

PART 3 - POLICIES CONCERNING FITNESS VERSUS UNFITNESS

3301 Standard Used for Disability Determination

The sole standard to be used in making determinations of physical disability as a basis for retirement or separation is unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated while entitled to basic pay. Each case is considered by relating the nature and degree of physical disability of the member to the requirements and duties that member may reasonably be expected to perform in his or her office, grade, rank or rating.

3302 General Criteria For Making Unfitness Determinations

a. A service member shall be considered Unfit when the evidence establishes that the member, due to physical disability, is unable to reasonably perform the duties of his/her office, grade, rank, or rating (hereafter called duties) to include duties during a remaining period of Reserve obligation.

b. In making a determination of a member's ability to perform his/her duties, the following criteria may be included in the assessment:

(1) Medical condition represents a decided medical risk to the health of the member or to the welfare of other members were the member to continue on active duty or in an Active Reserve status.

(2) Medical condition imposes unreasonable requirements on the military to maintain or protect the member.

(3) Nature of service member's established duties during any remaining period of reserve obligation.

3303 Relevant Evidence

Consider all relevant evidence in assessing service member fitness, including the circumstances of referral. To reach a finding of Unfit, the PEB must be satisfied that the information it has before it supports a finding of unfitness.

a. Referral Following Illness or Injury. When referral for physical disability evaluation immediately follows an acute, grave illness or injury, the medical evaluation may stand-alone, particularly if medical evidence establishes that continued service would be deleterious to the service member's health or is not in the best interests of the respective service.

b. Referral For Chronic Impairment. When a service member is referred for physical disability evaluation under circumstances other than as described in paragraph 3303 (a), evaluation of the member's performance of duty by supervisors as indicated, for example, by letters, efficiency reports, credential reports, status of physician medical

privileges, or personal testimony may provide better evidence than a clinical estimate by a physician of the service member's ability to perform his or her duties. Particularly in cases of chronic illness, these documents may be expected to reflect accurately a member's capacity to perform.

c. Adequate Performance Until Referral. If the evidence establishes that the service member adequately performed his or her duties until the time the service member was referred for physical evaluation, the member may be considered Fit even though medical evidence indicates questionable physical ability to continue to perform duty.

d. Cause and Effect Relationship. Regardless of the presence of illness or injury, inadequate performance of duty, by itself, shall not be considered as evidence of unfitness due to physical disability, unless it is established that there is a cause and effect relationship between the two factors.

3304 Reasonable Performance Of Duties

a. Considerations. Determining whether a member can reasonably perform his or her duties includes consideration of:

(1) Common Military Tasks. The member, due to physical disability, is unable to reasonably perform the duties of his or her office, grade, rank, or rating (hereafter called duties) to include during a remaining period of Reserve obligation. For example, whether the member is routinely required to fire his or her weapon, perform field duty, or to wear load bearing equipment or protective gear.

(2) Physical Readiness/Fitness Tests. The PEB will consider a member's case when the MTF determines that the medical condition prohibits the member from taking all or a portion of the PRT/PFT, and permanent increased bodily harm will result from taking all or a portion of the PRT/PFT. When a member has been found Fit to continue naval service by the PEB for a condition which subsequently is used by the member to obtain a waiver, from the local medical department representative, of all or a portion of the PRT/PFT, the waiver shall not be used as the basis for an adverse (punitive or administrative for misconduct) personnel action against the member. However, the waiver may be the basis for non-punitive administrative action according to service policies.

(3) Deployability. See definition in paragraph 2019. Inability to perform the duties of his or her office, grade, rank, or rating in every geographic location and under every conceivable circumstance will not be the sole basis for a finding of Unfit. When deployability is used by a service as a consideration to determine fitness, the standard must be applied uniformly to both the Active and Reserve components of that service.

(4) Special Qualifications. Members whose medical condition causes loss of qualification for specialized duties, whether the specialized duties comprise the member's current duty assignment; the member has an alternate branch or specialty; or whether reclassification or reassignment is feasible, will not be the sole basis for a finding of Unfit.

b. General, Flag, and Medical Officers. An officer in pay grade O-7 or higher or a medical officer 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 that is cause for referral to a PEB is not justification for a finding of Unfit. Medical doctors will have a review of clinical privileges with peer review required.

c. Members on Permanent Limited Duty. A member previously determined Unfit and continued in a permanent limited duty status or otherwise continued on active duty, normally will be found Unfit at the expiration of his or her period of continuation. However, the member may be determined Fit when the member's condition has healed or improved so that the member would be capable of performing his or her duties in other than a limited duty status. The member will be evaluated using current standards of fitness and if the member remains ratable, current VASRD standards will be used.

d. Overall Effect. A member may be determined Unfit as a result of the overall effect of two or more impairments even though each of them, standing alone, would not cause the member to be referred into the DES or be found Unfit because of physical disability .

3305 Presumed Fit

a. Application. Except for service members previously determined Unfit and continued in a permanent limited duty status, service members who are pending retirement at the time they are referred for physical disability evaluation enter the DES under a rebuttable presumption that they are physically Fit. The DES compensates disabilities when they cause or contribute to career termination. Continued performance of duty until a service member is approved for length of service retirement creates a rebuttable presumption that a service member's medical condition has not caused career termination.

b. Presumptive Period. Service members shall be considered to be pending retirement when the dictation of the member's MEB report occurs after any of the circumstances designated below:

(1) When a member's request for voluntary retirement has been approved. Revocation of voluntary retirement orders for purposes of referral into the DES does not negate application of the presumption .

(2) An officer has been approved for Selective Early Retirement.

(3) An officer is within 12 months of mandatory retirement due to age or length of service .

(4) An enlisted member is within 12 months of High Year Tenure (HYT) or expiration of active obligated service (EAOS), and will be eligible for retirement at his/her HYT or EAOS.

(5) An enlisted member is within 12 months of retirement eligibility and the member's EAOS has or will expire prior to the member being retirement eligible.

c. Overcoming the Presumption

(1) The Presumed Fit (PFit) rule shall be overcome when:

(a) Within the presumptive period an acute, grave illness or injury occurs that would prevent the member from performing further duty if he or she were not retiring; or

(b) Within the presumptive period, a serious deterioration of a previously diagnosed condition, to include a chronic condition, occurs and the deterioration would preclude further duty if the member were not retiring; or

(c) The condition for which the member is referred is a chronic condition and a preponderance of evidence establishes that the member was not performing duties befitting either his or her experience in the office, grade, rank, or rating before entering the presumptive period. Evaluate cases of members in a TLD status on the merits of each case.

(2) The PFit rule is not overcome when there has been no serious deterioration within the presumptive period. The ability to perform duties in the future as a result of presumed normal progression shall not be a consideration in overcoming PFit.

d. Application for Prisoners of War (POWs). The presumption of fitness will not be applied, and a disability rating will be assigned, for conditions of POWs resulting from the POW experience.

3306 Evidentiary Standards For Determining Unfitness Because Of Physical Disability

a. Factual Finding. A factual finding that a service member is Unfit because of physical disability depends on the evidence that is available to support that finding. Quality of evidence usually is more important than quantity. All relevant evidence must be weighted in relation to all known facts and circumstances which prompted referral for disability evaluation. Findings will be made based on objective evidence in the record as distinguished from personal opinion, speculation, or conjecture. When the evidence is not clear concerning a service member's fitness, attempt to resolve doubt based on further objective investigation, observation, and evidence. Benefit of unresolved doubt shall be resolved in favor of the fitness of the service member under the rebuttable presumption that the member desires to be found Fit.

b. Preponderance of Evidence. Make findings about fitness or unfitness for naval service based on preponderance of the evidence. Thus, if a preponderance (that is, more than 50 percent) of the evidence indicates unfitness, make a finding to that effect. If, on the

other hand , a preponderance of the evidence indicates fitness, the service member may not be separated or retired due to physical disability. The sole standard to be used in making determinations of physical disability as a basis for retirement or separation is Unfitness to perform the duties of office , grade , rank or rating because of disease or injury incurred or aggravated while entitled to basic pay. Each case is considered by relating the nature and degree of physical disability of the member to the requirements and duties that member may reasonably be expected to perform in his or her office, grade, rank or rating.

3307 Standards And Criteria Not Normally To Be Used As The Sole Basis For Determining Fitness Or Unfitness

a. Deployability. Inability to perform the duties of his or her office, grade, rank, or rating in every geographic location and under every conceivable circumstance will not be the sole basis for a finding of Unfitness.

b. Physical Fitness Test. Inability to take/pass the PRT/PFT will not be the sole basis for a finding of Unfit to continue naval service.

c. Special Qualifications. The inability to perform specialized duties or loss of special qualification, i. e., aviation, parachuting or diving qualifications, etc. (see paragraph 3304) will not be the sole basis for a finding of Unfitness.

3308 Members Undergoing Initial Active Duty For Training

a. Members with Medical Waivers. Provided no aggravation has occurred, service members who enter the military with a medical waiver may be separated without physical disability evaluation when the responsible medical authority designated by service regulations determines within 180 days of the member's entry into active service that the waived condition represents a risk to the member or prejudices the best interests of the Government. Once 180 days have elapsed, or the condition is one that causes referral into the DES, refer the member for physical disability evaluation, if otherwise qualified.

b. Members without Medical Waivers. Members undergoing initial active duty for training who incur an injury or condition which was not waived for the purpose of entry into military service, who will not be returned to training in a reasonable period of time, will be referred to the PEB for disability evaluation.

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