

ENCLOSURE 3: DISABILITY EVALUATION POLICIES

**PART 1 - INTRODUCTION AND ADMINISTRATIVE POLICIES**

**3101 Objectives**

Evaluation of physical disability within the Navy DES has as its objectives:

- a. The maintenance of a physically fit and combat ready Navy and Marine Corps, including Reserve components; and
- b. Equitable consideration of the interests of the government and individual service members.

**3102 Summary Overview**

a. A case usually enters the Department of the Navy DES when a Medical Evaluation Board (MEB) is dictated for the purpose of evaluating the diagnosis and treatment of a member who is unable to return to military duty because the member's condition most likely is permanent, and/or any further period of temporary limited duty (TLD) is unlikely to return the member to full duty. A condition is considered permanent when the nature and degree of the condition render the member unable to continue naval service within a reasonable period of time (normally 8-12 months or less). Note: The term "permanent" does not necessarily mean the condition is unfitting.

b. Medical Officers should be aware of the 16-month cumulative limitation on TLD when considering any condition where surgical intervention might return a member to duty. In light of the time necessary for convalescent leave and post-operative therapies (e.g. physical therapy), Medical Officers should normally consider performing operative procedures by the end of the first TLD period if conservative therapy has failed.

c. Referral of a Medical Board report to the PEB can come from two sources; i.e. Limited Duty board reports referred for PEB evaluation by service headquarters, and Medical Board reports submitted directly to the PEB by a medical treatment facility (MTF). An individual case is accepted by the PEB when all medical and non-medical information necessary to evaluate the case appropriately has been received by the PEB. Once a case has been accepted by the PEB, the Informal PEB conducts a record review of the case. The individual concerned then is notified of the preliminary findings and given 15 calendar days in which to make a decision concerning the findings. If the member accepts the preliminary findings, the case is finalized and service headquarters is directed to make an appropriate disposition (i.e., separate, retire or return to duty). If the member does not agree with the preliminary findings, the member can request reconsideration of that decision by the same Informal PEB and/or demand/request a personal appearance before a Formal PEB. If the member does not act on the preliminary findings, acceptance is presumed on the 16th day after receipt of the findings. Dependent upon certain factors later described in this enclosure, the member may or may not proceed to a personal appearance before the Formal PEB. If the Formal PEB hears a case, it makes findings, and, subsequent to legal review

and/or quality assurance review, findings are sent to the member. If the member accepts the findings, the case is finalized and appropriate disposition by service headquarters is directed. If a member disagrees with the findings/results of the Formal PEB, the member is given 15 calendar days from the date of receipt of the findings letter to petition the DIRNCPB. The member has the right to petition the Board for Correction of Naval Records (BCNR) at any time subsequent to final action on his or her case. See enclosure (10) of this instruction for additional details.

### **3103 Guidance to Members**

Cases are very individual and can be very complex. Accordingly, the paragraph 3102 summary is designed just to provide a general overview. Personnel with specific problems should review more detailed sections of this and other applicable instructions or consult with a Physical Evaluation Board Liaison Officer (PEBLO ) counselor or an attorney.

### **3104 Medical Board Requirements**

a. Purpose of Medical Boards: A medical board serves to report upon the present state of health of any member of the Armed Forces and as an administrative board by which the convening authority or higher authority obtains a considered clinical opinion regarding the physical status of service personnel.

#### b. Convening Medical Board

(1) Medical boards may be convened by commanding officers of naval hospitals and other MTFs designated by the Chief, Bureau of Medicine and Surgery (CHBUMED).

(2) Convening of a medical board may be ordered by the CNO, CMC, CHNAVPERS, and the CHBUMED.

### **3105 Special Interest Cases**

a. Special interest cases are those designated by SECNAV for referral to ASN (M&RA) for final determination. As required by paragraph 1004j, all cases involving flag and general officers who are within 12 months of mandatory retirement due to age or service limitations and medical corps officers in any grade who are pending nondisability retirement for age or length of service at the time of referral into the DES, on active or reserve duty, who are determined by the PEB to be Unfit, are designated special interest cases due to statutory or regulatory handling requirements.

b. DIRNCPB may designate a case to be of special interest.

### **3106 Prompt Identification of Disability**

There exists no authority to omit or postpone disability evaluation of physical impairment, which renders questionable the ability of service members to perform reasonably the duties of office, grade, rank, or rating. Commanding officers of MTFs and

individual medical and dental officers are to identify promptly for referral to the DES those members presenting for medical care whose Fitness for active duty is questionable.

### **3107 Counseling**

a. General. A member or, in appropriate cases, legal guardian, trustee, or next-of-kin shall be carefully counseled in clearly understandable terms by a PEBLO or collateral duty counselor concerning the significance of action being taken in a case, its probable effect on his or her future, and options available. Counselors shall discuss such other matters as estimated retired or severance pay, probable retired grade, potential veteran benefits, post-retirement insurance programs, the Survivor Benefit Plan, and recourse to and preparation of Petitions For Relief. Counseling shall be provided before, during, and after PEB consideration, at each stage of processing, and as questions are raised by the member.

#### b. PEBLOs/Counselors

(1) DIRNCPB shall assign counselors to medical treatment facilities (MTFs), where the volume of cases entering the DES warrants a full-time counselor, to provide counseling for members at and near those activities. At those naval MTFs where regularly assigned PEBLO counselors are not available, the commanding officer shall designate a staff member, preferably the patient administration officer or an assistant, to provide disability counseling as a significant collateral duty. PEBLO counselors and collateral duty counselors will, in addition, provide disability counseling as necessary for members of the naval service in MTFs controlled by other services.

(2) PEBLO counselors shall be senior enlisted (E-7 or above) or equivalent civilian employees.

c. Counselor Training. The DIRNCPB, in order to ensure effective counseling prescribed under paragraph 3107a above, will provide initial training, a Counselor's Manual and annual conference training to both PEBLO and collateral duty counselors. Travel funding for collateral duty counselors shall be provided by the MTF to which assigned.

### **3108 Conflict Of Interest/Recusal**

a. No officer may appear as the member being evaluated by a panel of the PEB, which was convened by him or her, by anyone temporarily succeeding to his or her office, or by any subordinate in the chain of command.

b. No member of an Informal PEB who is being processed by the PEB may be evaluated by that Informal PEB. In such cases, the President, PEB, will designate another Informal PEB to consider the case. The new Informal PEB may not include any members of the original Informal PEB.

c. No member of a Formal PEB who is being processed by the PEB may be evaluated by the Formal PEB of which he or she is a member.

d. No medical corps officer shall act as a member of a board of the PEB if he or she had either direct charge of the member's care immediately preceding evaluation by a board, prepared medical reports under consideration by a board, or was a member of a board of medical officers which reported on the member concerned.

e. There will be occasions when it becomes very difficult, if not impossible, for a member of the Informal PEB, Formal PEB, or other reviewing authority within the PEB process to render a decision which is not influenced in some manner by personal bias. When confronted with a situation of this nature, the individual PEB member must make the determination as to whether he/she can make a determination based solely on the facts of record, personal bias/interest aside. The individual's determination regarding his/her ability to render an unbiased decision in the case will govern his/her future participation. If in any doubt as to whether the appearance or reality of an ethical conflict of interest exists in a specific case, the board member must seek an advisory opinion from DIRNCPB legal counsel.

### **3109 Restriction on Communications with Members**

Except during the course of a Formal PEB, board members shall not engage in discussion with members under evaluation regarding their cases. The creation of any inference of undue influence or partiality shall be scrupulously avoided.

### **3110 Reservist Participation**

a. Reserve Representation Required. Each board of the PEB shall include at least one member who is a Navy or Marine Corps Reservist when evaluating the fitness for active duty of a member of the Naval or Marine Corps Reserve (10 U.S.C. 12643).

b. Failure To Have Reserve Representation During Records Review. If, after referral of a Reservist's case to a Formal PEB, it is discovered that no member of the Informal PEB was a Reservist, the case will be considered by a properly constituted Formal PEB without return of the case to an Informal PEB for reconsideration. Formal PEB consideration is tantamount to a "de novo" proceeding and meets the protective requirements of 10 U.S.C. 12643.

### **3111 Travel Expenses**

a. Members On The Temporary Disability Retired List. A member on the TDRL is entitled to travel and transportation allowances authorized by Joint Federal Travel Regulations (JFTR) for members in his or her retired grade for travel in connection with temporary duty while on active duty for periodic physical examinations and appearances before the PEB. See paragraph 3621.

b. Active Duty Members Appearing Before a Board. Personal appearance before a board by active duty members is official business and shall be covered by orders providing for all of the appropriate travel expenses authorized by the JFTR.

c. Inactive-Duty Reservists With A Notice Of Eligibility (NOE). Same as b above.

d. Inactive-Duty Reservists Without A Notice Of Eligibility (NOE). Inactive-duty reservists without an NOE who desire to appear before a board must do so at no expense to the government. Reservists covered under the provisions of paragraph 3201 b (3) rate travel expenses.

e. Escorts/Attendants. Certain members discussed in a, b, and c above may be incapable of traveling alone as determined by the attending physician. An accompanying escort/attendant is entitled to travel and transportation allowances as authorized by the JFTR. An escort/attendant may be a member of the Uniformed Services, a civilian employee of the U.S. government, or any other person considered suitable by the member and by the appropriate authority ordering the physical examination or appearance. Requests for an escort/attendant shall be submitted through the PEBLO with accompanying physician justification to the PEB for final approval.

### **3112 Leave**

a. Members whose cases are being evaluated within the DES, if otherwise physically able to do so, shall be permitted to take earned annual leave. The command authorizing leave will notify the cognizant PEBLO of the inclusive dates and the member's leave address and phone number. Commands shall recall the member if required by the President, PEB.

b. Commands shall not charge annual leave to a member who is required to report to an MTF for treatment, examination, rehabilitation, therapy, etc., or when convalescent leave is the proper category of absence.

c. Members who have earned leave which they are unable to sell upon disability separation or retirement shall be permitted to use the additional leave before their separation date.

### **3113 – 3199 Reserved**