

## **PART 7 - DISPOSITION POLICIES**

### **3701 Fit (Or Physically Qualified) Following Disability Evaluation**

If the PEB determines that an active duty member is Fit or an inactive duty reservist is Physically Qualified, return the member to his or her normal duty or reserve status unless separated or retired on a non-disability basis. However, for personnel on the TDRL, see paragraphs 3625 and 4213a.

### **3702 Unfit Following Disability Evaluation.**

Except in the cases of Unfit members being retained on active duty in a PLD status, any member on active duty or in active status who is found to be physically disabled will be retired, if eligible for retirement, or, if not so eligible, separated.

### **3703 Not Physically Qualified.**

An inactive-duty reservist who is found Not Physically Qualified, subject to paragraph 6005, shall be honorably discharged, retired if eligible, or offered non-regular retirement in accordance with chapter 1223 of title 10, U.S. Code.

### **3704 Flag And Medical Corps Officers**

a. Officers in grade O-7 or higher who are within 12 months of mandatory retirement due to age or service limitations or medical officers in any grade who are pending non-disability retirement for age or length of service at the time of referral into the DES, who are on active or reserve duty, may not be retired for physical disability unless the initial Unfit determination is approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)). ASN (M&RA) will be the final decision authority in cases involving flag and medical officers who are retirement eligible, but are not pending non-disability retirement. DIRNCPB will be the decision authority in those medical officer cases where the member is not eligible for non-disability retirement. In death imminent cases involving general, flag, or medical officers pending non-disability retirement see paragraph 12004.

b. CHNAVPERs and CMC (M&RA) shall submit to the ASD (HA) via the ASN (M&RA) one copy of all retirement orders issued in the case of each general/flag officer (grades O-7 through O-10) retired because of physical disability .

c. All medical boards involving medical officers as patients forwarded to the PEB for consideration will be accompanied by a separate command evaluation to include the medical officer's current overall level of function, and a Peer Review delineating clinical privileges (SECNAVINST 6320.23 applies).

d. Officers in grade O-7 or above or medical officers in any grade shall not be determined Unfit because of physical disability if the member can be expected to perform satisfactorily in an assignment appropriate to his or her grade, qualifications, and experience. Thus, the inability to perform specialized duties or the fact the member has a condition which is cause for referral to a PEB is not justification for a finding of Unfit.

### **3705 Permanent Disability Retirement**

If otherwise eligible, a member who is to be retired because of physical disability shall be placed on the permanent disability retired list if within 5 years of the initial determination under 10 U.S.C. 1201 or 1204:

a. based upon accepted medical principles, the member cannot reasonably be expected to recover so as to be physically Fit to perform the duties of his or her office, grade, rank or rating; and

b. the disability rating, as established under the VASRD, in use at the time of the initial determination that the member is Unfit because of physical disability, cannot reasonably be expected to increase or decrease so as to change the amount of disability retired pay to which the member would be entitled.

### **3706 Temporary Disability Retirement**

a. If a member's nature of disability does not meet the criteria for permanent retirement set forth in paragraph 3705 and 10 U.S.C 1202, place the member on the TDRL in accordance with 10 U.S.C. 1202 or 1205, as appropriate. Also, place members whose disabilities are unstable on the TDRL, if otherwise qualified.

b. Once a member's name has been placed on the TDRL, special rules and procedures become applicable. In addition, there are special disposition rules following later removal from the TDRL. Both sets of rules are set forth in part 6 of this enclosure.

### **3707 Effective Date of Retirement/Separation**

The effective date of retirement/separation because of physical disability (either permanent or temporary) normally shall be within 4-6 weeks, on the average, after issuance of the "Notification of Decision." The 4-6 weeks average elapsed time standard, however, is a guideline, not an inflexible rule. It may be exceeded by CHNAVPERs and CMC (M&RA) in such circumstances as severe hardship on the member, taking earned leave when the member is unable to sell it, infeasibility, such as when there is longer lead-time for properly vacating government quarters or arranging movement of household effects, and adverse effect on the service such as when it would preclude contact relief of officers in command or other key billets. These guidelines do not supersede service-unique transition rights and the Uniform Retirement Date requirement of 5 U.S.C. 8301, but rather provide for reasonable exercise of the Secretary's authority in 10 U.S.C. 1221.

### **3708 Permanent Limited Duty Exception To Continue On Active Duty, Members Otherwise Unfit Because Of Physical Disability**

See enclosure (6) to this instruction.

### **3709 Waiver Of Disability Retirement/Separation**

a. Members Qualified For Retirement For Other Reasons May Request Non-Disability Retirement/Separation. A member who meets all prerequisites for retirement or separation because of physical disability, but who also is qualified for retirement for other

reasons, or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, may request that he or she be separated for reasons other than disability .

(1) A member who wants non-disability retirement must submit a request to ASN (M&RA) in a timely manner prior to the effective date of his or her disability retirement, stating the reason for the request. Forward the request via CHNAVPERs or CMC (M&RA), who will make a specific recommendation with supporting rationale.

(2) A member who wants non-disability transfer to the Fleet Reserve or the Fleet Marine Corps Reserve, must submit a Request for Transfer to the Fleet Reserve (NAVPERs 1830/1) or Fleet Marine Corps Reserve Application (via Naval Message or AA Form). Along with the application, the member must forward a signed waiver of rights to a formal hearing and to disability pay under MILPERSMAN 3855180.9 or MARCORPSEPMAN (MCO P1900.16), Chapter 8, as appropriate, and request an effective date of not more than 60 days from date of application. A copy of the waiver is to be provided to the DIRNCPB for finalization of the member's case.

b. Authority To Waive Disability Retirement/Separation. At the request of the member, the DIRNCPB, is authorized to waive disability retirement/separation where consistent with the law and this enclosure.

**3710 Deferment of Mandatory Retirement or Separation**

If a member is pending mandatory separation or retirement, such retirement or separation may only be deferred if the member is hospitalized or a medical board report has been accepted by the President, PEB for disability evaluation processing. 10 U.S.C. 640 applies.

**3711 - 3799 Reserved**