposes are as follows:

(1) *Sedentary employment*. Work that is not time dependent.

(2) *Light manual labor*. "Bench work" equivalents.

(3) *Ordinary manual labor*. Leg, back and arm effort, time dependent.

(4) *Strenuous labor*. Repetitive, rapid combined arm, leg, trunk effort.

c. *Coronary bypass surgery*. Value prosthesis, or other cardiac surgery will be rated on the extent of residual function impairment when the member's condition is stable for rating purposes. If stability cannot be established, a period of TDRL may be required.

7100. *Arteriosclerosis, general*. The 20 percent rating under this code is rarely correct. Evidences of the disease preferably should be rated for impairment of the body system involved to the greatest degree.

7301-7329. *Diseases of the digestive system*. Special note will be made of VASRD introductory remarks.

7307. *Gastritis, hypertrophic*. Identification by endoscopy is required. Do not rate separately if other conditions are present and produce a common impairment (see above).

7345. Hepatitis, infectious.

a. *Acute infectious hepatitis* may be associated with "A", "B", or variant antigens. The disease will usually resolve without residual impairment at which time liver function tests return to normal.

b. *Chronic persistent hepatitis* is a condition with minimally disturbed histology and live function tests. There is no, or minimal, persistent disability or progression and both time and supporting evidence may be needed. Rating for residuals is seldom justified. Placement on the TDRL may be proper. However, when the clinical and laboratory course (particularly in the presence of persistent antigenemia) indicates a need for continued observation to rule out chronic active hepatitis both time and supporting evidence may be needed.

c. *Chronic active hepatitis* is a frequently progressive condition that may, or may not, readily be associated with a demonstrable antigen. Since the course of the disease is often difficult to predict, placement on the TDRL may be proper before permanent disposition is made.

7347. *Pancreatitis*. If diabetes is present, the predominant disease should be rated with consideration given to the other under a single code to avoid pyramiding.

7500-7531. *The genito-urinary system*. Sterility and impotence are not ratable entities.

7500-7509. *Upper urinary tract*. In assessing impairment of upper urinary tract, the endogenous creatinine clearance tests serve as guidelines for evaluating function. Normal creatinine clearance is 80-139 milliliters

(ml)/minute in men and 80-125 ml/minute in women.

Renal impairment: Marked

Creatinine clearance: Less than 28 ml/minute

Renal impairment: Moderate

Creatinine clearance: 28-52 ml/minute

Renal impairment: Definite

Creatinine clearance: 52-80 ml/minute

7512. *Total incontinence*. May not be rated as bladder fistula, 100 percent, when use of an appliance is unsatisfactory or not feasible.

7526. *Prostate resection*. Minimum rating requires presence of symptoms and objective evidence of impairment.

7528. *New growths, malignant, any specified part of genitourinary system*. Many malignant tumors of the genitourinary tract are subject to radical cure, even if widespread metastases have taken place. Completion of treatment and follow-up on active duty are desirable. If circumstances of duty assignment, adverse reaction to treatment or persistent evidence of tumor activity interfere with duty, TDRL may be considered. In some instances specific tumors may be found to be refractory to all treatment and final disposition should be made.

7617-7620. *Rating gynecological conditions*. Paragraph 116 of the VASRD specifies that "the excision of the uterus, ovaries, etc., prior to the natural menopause is considered disabling." In this context, "disabling" refers to eligibility for VA compensation, not for active military service. These conditions will not be rated unless residuals support rating under some other code, or they were rated prior to 15 February 1980 under previous regulations.

7626. *Removal of mammary glands*. Simple or radical mastectomy, unilateral or bilateral, is not unfitting, per se, in male or female. Unfitness is based on residual impairment of arm or chest wall or effects of X-ray or other treatment.

7703. *Leukemia*. Leukemia requiring the use of chemotherapeutic agents is rated analogous to leukemia requiring irradiation or transfusion. While some prolonged remissions and "cures" are being achieved with acute leukemia, this is not the expected outcome and permanent retirement should be considered in most cases at a maximum rating. Members with chronic leukemia who require treatment are often fit for prolonged periods of time with few profile restrictions. Such cases must be individually judged on their own merits. The principles of 7709, paragraph b, should be considered in leukemia cases.

7706. Splenectomy. Splenectomy for trauma is ratable at 30 percent immediately following (if member otherwise unfit). Remote splenectomy is not ratable unless absence of function is determined. Do not rate if performed incident to the direct management of an underlying hematologic condition.

7709. Lymphogranulomatosis. (Hodgkin's disease).

a. Clinical staging serves as a general guide for treatment, rating, and disposition of Hodgkin's disease. The following table B-2 can be applied for members with the understanding that many advances in treatment are taking place that may permit exceptions:

b. Prolonged remission and cures, even with salvage treatment, are becoming more commonplace. Regardless of the pre-treatment stage of the disease, retention on active duty during treatment or return to active duty after treatment on the TDRL may be possible. Intense treatment, however, is an extremely traumatic physiological experience and degradation of both physical and mental functions may be disabling for varying periods of time. Final disposition must be individualized according to both subjective and objective residuals.

7801-7802. Scars, burn. When calculating burn areas, figure B-3 and the following measurements may be of assistance.

Average 70 kg (150 lbs) male body surface = $1.7m^2$
 $2636 \text{ in.}^2 = 18.3 \text{ ft.}^2$
 1 meter = 39.375 in.
 $1 \text{ meter}^2 = 1550.4 \text{ in.}^2$

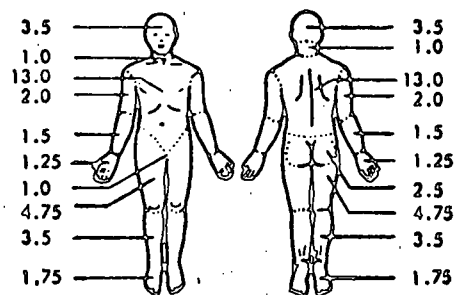


Figure B-3. Estimation of body surface area (Berkow)

7801. Scars, burns, third-degree. These instructions supplement the criteria in the VASRD to permit realistic rating of actual impairment of function.

a. Rate third-degree burn scars causing limitation of function to underlying structures by analogy to other codes that reflect the functional impairment.

b. Rate unsuccessfully healed or grafted areas according to code 7801. Footnotes in the VASRD apply.

c. Rate successfully grafted third-degree burn area as second-degree burns under

surface area measurement, based upon application to the "average 70 kgm. man" with a body surface area of 2,636 sq. in. (18.3 sq. ft.).

Body surface: Anterior or posterior head
Percent of body surface: 3.5
Area: 92 square inches; .64 square feet

Body surface: Anterior or posterior neck
Percent of body surface: 1.0
Area: 1.0 square inches; .18 square feet

Body surface: Anterior or posterior trunk
Percent of body surface: 13.0
Area: 343 square inches; 2.38 square feet

Body surface: Anterior or posterior arm
Percent of body surface: 2.0
Area: 53 square inches; .37 square feet

Body surface: Anterior or posterior forearm
Percent of body surface: 1.5
Area: 40 square inches; .27 square feet

Body surface: Dorsal or palmar hand & fingers
Percent of body surface: 1.25
Area: 33 square inches; .23 square feet

Body surface: Buttock
Percent of body surface: 2.5
Area: 66 square inches; .46 square feet

Body surface: Genitalia
Percent of body surface: 1.0
Area: 26 square inches; .18 square feet

Body surface: Anterior or posterior thigh
Percent of body surface: 4.75
Area: 125 square inches; .87 square feet

Body surface: Anterior or posterior calf
Percent of body surface: 3.5
Area: 92 square inches; .64 square feet

Body surface: Dorsal foot or sole, incl. toes
Percent of body surface: 1.75
Area: 46 square inches; .32 square feet.

code 7802. The footnote in the VASRD applies.

7802. Scars, burns, second-degree. VA code 7802 limits rating to 10 percent for second-degree burns affecting an area or areas of approximately 1 square foot. When there are widely separated areas and each area is approximately 1 square foot or more, 10 percent may be assigned for each scar.

7913. Diabetes Mellitus.

a. The format published by the 1979 National Diabetes Group will serve as the basis for classifying diabetes mellitus. The severity of each case is to be individualized, taking into consideration the expected natural course of the variants of diabetes mellitus. Insulin dosage is not a good indicator of the severity of the disease and is only one of the factors to be considered in the overall evaluation of disease. Response to specific therapy, diet, activity, compliance, and time are all important. With adequate compliance, many diabetics are fit with minimum profile restrictions. This is particularly true of type II DM (adult onset type). Young adults with type I DM (juvenile onset) are high risks for retention. If unfitness derives, in part, from non-compliance with prescribed treatment, members will not be rated higher than their disease warrants when it is under prescribed treatment.

b. Diabetes controlled by diet and/or oral medication, without a need for daily insulin, and which does not impair health or vigor, or cause significant limitation of activity, is considered to be mild.

c. Care must be taken that ratings reflect the severity of the diabetes, as such, and that undue importance not be given to early or questionable complications. This is particularly true in considering ratings of 60 percent or above. In most instances, a lower rating is to be given and complications such as vascular insufficiency, visual defects, pruritis, and neuropathies rated should be rated separately. The presence of early or questionable complications in otherwise less than severe diabetes mellitus does not automatically warrant a higher rating.

8105. Chorea. Rate residuals of central nervous system diseases or injuries that are diffuse, with impaired motor function or loss of coordination, by analogy to this code.

9200-9511. Mental disorders.

a. Loss of function is the principal criterion for establishing the level of impairment resulting from mental illness. Loss of function is reflected in impaired social and industrial adaptability. Psychoses specifically include those disorders manifesting disturbances of perception, thinking, emotional control, and behavior, severe enough to hinder economic adjustment; i.e., hinder the member's capacity to perform military duties or to earn a living.

b. Refer to the member's social and industrial adjustment before his diagnosed psychiatric illness when assessing loss of

Table B-2
General guide for treatment, rating, and disposition of Hodgkins disease

Stage	(Stage A) Rating	(Stage B) Rating	Disposition (If Unfit)*
I	30	60	TDRL
II	30	60	TDRL
III	60	...	TDRL
III	...	100	Permanent Disability Retired List (PDRL)**
IV	100	100	PDRL**

*Fitness or unfitness is not determined, as a rule, until response to initial treatment has been observed.
 **TDRL may be considered as an exception when there has been a prompt, complete remission during the initial treatment phase.

function. Carefully review all pertinent information provided by the MEBD, TDRL examining physicians, and other competent medical authorities before arriving at a final determination. When there are differences in the information, resolve the differences before making a rating decision. Show clearly in the record of proceedings the action taken to resolve these differences.

c. To properly assess the degree of *permanent* impairment resulting from a psychotic process is often difficult during the weeks immediately following an acute episode. Sometimes a member's period of intensive in-hospital treatment has not been completed at the time of the initial medical board action. With the passage of time, the clinical picture tends to become stable. The degree of *permanent* impairment may then be estimated more accurately. When assessing impairment resulting from most schizophrenias and the major affective psychoses, an initial period of placement on TDRL (18 months) usually is warranted. A definitive determination of level of impairment usually is made at the close of that period. In a few instances, an additional period of TDRL tenure may be required because of continuing instability of the member's status. Every effort should be made, however, to complete adjudication of cases within a 3-year period of observation. The date of initial diagnosis reasonably may be considered as the starting time of the assessment period.

d. The VASRD places emphasis on impairment of social and industrial adaptability in calculating disability rating.

(1) Information which directly relates to social impairment includes but is not limited to—

(a) Living arrangements (by oneself, with parents and siblings, with wife and children);

(b) Marital status (single, married, separated, divorced, harmony or strife);

(c) Leisure activity (sports, hobbies, TV, reading, sleeping);

(d) Acquaintances (male, female, many, few);

(e) Substance use or abuse (alcohol, illicit drugs); and

(f) Police record.

(2) Information which directly relates to industrial impairment includes but is not limited to—

(a) Job stability (unemployed, part-time work, full-time job, quit, fired, promoted);

(b) Type of job (menial, responsible, OJT, technical, for a relative, for a private employer); and

(c) Schooling (grade, technical academic, high school, college, post-graduate).

e. In addition to the above-mentioned items of information that relate directly to the social and industrial adaptability, there are other factors that bear on the service member's degree of social and industrial adaptability. These factors include but are not limited to—

(1) *Mental competency.* The question as to whether or not a service member is competent to handle his financial affairs is stated by the MEBD and has an obvious bearing on his social and industrial adaptability.

(2) *Level of supervision.* There are several levels of supervision that are considered in assessing a service member's degree of social and industrial adaptability. The most disabling is constant hospitalization. Constant supervision at home or intermittent and repeated hospitalizations are disabling factors to be considered. Being placed in one's own custody suggests a low level of supervision.

(3) *Contact with reality.* Certain service members have lost all contact with reality and cannot tell fact from fantasy. Dreams, imaginations, delusions, and hallucinations are just as real to certain service members as actual events. The quality of loss of contact with reality as well as quantity of time that service member is preoccupied with loss of contact with reality are factors to be considered.

(4) *Potential for harm.* At times, individuals suffering from mental disorders may be dangerous to themselves or to others. They may be homicidal, suicidal or violently destructive of property. Their judgment may be so impaired that they could jeopardize or destroy a family, a business, or themselves, financially, socially, and/or legally.

(5) *Signs or symptoms.* The degree of social and industrial adaptability is influenced by the number and intensity and signs or symptoms of mental disorders. These signs or symptoms may be overtly apparent or they may be subtle and apparent only to skilled examiners. Their significance must be carefully evaluated. A partial list of the more common signs or symptoms includes but is not limited to—autism, ambivalence, inappropriate affect, dissociative thinking, bizarre behavior, delusions, hallucinations, hyperactivity, depression, disorientation, emotional lability, memory defects, unfounded somatic complaints, phobias, compulsions, lack of insight, poor judgment, etc.

(6) *Medication and/or psychotherapy.* Further indicators which give a clue to the degree of social and industrial adaptability are medication and psychotherapy. The type of medication (potent or mild) and the amount (large or small doses) of medication as well as the frequency (daily, weekly, or as needed) should be considered. The frequency of psychotherapy and by whom (psychiatrist, psychologist, social worker, nurse) it is administered also should be considered. The fact that a service member is receiving medication does not automatically place him at a certain level of disability.

f. The Army is using a nomenclature from *Diagnostic and Statistical Manual of Mental Disorders (Third Edition) (DSM III)* published by the American Psychiatric Association. DSM III became effective 1 July 1980. The Army uses the numerical coding system of *International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM)*. ICD-9-CM became effective 1 January 1979. Older Army records have

used various other editions of DSM, ICD, and Army regulations. The *Veterans Administration Schedule for Rating Disabilities (VASRD)* uses a combination of DSM II and DSM III. The PEB will use the same nomenclature at the MEBD whenever possible. If modification of the MEBD nomenclature is necessary for clarification or other reasons, the modification will be minimal, preserving the MEBD nomenclature as much as possible. Although the PEB will use the MEBD nomenclature, it must use the VASRD numerical code. If difficulties are encountered in fitting the MEBD nomenclature to the VASRD numerical code, assistance should be sought from the psychiatric service of a MTF.

g. In addition to this appendix, DSM III, ICD-9-CM, and VASRD, the American Medical Association has published *Guides to the Evaluation of Permanent Impairment* (Copyright 1984, 1977 and 1971) that offer further guidance in evaluating disabilities. Pages 149-157, 215-221 of the 1977 edition are entitled "Mental Fitness and Behavioral Disorders."

Appendix C Counseling

Section I General

C-1. Purpose

This appendix outlines the responsibilities and duties of the Physical Evaluation Board Liaison Officer (PEBLO) and the Physical Evaluation Board (PEB) legal counsel. It provides a guide for counseling members being processed through the Physical Disability Evaluation System.

C-2. Scope

The PEBLO will counsel each member throughout physical disability processing. The PEBLO will counsel the next-of-kin or legal guardian in deleterious-type cases or when the member is mentally incompetent. In cases in which the member is unable to converse verbally, the PEBLO will counsel the member and his next-of-kin or legal guardian, if available, jointly. Counseling will be based on the circumstances of the case. It will be designed to serve the member's best interests. Members who are under treatment for conditions that may result in disability separation or retirement are concerned over their eventual disposition. They will often have questions about medical evaluation board (MEBD) and PEB procedures. They may also want to know what the possibilities are for remaining on active duty in spite of their disabilities and answers to similar questions. The answers to these questions are frequently not readily available at the moment. Such questions should be answered so far as available information permits. Generally the answer to such questions will be to describe procedures used in handling disability cases. In these circumstances, the PEBLO will reassure members that they will be counseled from time to time as their cases progress. The PEBLO should encourage them to ask questions whenever they wish.

C-3. Stages of counseling

Provide counseling at the following stages of the physical evaluation process:

a. When the attending medical officer managing a patient decides that the member's case will be referred to an MEBD. At this stage, a member may often have questions and problems requiring advice by the PEBLO. If needed, action should be taken to obtain documents reflecting the member's physical ability or inability to perform duty from his commander or rater. These documents are discussed in paragraph C-4d.

b. When the approved findings and recommendations of the MEBD are made known to the member or his next-of-kin, the member will be given a chance to read the medical report and narrative summary. He will be instructed in how more evidence may be presented for consideration by the

proper MEBD. When proper, the PEBLO will advise the member on procedures for requesting expeditious discharge under the provisions of chapter 5, or continuance on active duty under chapter 6, and the probable effects of each.

c. When the findings and recommendations of an informal PEB are made known to the member or his next-of-kin.

d. When the member's case is to be considered by a formal PEB, the PEBLO will notify the PEB counsel of the member's demand for a formal hearing. During this stage, the PEB counsel will counsel the member.

e. When the findings and recommendations of a formal PEB are announced.

f. When the CG, US Army Physical Disability Agency (USAPDA) informs the member or his next-of-kin of a proposed modification to the findings and recommendations of the PEB.

g. When the results of the Army Physical Disability Appeal Board's (APDAB) consideration of his appeal are made known to the member or his next-of-kin.

C-4. PEBLO

The PEBLO, in executing his responsibilities, must—

a. Have a thorough knowledge of the policies, operating regulations, and directives that apply to the Physical Disability Evaluation System. (Sec. II contains guidance for counseling purposes.)

b. Include each of the matters outlined below in explaining the findings and recommendations of the adjudicative elements of the disability evaluation system even though the scope of counseling may vary with the circumstances of the member's case.

(1) *Legal rights.* The member will be advised that no member of the Army may be retired or separated for physical disability without a full and fair hearing. If the member is a Reservist, the PEBLO will advise him that at least one Reserve voting member will be on the PEB panel. When the member indicates dissatisfaction with the findings and recommendations, or at any time requests advice as to proper course of action, the PEBLO will inform the member of the legal and factual issues, and the merits of the case. The PEBLO will also provide him required assistance in preparing and submitting written comments on, or rebuttals to, the findings and recommendations. If applicable, PEBLO will advise the member that a formal hearing is not the forum for appealing LD decisions. (See chap 4.)

(2) *Findings and recommendations.* The PEBLO will explain each of the findings and recommendations in language the member can understand. The PEBLO will also explain the effect the recommended disposition will have on the member's status.

(3) *Pay.* With the assistance of the local finance officer, the PEBLO will furnish the member an estimate of the retired severance

pay he may receive under the several formulas that may be used. With the advice of a legal assistance officer, as required, the PEBLO will inform the member of the income tax exemptions that may be applicable. He will also inform him that an election to participate in the Survivor Benefit Plan will result in a deduction from retired pay.

(4) *Grade determination.* The PEBLO will notify the member that the grade in which he will be retired will be based on the provisions of Sections 1372 and 1373 of title 10, United States Code. The highest grade the member has held satisfactorily will be decided at HQ, DA before his retirement.

(5) *Veterans Administration (VA).*

(a) Whenever possible, the PEBLO should arrange for a member being retired or separated because of physical disability to have a personal interview with the VA representative serving the medical treatment facility (MTF) or installation. The interview should cover the member's entitlements to VA benefits. If for any reason this is not possible, the PEBLO will counsel the member according to (b) below. The PEBLO will furnish the member a copy of VA Pamphlet 20-67-1.

(b) The PEBLO will advise the member of his right to apply to the VA for disability benefits before separation, after separation, or not at all, as he elects. The PEBLO should strongly urge the member to file a claim before separation whether or not he finally decides to avail himself of the VA benefits. Greater benefits may be available from the VA. Although there is no assurance that VA benefits will be greater, the member is not bound in any case to accept them. The likelihood that the VA benefits may be greater is often substantial. The benefits depend on the member's grade, severity of the disability, and his dependency status. The PEBLO will show the member how disability compensation paid by the VA relates to retired or severance pay. The PEBLO will point out other potential benefits such as postservice life insurance, survivor benefits, medical care, and hospitalization. The PEBLO will emphasize, in all cases, that the VA makes its own decisions on entitlements and administration of rights and benefits arising out of laws it administers. The PEBLO will inform the member that the VA is not bound by decisions made by the Army. Likewise, the Army is not bound by VA disability rating decisions.

(6) *Social security.* The PEBLO will maintain close liaison with managers of social security district offices. The PEBLO will ensure that members who are being processed through the disability system, or those for whom processing is considered, are properly advised of the social security laws and regulations. When a person may be eligible for social security benefits, the PEBLO will assist the member in setting up contact with the social security agency.

(7) *Temporary Disability Retired List (TDRL).* If placement of the member on the TDRL has been recommended, the PEBLO

will advise the member of the effects of this action. The PEBLO will counsel the member (next-of-kin) that—

(a) He must undergo periodic medical and PEB evaluation, when so directed, or forfeit his right to retired pay.

(b) He must notify HQDA(DAPC-MSS-RD), 200 Stovall Street, Alexandria, VA 22332, of any change in residence.

(c) The maximum time he may be retained on the TDRL is five years, but final disposition may be made at an earlier date whenever a periodic examination discloses that his condition has sufficiently stabilized or improved.

(d) Changes in the degree of severity of his disability will not affect his retired pay while he is on the TDRL; however, his final disposition may result in permanent retirement with the same, a greater, or lesser percentage of disability; separation with or without severance pay; or an opportunity to be reappointed or reenlisted.

(e) If he is a Reservist, reappointment or reenlistment will not necessarily be followed by a recall to active duty.

(8) *Review procedures.* The PEBLO will inform every member of the review procedures that take place. The PEBLO will apprise him of the fact that the CG, USAPDA and the APDAB (if the case is referred to it) are authorized to recommend changes or modifications of PEB findings and recommendations. The PEBLO will advise him of the rights and elections available to him in such event.

c. Assist the member in obtaining answers to questions that may arise. The PEBLO will do this in such a manner as to clarify and resolve problems related to disability evaluation.

d. Counsel the member on the advisability of obtaining documents reflecting physical ability or inability to perform military duties. If the member desires to obtain such documents, the PEBLO will assist in identifying and obtaining them. The MTF commander will ensure that they are attached to the case file as supporting evidence. These documents may be letters, supervisor evaluations, or efficiency reports as follow:

(1) Special letter of evaluation describing the member's most recent performance of duty prepared by the member's commander or rater, or both. The letter should emphasize the member's limited duty assignment. It should also emphasize the member's ability or inability to perform duties normally expected of an individual in the member's office, grade, rank, or rating. Included are factors such as current duty assignment, anticipated duty assignments, branch, age, and career specialties.

(2) Copies of applicable efficiency reports for officer personnel may be obtained from the Records Branch, HQDA(DAPC-POS), 200 Stovall Street, Alexandria, VA 22332. For enlisted personnel, copies may be obtained from the US Army Enlisted Records Center, Fort Benjamin Harrison, IN 46249.

(3) The member may obtain other documents such as letters or statements from

knowledgeable individuals, as desired. An efficiency report prepared by his current rater reflecting performance of duty since the last required rating may be significant.

(4) In TDRL reevaluations, the PEBLO will ascertain whether the member has been treated at a VA hospital, other military hospital, civilian hospital, or by a private physician since his last medical evaluation. If the member indicates he was seen recently for a service-connected disability, the PEBLO will make every effort, with the assistance of the member, to obtain copies of such records of treatment and evaluation.

e. Maintain close coordination with the PEB in the processing of cases, and on all other matters affecting the efficient and prompt handling of disability evaluation cases.

f. Provide counseling and assistance to TDRL members undergoing periodic examinations and related evaluations.

g. *Retirement and separation dates.* The PEBLO will be familiar with the provisions of appendix E, paragraphs E-5 and E-9, to counsel members on the approximate date they will be released from active duty. Members should be advised of their probable retirement or separation date at the initial counseling session after the MEB and during the PEB processing. This will give them adequate planning time to ensure an orderly separation retirement.

Section II Counseling Guide

C-5. General

Several other references frequently apply. These references should be available to the PEBLO for counseling purposes. As a minimum, the following should be available.

a. AR 37-104 series.

b. AR 40-3.

c. AR 40-501.

d. AR 600-33.

e. DA Pam 360-506.

f. DA Pam 600-5.

g. Veterans Administration Schedule for Rating Disabilities (VASRD).

h. Physicians Guide: Disability Evaluation Examinations; Department of Medicine and Surgery; Veterans Administration.

C-6. Rights of member

No member may be separated from the Army because of disability without a full and fair hearing. His rights are listed below according to board or agency:

a. *MEBD.* The Medical Evaluation Board can find a member not qualified for retention and refer him to a PEB. MEBD recommendations are not binding on the PEB. The member has the right to—

(1) Disagree with MEBD findings and appeal.

(2) PEBLO assistance following the MEBD and during later disability evaluation. Included, when advisable, is the right to the right to assistance in obtaining documents such as letters, supervisors' evaluations, or efficiency reports reflecting

physical ability or inability to perform duties.

b. *PEB-Informal.* The member does not appear or take part in an informal PEB hearing. The member has the right to—

(1) Be advised by PEBLO about findings of the informal PEB. Included are an explanation of all rights and elections, and clarification of effects and benefits.

(2) Three working days in which to decide whether or not to accept PEB findings.

(3) A formal hearing. (Discuss composition of formal panel—that the board members may be the same as those who made the informal finding. Consider what the member may wish to present to the PEB. Emphasize that new material must generally be presented to have PEB finding changed.)

c. *PEB-Formal.* The member has the right to—

(1) Appear personally before the PEB.

(2) Be represented by an appointed Judge Advocate General's Corps (JAGC) officer (lawyer); a JAGC officer of his choice, if reasonably available; a civilian attorney at no expense to the Government; or a representative (counselor) of an accredited veterans service organization.

(3) Cross-examine any witnesses called by the board; call witnesses in his own behalf (para 4-20n(2)).

(4) Have excluded any statement signed by the member against his interest concerning the origin, incurrence, or aggravation of a disease or injury that he has.

(5) Submit a written rebuttal to the findings of a formal PEB.

d. *USAPDA.* This agency reviews all PEB cases. When a reduction in the percentage of disability, a change of disposition, or any change affecting the member adversely occurs, the member has the right to—

(1) Be informed of the proposed modification and the reasons.

(2) A formal PEB hearing (if the member has not already had one) with rights as outlined in c above.

(3) Submit a rebuttal to modified findings of CG, USAPDA in every case.

(4) Be counseled by PEBLO (or PEB counsel in formal case) as to the meaning and effect of the proposed change.

(5) Be assisted by the PEBLO (or PEB counsel in formal cases) in preparing his rebuttal if the member elects to submit one.

e. *APDAB.* The Army Physical Disability Appeal Board reviews cases at which the member has elected to rebut a proposed modification and the CG, USAPDA did not agree with the rebuttal. If the APDAB arrives at findings and recommendations different from either the PEB or USAPDA, the member has the right to—

(1) Be informed of the revised findings of the APDAB.

(2) Submit a rebuttal to the findings.

(3) Be counseled on the meaning and effect of these new findings.

(4) The assistance of the PEBLO or PEB counsel in preparing his rebuttal if he elects

to submit one. (Send rebuttals to the appeal board for reconsideration.)

C-7. PEB findings and recommendations

a. The PEB must make findings, based on medical records, the MEBD, and all other relevant evidence, such as evaluation of performance of duty, as to the following:

- (1) Whether the member is unfit.
- (2) If unfit, whether the disability causing unfitness was incurred while the member was entitled to basic pay and in line of duty. Members ordered to active duty for 30 days or less, or inactive duty for training, must have an unfitting disability resulting from an injury incurred under certain conditions.
- (3) Percentage of disability if the member is otherwise qualified.

(4) Whether the member's retirement was based on disability:

(a) Resulting from injury or disease received in line of duty as a direct result of armed conflict.

(b) Caused by an instrumentality of war and incurred in line of duty in a period of war.

b. Main guidelines for explaining each disability percentage (VASRD) are as follows:

(1) Guidance in interpreting VASRD is in appendix B.

(2) Method for computing the combined rating for more than one disability is not by simple addition but by a mathematical formula (para B-12, sec I, app B).

(3) Various means of rating a disability exist. For example, a joint injury may involve nerve or muscle damage and limitation of motion. Check each to assure the member has been rated the most advantageous way. However, give attention to the amputation rule (para B-18, sec I, app B) and the prohibition of pyramiding (para B-5, sec I, app B).

c. Retirement of separation is decided by percent of disability and years of service.

(1) With a combined rating of 30 percent or more, the member is either placed on TDRL or permanently retired. If member has been retired once and then recalled, he will revert to the same retired status as when he was released from active duty. He may be entitled to recomputation of retired pay.

(2) With a combined rating less than 30 percent, the member is separated from the service with severance pay unless he has over 20 years service. With 20 or more years of service he would be retired. (See tables 4-3, 4-4, and 4-5.)

C-8. Rights available only to retired members

Rights available *only* to retired members (TDRL or permanent) will be explained to all members. They have the same rights and privileges as those for members retired for years of service. Possession of valid DD Form 2A (Armed Forces Identification Card (Retired)), for retirees; and DD Form 1173 (Uniformed Services Identification and

Privilege Card), for dependents, is all that is needed for most privileges. A retired member has the right to—

a. Commissary, PX, and other installation privileges for himself, his wife, and dependent children, if children are under 18 years of age (23 if attending school full time). Special rules apply to disabled dependent children.

b. Generally, medical care for himself and his dependents as is reasonably available at any service installation.

c. Take part in Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). (Refer the member to the MTF CHAMPUS advisor if he desires a detailed briefing.)

d. Receive treatment at VA hospital and other VA benefits.

C-9. TDRL

a. The minimum payment is 50 percent of basic pay even if the disability percentage is less than that.

b. Periodic medical examinations are required at least every 18 months. The member will receive instructions telling him when and where to report.

(1) If the member does not respond, his Army retired pay may be stopped.

(2) If an emergency comes up and the member is unable to meet date assigned, he will contact the MTF commander who will arrange a new examination date.

(3) Each periodic examination report is referred to a PEB for a decision as to whether the member is to be retained on or removed from the TDRL.

c. The maximum TDRL period is 5 years.

(1) In no case will a member be removed from the TDRL without another PEB.

(2) No changes will be made in the percentage of disability while the member is on the TDRL, even if disability becomes materially better or worse. (See para 7-20b.)

(3) Retired pay will be stopped if final action is not completed within five years.

d. The finding of fit for duty upon completion of TDRL results in one or more of the following actions:

(1) Disability pay stops.

(2) If the member is a member of the Regular Army, he may be reappointed or reenlist. If in the Reserve, he may reenter the Reserve without active duty, or be discharge.

(3) If the member elects active duty (AD), time spent on TDRL will count for pay purposes.

(4) If the member does not elect AD, the finding of fit does not necessarily affect his standing with VA or his entitlement to VA compensation.

C-10. Pay and grade

a. *Grade.* Retired pay is computed on highest grade "satisfactorily" held or current grade. DA makes the final grade decision.

b. *Severance pay.* In computing pay for those with less than 20 years' active service

and a disability percentage of less than 30 percent (separation with severance), figure 2 months' basic pay for every year of active duty with a maximum of 12 years' service. Consider 6 months or more as a whole year for computing years of service as a multiplier. A member with less than 6 months' service cannot receive severance pay. The member may apply to the VA for disability compensation.

c. *Retired pay.* A member is eligible for disability retired pay if he has a rating of less than 30 percent and has 20 or more years of active service for retirement (19 years and 6 months of active service is not 20 years for retirement) or a disability rating of 30 percent or more. The percentage multiplier is either the percent of disability or 2½ percent of the total years of service (increase 6 months or more to the next higher whole year for this purpose). Use the highest percentage, but not more than 75 percent, as a multiplier of basic pay to arrive at the retired pay entitlement.

(1) *Example 1.* A member with 23 years and 7 months of service is entitled to (24 X 2.5 percent) 60 percent of his basic pay as retired pay. If he is rated as 90 percent disabled, he is entitled to 75 percent as a multiplier. All of the retired pay may be tax-free (see *d* below).

(2) *Example 2.* A member with 19 years and 6 months of service and 30 percent or more disability is retired because of disability. His retired pay entitlement (20 X 2.5 percent) is 50 percent of his basic pay. If his disability rating is less than 50 percent, only that portion (basic pay times the disability rating) of his retired pay may be tax-free (see *d* below).

(3) *Example 3.* A member with 12 or less years of service and 30 percent or more disability is retired because of disability. His retired pay entitlement is his disability rating times his basic pay limited to 75 percent of basic pay. All of the retired pay may be tax-free (see *d* below).

d. *Tax exemption.* A member separated or retired because of physical disability may be entitled to certain income tax benefits. The Internal Revenue Service will make final decisions on Federal entitlements.

(1) Severance pay is not taxable under Federal income tax laws when—

(a) Payable to member who, on 24 September 1975, was serving in the US Armed Forces or was under a binding written commitment to become such a member or

(b) Any time entitlement occurs because of separation that results from combat-related injuries.

However, severance pay may be taxable in some States.

(2) If a member, on or before 24 September 1975, was entitled to receive disability retired pay, the portion of his retired pay that is based on his percentage of disability is not included in gross income for Federal income tax purposes, but may be taxable in some States.

(3) The portion of a person's retired pay that is based on his percentage of disability is not included in gross income for Federal income tax purposes, but may be taxable in some States if—

(a) He was a member of a uniformed service on 24 September 1975, or was under a binding, written commitment on that date to become such a member.

(b) He was later retired because of physical disability.

(4) A person may not be covered in either (2) or (3) above; he may have become a member of a uniformed service after 24 September 1975, and he may be retired because of physical disabilities. If so, the portion of his retired pay that is based on his percentage of disability is not included in gross income for Federal income tax purposes if—

(a) The portion of his retired pay attributed to disability is received by reason of combat-related injury.

(b) On the application to the VA, he would be entitled to receive disability compensation from the VA.

Note 1: For this subparagraph, the term "combat-related injury" means personal injury or sickness that is incurred as a direct result of armed conflict, while engaged in extrahazardous service, or under conditions simulating war; or personal injury or sickness that is caused by an instrumentality of war. The burden is on the individual to satisfy Internal Revenue Service requirements.

Note 2: Gross income excludable under (2), (3), and (4) above is not less than the maximum amount that a person, on application to the VA, would receive as disability compensation from the VA.

(5) A person who is retired because of physical disability may claim disability income (formerly sick-pay) exclusion from his gross income not to exceed \$100 weekly provided—

(a) He did not attain age 65 before the close of the tax year.

(b) He retired because of physical disability and, when retired, was permanently and totally disabled.

(6) A person generally may exclude up to \$5,200 a year of his disability payments if he qualifies for the disability income exclusion. The amount of the exclusion is limited and must be reduced dollar-for-dollar for his adjusted gross income that is more than \$15,000. (When adjusted gross income equals or exceeds \$20,000, an entitlement to disability income exclusion is no longer allowable. Adjusted gross income must equal \$25,400 if married and spouse qualifies for disability income exclusion before an entitlement to disability income exclusion is no longer available.)

Note: In this subparagraph, "permanent and total disability" means that the person is unable to engage in any substantial gainful activity because of any medically decided physical or mental impairment that can be expected to last, for a continuous period of not less than 12 months. Proof of permanent and total disability must be furnished in such form and manner, and at such times as the Internal Revenue Service may require.

e. *Survivor Benefit Plan (SBP).* Retired members are automatically covered under the Survivor Benefit Plan unless they elect not to take part.

f. *Dual compensation.* Retired Regular Army officers may come within the limitations of "dual compensation" if they come back to work for the Federal Government unless—

(1) They have a disability declared a direct result of armed conflict.

(2) They have a disability caused by an instrumentality of war during a period of war.

g. *Civil service employment.* Special advantages accrue to persons who are veterans, disabled veterans, and preference eligibles in qualifying for civil service employment, non-competitive appointment, and retention rights. The Office of Personnel Management administers these special advantages and rights.

C-11. Veterans Administration (VA)

The VA's program for disability benefits is based on decisions made by the VA. Advise the member to contact the VA regional office in his area promptly for complete details. Inform him of the following examples of the VA program:

a. A member may receive compensation from either the Army or the VA, or both. The amount received, however, may not exceed the higher of the two compensations. For example, the Army disability retired pay may amount to \$364 monthly. This figure is based on 100 percent disability for a PFC (less than 2 years of service), using pay tables for 1 October 1978. If the VA assigned the same rating, the VA disability compensation would be \$858 (1 October 1978 rates) if he is married with no children, and \$809 if unmarried. The member would naturally waive Army retired pay for the VA compensation. If the Army rating were 50 percent disability (based on degree of disability), his disability retired pay would be \$243. If further hospitalization were to prevent employment, however, the VA might assign the 100 percent rating with the compensation of \$858 or \$809 (mentioned above) until the member is able to work. The member could waive his Army pay for that period. Assuming a final VA rating of 50 percent disability, which provides compensation of \$258 if married with no children or \$232 if single, he could then change back to the Army retired pay if it is more. Many variations of circumstances might apply. No matter what the member's grade, he should file an application with the VA to set up entitlement to benefits. When a VA decision is received, he can then decide on the best course of action. A member loses no rights to benefits from either the VA or Army by these elections.

b. Urge the member to contact the VA counselor to learn more about such available benefits as—

(1) The VA's excellent rehabilitation program that may include tuition, fees, books,

and monthly subsistence for qualified members.

(2) Insurance programs that include Service-Disabled Veterans Insurance (SDVI) up to \$10,000. This insurance is in addition to Serviceman's Group Life Insurance, which may be converted.

(3) Employment assistance.

(4) Home loans.

(5) Extensive medical care benefits for veterans and, sometimes, dependents.

c. *None of the above benefits is automatic. The individual must start the action.*

C-12. Social security

a. Members who become disabled may be entitled to social security benefits.

b. Every member should file a claim if any possibility of collecting exists since social security may be payable in addition to, and without deduction from, Army or VA disability compensation.

c. PEB liaison officers should—

(1) Set up liaison with social security officers.

(2) Supply information concerning social security.

(3) Counsel patients about the social security disability program.

C-13. Counseling procedure and checklist for MEBDs

a. Review and become familiar with the findings of the MEBD.

(1) Be sure that the medical terminology is explained in terms that the member can understand.

(2) Check all entries on the DA Form 3947 (Medical Board Proceedings) for completeness.

b. Promptly contact the member and make arrangements to discuss the findings.

(1) Give the member a chance to read the MEBD report and the narrative summary.

(2) Inquire whether all medical conditions and physical defects appear and if they have been described adequately. If not, consider submitting an appeal, or contacting physician, as to obtaining an addendum.

(3) Inform the member of the procedures for requesting expeditious discharge (chap. 5) or continuance on active duty (chap. 6).

c. When the member indicates he wishes to appeal the findings of the medical board:

(1) Explain how more evidence may be presented for consideration by MEBD.

(2) Explain the options of the appointing authority that is to approve the findings and recommendations, or return the proceedings to the MEBD for reconsideration.

(3) Have the member sign the medical board proceedings showing whether he desires to appeal.

(4) Assist in writing an appeal, if the member desires, and furnish clerical assistance.

d. In general, outline the course of physical disability processing through the PEB and the USAPDA.

(1) Inform the member that he will be contacted when the PEB makes an informal

finding. Inform him that he will be advised concerning the PEB's recommendations.

(2) Furnish the member with a copy of all pertinent publications that may answer many of his questions. If the publications do not answer his questions, tell him that he should come back.

e. Suggest that he see a VA counselor to find out what benefits are available from the VA.

f. Do not inform the member before PEB action:

(1) That he has been found physically fit or unfit.

(2) That he will be discharged or retired from the service.

(3) What percentage of disability he may receive.

(4) Of the line-of-duty (LD) decisions unless a final, approved LD decision is available.

C-14. Counseling procedure and checklist for findings of the PEB

a. Review and become familiar with the findings and recommendations of the PEB.

(1) Compare PEB findings with the member's MEBD, the VASRD, and appendix B. (If the member had been found fit, consult chap. 3, AR 40-501, and chaps. 2 and 4 of this regulation. Check that PEB has not overlooked any condition that may substantially alter the member's benefits.)

(2) Compute and prepare an estimate of retirement or severance pay, tax benefits, and VA compensation. (See Disability Counseling Worksheet, fig. C-1.)

b. Contact the member and make arrangements to discuss the findings of the PEB.

(1) Inform the member of the findings of the PEB, the benefits that accrue in his case (using the prepared estimates), and his possible courses of action.

(2) Advise the member that he has 3 days (7 days plus mail time for members on TDRL), excluding weekends and holidays, in which to accept or decline the findings of the PEB. If no election is made within that time, it will be assumed he concurs.

(3) Clarify the possible elections the member might make and his legal rights. Then request that he check the proper item(s) on DA Form 199. If the member wishes to non-concur, he may elect to have a formal hearing at which he is, or is not, present. Advise the member he may be represented by—

(a) Appointed PEB counsel.

(b) Other military counsel, if available.

(c) Representation by a veteran's organization counselor.

(d) Civilian counsel at his own expense.

c. Obtain the member's residence phone number at which a PEB may reach him.

d. Should the member be recommended for TDRL, be sure to explain that—

(1) TDRL status is for a maximum of 5 years, but final disposition may be at an earlier date.

(2) He will undergo periodic medical evaluations (usually at 12- to 18-month intervals) when so directed by MILPERCEN.

(3) No change in the degree of severity of his disability (percentage) will be made as long as he is on TDRL, nor until a final disposition is made.

(4) Final disposition may result in permanent retirement with the same, a greater, or lesser percentage of disability; separation with severance pay (if less than 20 years); or a finding of physical fitness.

(5) Members placed on TDRL never receive less than 50 percent of base pay while on TDRL.

(6) He must notify MILPERCEN: ATTN: DAPC-MSS-RD of any change of address.

e. If the member indicates he wishes to non-concur:

(1) Decide whether the member's non-concurrence is due to a misunderstanding of benefits.

(2) If the member indicates that such action is based upon the fact that the PEB did not rate a certain condition, recheck MEBD (contact physician, if necessary) to ensure that the condition has been recorded and properly described. (An addendum can often resolve the problem.) Compare symptomatology related by the member and contained in his medical board with the requirements of the VASRD and appendix B of this regulation. Advise the member on the merits of his contention.

f. After this discussion, if the member still wants a formal hearing:

(1) Notify the PEB so arrangements can be made for the member to consult with PEB counsel.

(2) Prepare a short summary of the member's reasons for nonconcurring. Forward the summary with the member's choice.

g. Every member should be informed that—

(1) Pay computations are merely estimates.

(2) Findings and recommendations are not final. If a modification of change is made, he should contact his counselor.

(3) He should read DA Pam 600-5, Handbook on Retirement Services for Army Personnel and Their Families.

(4) He should file a VA claim and contact a VA representative, (same for social security).

(a) VA compensation is payable as an alternative to Army payments.

(b) Social security is payable in addition to the Army or VA compensation for qualified veterans.

(5) He should decide if disability insurance exists on any outstanding indebtedness, which might relieve him from further payments.

(6) He should be advised that as a disabled veteran he has a 10-point job preference in Federal employment. (Under some circumstances, this preference can be claimed by wife.) In addition, veterans preference provides waiver of age and physical

requirements. It gives retention preference (except those retired on 20 years or more service.)

C-15. Counseling checklist for review modifications

a. Review and become familiar with the USAPDA action and the rationale for that action.

(1) Compare the proposed change with the findings of the PEB, the member's medical board, the VASRD, and appendix B of this regulation.

(2) Compute and prepare an estimate of benefits resulting from the modification as compared to the earlier PEB findings.

b. Contact the member, by phone or certified mail, informing him of—

(1) The proposed change and the effects it would have in terms of retirement or severance pay and tax benefits.

(2) The fact that he may elect to concur, have a formal hearing if he has not already had one, or submit a rebuttal. If the member has had a formal hearing, he may elect to concur or submit a rebuttal.

(3) The reasons for the proposed change.

(4) The fact that you will be available to assist him in making his election and pursuing the course of action he elects.

(5) The advantages and disadvantages of both a rebuttal to the CG, USAPDA, and a demand for a formal PEB hearing if he has not already had one. A formal PEB hearing may, in some cases, provide a better vehicle for submitting evidence. However, PEB may agree with the CG, USAPDA, in which case the file will not be forwarded to APDAB for review.

c. If the member wishes to nonconcur and request a formal hearing, advise him that—

(1) The PEB counsel will contact him to make arrangements for preparing his case.

(2) The PEB recorder will notify him of the date and time of his hearing.

d. If the member wishes to nonconcur and submit a rebuttal, advise him that—

(1) You will be available to assist him in preparing his rebuttal. (If the member has gone home PCS, it may be more convenient for him to work with a JAG officer, PEBLO, or PEB counsel near his home.)

(2) His rebuttal should be directed to the Cdr, USAPDA, WRAMC, FG Section, WASH DC 20012.

(3) His rebuttal should state clearly and completely why he does not agree with the modified findings.

e. Inform the member that he has 7 days from date of receipt to make an election. However, he may request an extension for good reasons.

f. After counseling the member on the modification or sending him a letter, complete the statement on the copy of the modification letter and send it to the CG, USAPDA.

DISABILITY COUNSELING WORKSHEET

Date _____

- 1. Member's name
- 2. Years of service (YOS)
- 3. Grade
- 4. Monthly base pay
- 5. Disability percentage
- 6. Disposition

7. If disposition is to retire, estimated retired pay

a. Years-of-service computation --

$$2.5\% \times \frac{\text{_____}}{\text{(YOS)}} \times \$ \frac{\text{_____}}{\text{(base pay)}} = \$ \frac{\text{_____}}{\text{(retired pay)}}$$

b. Disability rating computation --

$$\frac{\text{_____}}{\text{(rating)}} \times \$ \frac{\text{_____}}{\text{(base pay)}} = \$ \frac{\text{_____}}{\text{(retired pay)}}$$

(Note: If member has less than 20 YOS and is placed on TDRL, percent multiplier is not less than 50 percent, all of which may be tax free. If placed on TDRL with more than 20 YOS, compute as for permanent retirement; tax exemption, if any, depends on disability rating.)

c. Estimated taxable service retired pay \$ _____

d. Estimated nontaxable disability retired pay \$ _____

(Note: Sum of c and d equals a or b.)

8. Estimated disability severance pay

$$2 \times \$ \frac{\text{_____}}{\text{(base pay)}} \times \frac{\text{_____}}{\text{(YOS - limit 12)}} = \$ \frac{\text{_____}}{\text{(severance pay)}}$$

9. Notes --

Appendix D Instructions for DA Form 199 (Physical Evaluation Board Proceedings)

PEB type. Stamp the word *FORMAL* on the form if the PEB is a formal board. All PEB proceedings are informal unless stamped formal.

Block 3. Enter both pay entry basic date (PEBD) and basic active service date (BASD) even though in many cases they will be the same. If one of the dates is unknown, type *Unknown*.

Use the following source documents to find the PEBD and BASD:

(1) DA Form 2 (Personnel Qualification Record—Part 1), section III, items 46 and 47.

(2) DA Form 2-1 (Personnel Qualification Record—Part II), section VII, item 35.

(3) Letter Order (LO), Ordered to Active Duty.

(4) DA Form 66 (Officer Qualification Record), item 18.

(5) DD Form 214 (Report of Separation from Active Duty), Refer to the following documents in enlisted cases, if necessary:

(a) DA Form 47 (Record of Induction).

(b) DA Form 2-1, section III, item 20.

(c) DA Form 20 (Enlisted Qualification Record), item 16.

(d) DD Form 4 (Enlistment or Reenlistment Agreement—Armed Forces of the United States).

Block 6. Enter TDRL if the member is on the Temporary Disability Retired List.

Block 8. Decide entries for each column by the recommended disposition. If the member is found fit, do not make entries in columns *a*, *c*, *d*, *e* and *g*. Do not make entries concerning percentage ratings or calculations. (See chap. 6 for procedures in processing applications for continuance on active duty.)

Column a. Use the Veterans Administration Schedule for Rating Disabilities (VASRD) code numbers.

Column b. Choose terms to describe each disability from the VASRD, this regulation, the medical evaluation board (MEBD) diagnosis, narrative summary, or a combination of these. Choose those terms that help to provide a succinct and complete disability picture. Include limitations, controls, and severity. Do not arbitrarily select a description of the limitation and

qualifying phrases from VASRD merely to justify a particular rating. Cross-reference each disability to the source in the medical records; e.g., medical board diagnosis, narrative summary, present condition, photographs. If member is found fit, enter rationale for finding only.

(1) In line of duty (LD)—NO or existed prior to entry service (EPTS) diagnoses, state the reason or indicate the source (Health Record entry, LD investigation, etc.). In EPTS conditions involving service aggravation, except when the rating is 100 percent, indicate the computation of a net rating after the disability entry. Include reasons for the deduction, for example:

Anatomical loss, right eye; left eye 20/70
(Medical board diagnoses 1,2)
Present rating 60%
EPTS right eye 20/50; left eye 20/40 10%
(Induction physical, SF 88)
Net rating 50%

Enter the net rating in column *g* also.

(2) When paired extremities or paired skeletal muscles are involved, resulting in the application of bilateral factors, list those disabilities consecutively. Follow the disability by computation of the bilateral factor.

Example:

1. Foot, right; loss of use of (MEBD diagnosis 1).

2. Ankle, left, limited motion; marked (MEBD diagnosis 3). Rating for No. 1 = 40%, No. 2 = 20% = Combined rating: 52%.

Bilateral factor: $52\% + 5.2 = 57.2 = 57\%$.

3. Scars, disfiguring, face; severe (MEBD diagnosis 4, photographs).

Enter the combined net rating for the bilateral elements in column *g*. The net rating will determine the order of significance as indicated above.

(3) If the member is on the TDRL, the following will apply:

(a) *Retention on the TDRL.* Update the disability description, as required above, following each periodic examination. The description will describe the severity of the member's current physical condition. Enter additional ratable disabilities when etiologic relationship to an active service condition exists. List a disability incurred while the member was on the TDRL only if it is unfitting. Enter "NO" in column *d*. Make proper remarks in block 16 to explain the new entries.

(b) *Removal from the TDRL.* At the time of final adjudication, reflect the current status of all physical disabilities.

Column c. Enter "YES" or "NO." Use an unfavorable entry (YES) only when an approved

DD Form 261 (Report of Investigation-Line of Duty and Misconduct Status) contains an entry in item 9d that the member was absent without authority and the entry in item 10 is: "Not in Line of Duty—Not Due to Own Misconduct"; or the entry in item 9e must state that intentional misconduct or willful neglect was the proximate cause and the entry in item 10 must be "Not in Line of Duty—Due to Own Misconduct." Make no entry if member is on the TDRL. If entry is "YES," make no entry under column *d*, *e*, *f*, or *g*.

Column d, e, and f. Enter "YES" or "NO," whichever is correct, for each disability. Include disabilities incurred while on active duty, or active duty for training, and discovered while the member is on the TDRL. Also include any unfitting disability incurred after the member was placed on the TDRL, as provided in (3)(a) above. If a member is retained on the TDRL without a change, make no entries.

Column g. Enter the proper rating from the VASRD, appendix B, the result of computation of bilateral factors, or adjustments for EPTS conditions for each disability. Enter only the net rating after computations for bilateral factors are applied or when EPTS values are deducted. Make no entry if member is retained on the TDRL. For members being removed from the TDRL, make an entry for each compensable disability. The following limitations apply even though entry on a percentage rating appears proper:

(1) A 0-percent rating may not be used to indicate no aggravation of an EPTS condition. A 0-percent rating is a compensable rating. Thus, the rating would improperly permit payment of severance pay.

(2) If the unfitting disability is not compensable; for example, the member's unfitting disability is EPTS, or LD is no because of member's misconduct, no other disability may be rated.

(3) A rating may not be assigned for disability because of disease in the case of an RC member except as provided in chapter 8.

Block 9. Select recommendations for disposition of the member from the following statements:

(1) "Permanently retired from the service."

(2) "Placed on the TDRL with reexamination during (Month and year)."

(3) "Separated from the military service without entitlement to disability benefits from the service."

(4) "Separated from the service with severance pay if otherwise qualified."

(5) "Retained on the TDRL with reexamination during (Month and year)."

(6) "Revert to retired status."

(7) Other (specify).

A member who has completed less than 20 years of service may have applied for retirement contingent on completion of 20 years' active service. PEB processing may result in a recommendation for placement on the TDRL or separation with severance pay. If so, the PEB will make the proper entry from (1) through (7) above, and add "See block 16." Place a statement in block 16 to reflect that permanent retirement or placement on the TDRL would be recommended if the member had completed 20 years of active military service.

Block 10A. Make the entry according to the provisions of paragraph 4-18k. Make the entry in all cases other than those on the TDRL although the entry pertains only to members who will be retired. For a member on the TDRL, make an entry only if the DA Form 199 placing him on the TDRL did not indicate a finding.

Block 10B. Make the entry in all cases even though block 10B addresses only members who will be retired. Check "was" if, on 24 September 1975, the individual was a member of:

(1) The armed force of any country or Reserve Component (RC) of the armed force.

(2) The National Oceanic and Atmospheric Administration (NOAA) (formerly the Coast and Geodetic Survey).

(3) The United States Public Health Service (USPHS).

(4) Under a binding written commitment to become such a member. For a member on the TDRL, make the proper entry only if the DA Form 199 placing him on the TDRL after 24 September 1975 does not indicate a finding.

Block 10C. Make the entry in all cases even though block 10C addresses only members who will be retired. See the definition of combat-related injury in appendix A the glossary to decide which block to check.

Block 11A. Arrange exhibits to follow the order of table 4-2.

Block 11B. DA Form 3947 (Medical Board Proceedings) should be examined to decide whether the member has indicated a desire to remain on active duty under chapter 6. Indicate application for continuance on active duty under block 11 as an exhibit.

Block 12. Complete this block for informal cases only.

Block 13. Member will complete this block for informal cases only.

Block 14. The legal counsel or PEBLO who informs the member of the PEB's findings and recommendations will sign this item.

Block 15. When a formal hearing is held, complete proper entries. The signatures of the president and counsel will confirm that the record is accurate and complete. Explain the failure of either to sign on a separate sheet. Treat this sheet as an exhibit.

Block 16. Enter rationale for finding made in block 9. (Also see item 5.) Upon removal from the TDRL, explain any variation among the findings, recommendations, and ratings of the original action placing the member on the TDRL. Explain the present action removing him from the TDRL. Explain the variations in a brief summary understandable to the member.

Blocks 8, 9, 10, and 16. Apply the following special instructions for blocks 8, 9, 10, and 16 to cases of retired members who are serving on active duty:

a. *Previously retired other than for physical disability.*

Block 8. Complete the section by listing all current disabilities. Recomputation of retired pay for a member previously retired other than for disability depends on the member's incurring physical disability, while on active duty after retirement, of at least 30 percent for which the member would otherwise be eligible for disability retirement. More than one disability may exist. If so, a footnote after the last disability will identify those disabilities that were incurred while the member was on postretirement active duty and the combined rating for those alone. The footnote will credit only the percent representing aggravation of a disability present before retirement. Decide the aggravation by subtracting the preretirement rating from the current rating. The remainder will be the rating incurred while on postretirement active duty. The combined rating for such postretirement active duty disabilities, if 30 percent or more, will justify recomputation of retired pay. However, enter the rating for each disability incurred in line of duty while entitled to receive basic pay in block 8g. Enter the rating regardless of when the disability was incurred. Enter the combined rating resulting from 8g in block 9.

Block 9. Complete all entries; however, disposition will be "Revert to retired status."

Block 10. Make proper entries in 10B and C only.

Block 16. Enter a brief statement explaining—

(1) That the member was recalled to active duty while in a retired status.

(2) The reason for retirement.

(3) The date of recall and period for which the member was recalled.

b. *Previously permanently retired because of physical disability.*

Block 8. Describe the current disability. Enter the rating in column g.

Block 9. Make no entry as to fitness. The disposition will be "Revert to retired status." Block 9 may reflect recommendation to remove member from TDRL if condition has stabilized or improved so as to support the recommendation.

Block 10. Make no entry.

Block 16. Enter a brief statement explaining—

(1) That the member was recalled to active duty from permanent disability retirement.

(2) The date recalled.

(3) Whether the evaluation is the result of a new disability or aggravation of a previous disability or a combination of both.

c. *On the TDRL at the time of recall to active duty and upon evaluation still on the TDRL.*

Complete all items as provided in instructions for items 4, 5, and 6 above. Block 16 should relate to the member's status, the date of recall, and the period for which recalled.

Appendix E Personnel Processing Actions

E-1. General

This appendix prescribes personnel processing actions for members undergoing physical evaluation under the provisions of this regulation.

E-2. Physical evaluation

a. When an MTF commander determines that a member will be processed for physical evaluation, the commander will—

(1) Decide whether the member will be assigned to the medical holding unit of the medical treatment facility (MTF). His decision will be based on whether the individual may render productive service to his parent unit while undergoing disability processing.

(2) Decide whether the member will be attached to the medical holding company of the MTF to make evaluation processing easier.

(3) Process members on an outpatient basis from the parent organization whenever possible.

b. The MTF commander concerned is responsible for initiating proper actions relating to disability processing promptly. Such actions include—

(1) Moving the patient to another hospital if required.

(2) Moving the patient to the PEB if a member is to make a personal appearance at the board.

c. Commanders of the Army National Guard of the United States (ARNGUS) members and Army Reserve personnel will follow AR 135-200 concerning issuing orders on their personnel to appear before PEBs.

E-3. Individual records and property

The commander of the organization to which the member is assigned will—

a. Retain personnel records of members attached to a medical holding unit in the organization.

b. Upon request, furnish the MTF commander, on a loan basis, records he may require in conjunction with the study and evaluation of the member.

c. Upon receipt of an order reassigning a member of the organization to a medical holding unit, forward the member's personnel and pay records to the MTF commander concerned within 48 hours.

d. Forward individual clothing of the member according to AR 735-5.

E-4. Administrative control of members before final PEB action

a. *Members processed as outpatients.* A member for whom disability processing has been initiated will remain available to the MTF commander and/or president of the PEB until the PEB completes action in his case.

b. *Member processed by MTFs in attached status.* When referral of his case to a PEB is indicated, a member attached to a medical holding unit of an MTF will normally be retained at the MTF until PEB processing is completed. He may, however, be authorized to subsist elsewhere pending completion of PEB action.

c. *Members processed by MTFs in assigned status.* After referral of a case to a PEB, an assigned patient normally will remain at the MTF until PEB action is completed. He may, however, be authorized to subsist elsewhere pending completion of PEB action.

E-5. Administrative control of members after PEB action

After PEB proceedings have been completed, the member's disposition will be according to the recommended findings of the board as indicated in a and b below. Do not separate the member from the service before notice is received of the final decision at HQDA.

a. *Physically fit.* When a PEB finds a member physically fit for duty, the MTF commander will process the member according to AR 40-3 if the member concurs in the finding. If the member does not concur with the PEB's finding of fit, or if he is being processed in connection with mandatory or voluntary retirement, the MTF commander will retain him under control, pending final action on his case at HQDA. If the member is an inpatient, the MTF commander may place him on duty within the MTF or with a nearby organization pending final action on his case.

b. *Physically unfit.* The MTF commander will retain a member who is found unfit because of physical disability by the PEB under his control pending final review and approval of his case.

c. *Inpatient processing.* A member who is an inpatient in an MTF when his case was referred to a PEB may be—

(1) Retained as an inpatient at the option of the MTF commander.

(2) Placed on duty within the MTF, if assigned to the medical holding unit, to perform such duties as his condition permits. DA Form 3349 (Medical Condition-Physical Profile Record) will be furnished to the member and duty supervisor.

(3) Authorized to subsist elsewhere pending completion of PEB action.

(4) Ordered home on a permanent change of station (PCSH) on his request if assigned to the medical holding unit, while awaiting final action on his case and further orders. Time spent at home is chargeable as leave and will be administratively processed in accordance with AR 630-5. The member's request for PCSH will follow the format of figure E-1. He will be counseled carefully on his entitlements and obligations

incurred as a result of his request. All separation actions and forms will be completed, insofar as practical, before the member departs on PCSH. Final action by the PEB and the member on PEB actions will be completed before he departs.

(5) Ordered to a VA hospital on a permanent change of station (PCSV) as set forth in AR 40-3.

d. Change in status.

(1) If the member is rehospitalized before final disposition, amend his orders to show the place and date of rehospitalization and authorization for travel between his home and the MTF. Also show whether he is entitled to basic allowance for quarters (BAQ) and subsistence during hospitalization. Do not charge the member leave during hospitalization and connected travel. If rehospitalization is completed before final disposition of his case, he may again be placed on a PCSH status if he so desires.

(2) Furnish the PEB a copy of the member's request and orders directing PCSH to attach to the cash records. If the records have already been sent to the CG, USAPDA, the PEB will send the request and orders to HQDA (DAPC-POS-RD). If the orders are later amended as described in (1) above, furnish the CG, MILPERCEN, without delay, a copy of each amendment at the same address.

E-6. Members located in overseas command

A member assigned in an overseas command, or who is on the temporary disability list (TDRL) and residing (not visiting) in the command, will be processed as follows:

a. *Active duty.* When the responsible overseas MTF completes the medical board proceedings, forward the medical records and related papers for evaluation to the PEB prescribed in table 4-1. Should the member refuse to accept the findings and recommendations of the informal board and demand a formal hearing with personal appearance, the PEB conducting the informal hearing will schedule the formal board. The PEB will inform the overseas MTF commander of the scheduled hearing and request that the member's travel order be issued. Authorize the member 5 days TDY at the PEB. The member will return immediately to his assignment overseas after his appearance before the board unless otherwise directed by proper authority.

b. *TDRL.* When a TDRL member who resides in the overseas command demands a formal hearing and elects personal appearance, he will perform necessary travel on the orders issued as prescribed in chapter 7. Authorize the member 5 days TDY at the PEB.

E-7. Continuance of disabled members

Process disabled members who request continuance on active duty according to chapter 6.

E-8. Army members hospitalized in non-Army MTFs

CG, Health Services Command (HSC) is responsible for the administration of Army members hospitalized in other than Army MTFs. This responsibility is exercised through Army MTFs designated by the HCS commander to assume responsibility for such members as provided for in AR 40-3.

a. In all cases of disabled members hospitalization in non-Army MTFs, if transfer to an Army MTF is not contemplated or is inadvisable, commanders of Army MTFs designated to assume administrative control will exercise the functions and responsibilities necessary for the timely processing of such members. If transfer of a member to an Army MTF is planned, defer disability processing until the member has been moved.

b. Medical board proceedings prepared by Navy and Air Force MTFs on Army members in those MTFs will be routed through the responsible Army MTF commander and used for disability processing whenever feasible. Medical evaluation boards appointed by Army MTF commanders having administrative responsibility for members in nonservice MTFs will evaluate such members who require disability evaluation.

E-9. Final disposition instructions

After final approval, forward DA orders or other disposition instructions to the proper commander for final disposition. AR 635-10 establishes procedures for processing members for retirement or discharge. The following instructions supplement those in AR 635-10 when members who are unfit because of physical disability are processed for retirement or discharge:

a. *Discharge.* Discharge will be effected within 3 working days after receipt of disposition instruction from CG, MILPERCEN.

b. *Retirement.* Retirement processing must be completed by the effective date established in DA orders. Retirement dates will be established as follows:

(1) *General officers.* Date of retirement will be on an individual basis.

(2) *Individuals processed for mandatory retirement.* Date of retirement will be one of the following:

(a) The mandatory retirement date.

(b) As soon thereafter as possible, as provided in (4) below.

(c) An earlier date, if requested.

(3) *Individuals processing for voluntary retirement.* A member who has applied for voluntary retirement will not be separated or placed on the TDRL before completion of 20 years of service, without approval of the SA or his designee. Date of retirement will be one of the following:

(a) The date originally requested.

(b) As soon after the date requested as possible, as provided in (4) below.

(c) An earlier date if requested later.

(4) *All others.*

(a) Date of retirement will be 7 days from the date orders are issued for a member in Continental United States (CONUS) at home on PCSH or in a VA hospital awaiting retirement.

(b) Date of retirement will be 15 days from the date retirement orders are issued, or earlier upon request, for members who have a home of record in CONUS and are—

1. Stationed in CONUS.

2. Stationed outside CONUS and separation will be in the oversea area of command.

(c) Date of retirement will be 30 days from the date orders are issued or earlier upon request, for members in CONUS whose home of record is outside CONUS. Date of retirement may be earlier, upon request, for members whose home of record is in CONUS, and who are stationed outside CONUS when retirement orders are issued.

c. *Release from active duty of recall retired member.* Processing required will be completed and the member released from active duty on the effective date established in DA orders.

d. *Requests for exception to established discharge or retirement date.* Request for deviation from established discharge date or amendment or revocation of retirement orders for other than medical reasons will be submitted, with justification, to HQDA (DAPC-POS-RD). Retirement date will not be adjusted for the purpose of using leave. If the member is rehospitalized, and the presence of substantial new evidence indicate that the initial disability decision or percentage of disability should be changed, the MTF commander will notify the PEB that adjudicated the case. The CG, USAPDA will decide whether the case should be reconsidered by the PEB. The CG, USAPDA may request the CG, MILPERCEN to cancel discharge instructions, or amend or revoke retirement orders.

e. *Responsibility of MTF commanders.* MTF commanders will be responsible for final disposition of members for physical disability separation within their area of responsibility.

E-10. Preparation and distribution of orders

Orders separating members for physical disability will be prepared and distributed according to AR 310-10. If applicable, a statement will be made regarding termination of appointment.

E-11. AR 635-5 (Separation Documents)

See AR 635-5 for instructions on completion of DD Form 214 (Report of Separation from Active Duty).

E-12. Type discharge certificate issued

a. *Officers.* Officers discharged for physical disability will be honorably discharged. Issue a DD Form 256A (Honorable Discharge Certificate). An exception is a case in which the disability upon which discharge is

based was the result of intentional misconduct or willful neglect of the officer concerned or was incurred during a period of unauthorized absences. In any of these circumstances, the officer will be discharged under honorable conditions. Issue him a DD Form 257A (General Discharge Certificate (Under Honorable Conditions)).

b. *Enlisted personnel.* Enlisted members discharged by reason of physical disability will be honorably discharged. Issue DD Form 256A, unless the character of service (see AR 635-200) has been such as to warrant issuance of a DD Form 257A.

E-13. Delivery of separation forms

Deliver separation forms to the member according to AR 635-5. If the member has been moved to a VA hospital before the date of separation or retirement, and is mentally incompetent, mail the separation forms to his next-of-kin or legal guardian. Furnish the director of the VA hospital a copy of the DD Form 214.

E-14. Retirement honors

Extend proper honors to members retired for physical disability according to AR 635-10.

SUBJECT: Request for Permanent Change of Station Pending Disability
Separation or Retirement

TO: (Commander of appropriate MTF)

1. I have been informed that a physical evaluation board has found me unfit because of physical disability to perform my military duties. I understand that I may elect permanent change of station to my home (PCSH), pending final action on that finding. The finding is subject to conditions set forth below. I wish to be placed on PCSH at . . . (complete home address) . . . to await further orders.

2. I understand I will be charged ordinary leave to the extent of my accrued leave during PCSH. Any unused accrued leave remaining to my credit on the day before the effective date of separation or retirement will be computed. Payment will be made with my final pay, if proper.

3. I further understand that I remain subject to military control. I may need to undergo further medical treatment or evaluation. I may be declared physically fit for duty. Also other circumstances may prevent my separation or retirement. I will comply with orders or instructions issued by proper authority.

4. While PCSH, I am in an "awaiting orders" status. I am entitled to proper pay and allowances. Basic allowance for quarters is payable if I am not occupying Government quarters. If an enlisted member, I am entitled to subsistence allowance or rates prescribed when rations in kind are not available.

5. I am entitled to shipment of household goods to the place at which I will await further orders. I may also request temporary storage of household goods. These entitlements do not prevent shipment of household goods to my selected home when I retire. Nor do they prevent shipment of household goods to my selected home when I retire. Nor do they prevent shipment of household goods to a new duty station if I am found physically fit and ordered back to duty. I also understand I am entitled to transportation for myself and any dependents. In addition, I may request an advance of travel allowances for myself to the place at which I will await further orders. Furthermore, I understand such entitlements may be adjusted. For example, they may be adjusted if I accept transportation of my dependents and shipment of household goods to both the place where I await orders and my selected home when I retire. They may be adjusted if I accept transportation to my new duty station if I am found fit and ordered to duty. Entitlement may not exceed the amount payable for the distance from the place at which I received orders. The orders may direct me to proceed in an "awaiting orders" status to my selected home when I retire or to my new duty station, whichever is proper.

(Signature of member,
typed name and grade
SSN)

Figure E-1. Request for PCSH

Appendix A

Glossary

A-1. Abbreviations

Section I

Abbreviations

ABCMR

Army Board for Correction of Military Records

ACRB

Army Council of Review Boards

ADRB

Army Disability Review Board

APDAB

Army Physical Disability Appeal Board

ADRRB

Army Disability Rating Review Board

COAD

continuance (continued) on active duty

DRC

Disability Review Council

EPTS

existed prior to entry service

MEBD

medical evaluation board

MEDDAC

medical department activity

MTF

medical treatment facility

PEB

Physical Evaluation Board

PEBLO

Physical Evaluation Board Liaison Officer

TDRL

Temporary Disability Retired List

USAPDA

US Army Physical Disability Agency

VASRD

Veterans Administration Schedule for Rating Disabilities

A-2. Explanation of terms:

Section II

Explanation of Terms

Accepted medical principles

Fundamental deductions that are consistent with medical facts. These principles are so reasonable and logical as to create a virtual certainty that they are correct.

Active duty

Full-time duty in the active military service of the United States. This general term applies to all active duty service with the active forces without regard to duration or purpose:

Active service

Service on active duty.

Acute, grave illness

A pathological condition having a sudden onset or sharp rise that is very serious or dangerous to life. It is usually short and relatively severe as opposed to a prolonged chronic condition.

Armed conflict

Any activity in which American military personnel are engaged with a hostile or belligerent nation, faction, or force. The activity may include a war, expedition, occupation, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, or insurgency, etc.

Clear and convincing evidence

Factual information that would convince an ordinarily prudent-minded person beyond a well-founded doubt. This evidence is a higher degree than preponderance of evidence. It does not, however, require proof beyond a reasonable doubt as in criminal cases.

Combat-related injury

A personal injury or sickness that a member incurs under one of the following conditions: as a direct result of armed conflict; while engaged in extrahazardous service; under conditions simulating war; or which is caused by an instrumentality of war.

Conditions simulating war

Those circumstances of training so simulating conditions of war that a special personal risk attends the situation. The mere fact that training (calisthenics) was required, or that training (football) is sponsored by the military, does not equate with "conditions simulating war."

Disease

An abnormal condition affecting a person that is not defined or classified as an injury. (A detailed listing of diseases may be found in Volume I, Eighth Revision, International Classification of Diseases, Adapted for Use in the United States (ICD-9), diagnostic codes 000 to 796.9.)

Deleterious-type cases

A case in which disclosure of information on a member's physical condition would be harmful to his physical or mental health.

Extended active duty

The duty status of a member of the Regular Army. It is also the duty status of a non-Regular member who is called or ordered to active duty for a period of more than 30

days other than for training under section 270(b) of title 10 United States Code.

Impairment of function

The lessening of the capacity of the body or its parts to perform normally because of disease or residual of an injury.

Impairment, manifest

An impairment evidenced by signs or symptoms.

Impairment, mental

An alteration of mentality because of disease or injury. Excluded are such deviations from anticipated norms as personality disorders and primary mental deficiency or retardation.

Impairment, physical

Any anatomic, functional, or physiologic abnormality of the body. The term is synonymous with "physical defect."

Injury

A condition caused by trauma, such as a fracture, wound, sprain, dislocation, concussion, or compression. Also, an injury includes conditions resulting from extremes of temperature or prolonged exposure. Acute poisonings resulting from exposure to a toxic or poisonous substance are also classed as injuries. Poisoning due to contaminated food is not considered an injury. (A detailed listing of injuries may be found in Volume I, Eighth Revision, International Classification of Diseases, Adapted for Use in the United States (ICD-9), diagnostic codes 800 to 999.9.)

Instrumentality of war

A device designed primarily for military service and intended for use in such service at the time of the occurrence of the injury. It may also be a device not designed primarily for military service if use of or occurrence involving such a device subjects the individual to a hazard peculiar to military service. This use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits.

Maximum hospital benefits

The point during hospitalization when a patient's progress appears to have stabilized. At this point, it can be anticipated if additional hospitalization will contribute to any further substantial recovery. A patient who can be expected to continue to improve over a long period of time without specific therapy or medical supervision, or with only a moderate amount of treatment on an outpatient basis, may be considered as having attained maximum hospital benefits.

Member

Unless otherwise qualified, a commissioned officer, warrant officer, or enlisted person of the Army.

Next-of-kin

An individual's nearest relative. (See AR 600-10, for a list in the order of succession.)

Not on extended active duty

The duty status of a non-Regular member who is ordered to active duty for training under section 270(b) of title 10, United States Code. The member may also be ordered to active duty or active duty for training for 30 days or less, or performing inactive duty for training.

Office, grade, rank, or rating

For this regulation—

a. *Office* is a position of duty, trust, or authority to which an individual is appointed.

b. *Grade* is a step or degree in a graduated scale of office or military rank that is established and designated as a grade by law or regulation.

c. *Rank* is the order of precedence among members of the Armed Forces.

d. *Rating* is the name prescribed for members of an Armed Force in an occupational field. The term equates with military occupational specialty.

Optimum hospital improvement

The point during hospitalization when a patient's fitness for further military service can be decided. Also further treatment for a reasonable period in a military medical treatment facility will probably not result in materiel change in his condition so as to alter his type of disposition or amount of separation benefits.

Physical evaluation board (PEB) counsel

A member of the Judge Advocate General's Corps (JAGC) on duty with a PEB. The purpose of legal counsel is to represent members at PEB hearings and counsel such members.

Physical evaluation board liaison officer (PEBLO)

An experienced, mature officer or civilian employee designated by the MTF commander. The PEBLO performs the primary duties of counseling members who are undergoing informal physical disability evaluation. He provides members with authoritative and timely answers to their questions and aids them in understanding their rights and entitlements. He need not be qualified as a legal officer.

Physical disability

Any manifest impairment due to disease or injury, regardless of degree, that reduces or prevents an individual's actual or presumed ability to engage in gainful or normal activity. The term includes disability due to mental disease.

Physically unfit

Unfitness due to physical disability. The unfitness is of such a degree that a member is unable to perform the duties of his or her office, grade, rank, or rating in such a way

as to reasonably fulfill the purpose of his or her employment on active duty Army wide under field conditions. "Physically unfit" is synonymous with the "unfit because of physical disability."

Preponderance of evidence

Factual information that tends to prove one side of a disputed fact by outweighing the evidence on the other side. Preponderance does not necessarily mean a greater number of witnesses or a greater mass of evidence; rather, the term means a superiority of evidence on one side or the other of a disputed fact. The term refers to the quality rather than the quantity of the evidence.

Presumption

An interference of the truth of a proposition or fact. It is reached through a process of reasoning and based on the existence of other facts. Presumed matters need no proof to support them. They may be rebutted by evidence to the contrary, however.

Proximate result of performing duty

A disability may reasonably be assumed to have been the result of, arising from, or connected with active duty, full-time training duty, other full-time duty, or inactive duty training. The duty may include but is not restricted to authorized leave (with or without pay). All facts, circumstances, and laws on a particular case must be considered.

Reasonable doubt

Reasonable doubt exists when evidence does not satisfactorily prove or disprove a claim. Reasonable doubt is substantial, not specious. It is within the range of probabilities as distinguished from pure speculation or remote possibility. It is not a means of reconciling conflicts or contradictions in evidence.

Reserve component of the Army

The US Army Reserve and the Army National Guard of the United States.

Separation

An all-inclusive team that is applied to personnel actions resulting from release from active duty, discharge, retirement, dismissal, resignation, dropped from the rolls, or death. In this regulation, separation means discharge because of physical disability with or without severance pay.

Service aggravation

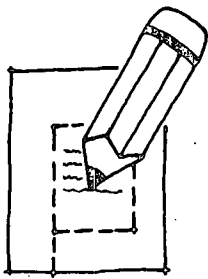
a. Medical treatment facilities frequently list a medical condition as "service aggravated" based on the fact that the condition becomes symptomatic under certain conditions found in the military. Symptoms arising when limits imposed by a condition have been exceeded are poor criteria of service aggravation of the condition, itself.

b. When an EPTS condition becomes symptomatic under the stress of active duty

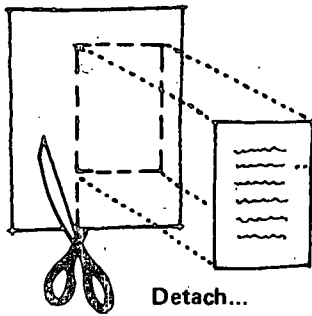
it may be unfitting but it has not been aggravated by AD unless it has been permanently worsened over and above natural progression.

Unfit because of physical disability

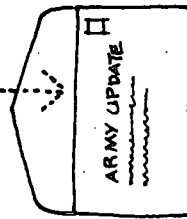
Synonymous with physically unfit.



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