

PART 5 - POLICIES CONCERNING COMBAT-RELATED INJURIES

3501 Provision Of Combat-Related Opinion

a. Once a member has been rated, the PEB shall provide a combat-related opinion for the member which shall be binding on the appropriate finance center in the absence of guidance to the contrary from the Internal Revenue Service or from the JAG. CHNAVPERS and CMC (M&RA), as appropriate, shall communicate this opinion to the separating activity and to the appropriate finance center.

b. No combat-related opinion need be made when it is clear from the record of proceedings that the member was on active duty or under binding contract with the Armed Forces on or before 24 September 1975.

c. The PEB will state affirmatively, for contingent use in civil service matters by the JAG, if the disability is a result of an instrumentality of war or incurred as a direct result of armed conflict.

3502 General

Retired and severance pay awarded to members who were not a member of an armed force or under a binding contract to become such a member on 24 September 1975 is considered taxable under Section 104 of the Internal Revenue Code, found as 26 U.S.C. 104. An exception to this provision exists in Section 104(b)(1)(c) for a member receiving separation or retired pay by reason of a combat-related injury .

3503 Combat-Related Injury

The term "combat-related injury" as defined in 26 U.S.C. 104(b)(3) includes four separate categories. It means personal injury or sickness:

- a. Incurred as a direct result of armed conflict,
- b. Incurred while engaged in extra hazardous service, or
- c. Incurred under conditions simulating war; or
- d. Caused by an instrumentality of war.

3504 Direct Result Of Armed Conflict

The physical disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. The fact that a member may have incurred a disability during a period of war or in an area of armed conflict, or while participating in combat operations is not sufficient to support this finding. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

a. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, riot, or any other

action in which service members are engaged with a hostile or belligerent nation, faction, force, or terrorists.

b. Armed conflict also may include such situations as incidents involving a member while interned as a prisoner of war or while detained against his or her will in custody of a hostile or belligerent force or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

3505 Engaged In Extra Hazardous Service

Includes, but is not limited to, aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

3506 Conditions Simulating War

In general, this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses; grenade and live fire weapons practice; bayonet training; hand-to-hand combat training; repelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities, such as calisthenics and jogging or formation running and supervised sports.

3507 Caused By An Instrumentality Of War

For income taxation purpose only, incurrence during a period of war is not required. A favorable determination is made if the disability was incurred during any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury, or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or material. However, there must be a direct causal relationship between the instrumentality of war and the disability. For example, an injury resulting from a service member falling on the deck of a ship while participating in a sports activity would not normally be considered an injury caused by an instrumentality of war (the ship) since the sports activity and not the ship caused the fall. The exception occurs if the operation of the ship caused the fall.

3508 Appeals Of Combat-Related Opinions

a. JAG shall act on behalf of the SECNAV in providing departmental appellate resolution of combat-related opinions.

b. DIRNCPB may request an opinion from the JAG as to the appropriateness of a PEB combat-related opinion. Such opinion shall be binding on and shall be issued by the PEB.

c. A determination by the PEB that a disability is not combat-related may be appealed by the member to the JAG. The appeal shall be by letter addressed to the Judge Advocate General of the Navy (Code 131), Washington Navy Yard, 1322 Patterson Ave SE, Suite 3000, Washington, DC 20374-5066 and shall set forth the reasons the member disagrees with the determination of the PEB. The member's disability evaluation proceedings will not be delayed or abated pending action on the appeal by the JAG.

d. JAG may provide a combat-related opinion upon request by a member who was not provided one during earlier DES processing.

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