



Department of Defense **INSTRUCTION**

NUMBER 6040.44

July 2, 2015

USD(P&R)

SUBJECT: Physical Disability Board of Review (PDBR)

References: See Enclosure 1

1. PURPOSE. This instruction:

a. Reissues DoD Instruction (DoDI) 6040.44 (Reference (a)) in accordance with the authority in DoD Directive (DoDD) 5124.02 (Reference (b)) to establish policies, assign responsibilities, and provide procedures for PDBR operation and management as required by section 1554a of Title 10, United States Code (Reference (c)).

b. Designates the Secretary of the Air Force as the lead agent for the establishment, operation, and management of the PDBR for DoD.

2. APPLICABILITY. This instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this instruction as the "DoD Components").

3. POLICY. It is DoD policy that:

a. The PDBR will reassess the accuracy and fairness of the combined disability ratings assigned former Service members who:

(1) Were separated, with a combined disability rating of 20 percent or less during the period beginning on September 11, 2001, and ending on December 31, 2009, due to unfitness for continued military service, resulting from a physical disability as described in chapter 61 of Reference (c); and

(2) Were not found to be eligible for retirement, including former Reserve Component Service members with 20 satisfactory years.

b. The PDBR will review the combined disability ratings assigned to individuals who meet the criteria in paragraph 3a (referred to in this instruction as “covered individuals”). Review may be upon the covered individual’s request or the PDBR’s own initiative. Where appropriate, the PDBR will recommend that the Military Departments correct discrepancies and errors in such ratings.

c. The PDBR will review covered individuals’ appeals pertaining to conditions identified but not determined to be unfitting by the physical evaluation board (PEB) of the Military Department concerned, when contended by the applicant.

d. The PDBR will operate in a transparent and accountable manner. The PDBR has no greater obligation to wounded, ill, and injured former Service members than to offer fair and equitable recommendations pertaining to the assignment of disability ratings.

e. Performance and production metrics will be considered in the determination of resource requirements. Resources for implementing the PBDR must be identified and allocated as part of the Defense Planning, Programming, Budgeting, and Execution process by the Military Departments.

f. Scheduling of cases subject to review by the PDBR will be based upon an intentional methodology that gives equitable consideration to requests originating from covered individuals regardless of status, component affiliation, or source of disability.


g. The PDBR will support the disability evaluation system (DES) in accordance with DoDI 1332.18 (Reference (d)).

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

6. RELEASABILITY. **Cleared for public release.** This instruction is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

7. EFFECTIVE DATE. This instruction is effective July 2, 2015.



Brad Carson
Acting Under Secretary of Defense
for Personnel and Readiness

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ENCLOSURE 1

REFERENCES

- (a) DoD Instruction 6040.44, "Lead DoD Component for the Physical Disability Board of Review (PDBR)," June 27, 2008, as amended (hereby cancelled)
- (b) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
- (c) Title 10, United States Code
- (d) DoD Instruction 1332.18, "Disability Evaluation System," August 5, 2014
- (e) "Physical Disability Board of Review Charter," November 1, 2012¹
- (f) DoD 7000.14-R, Volume 11A, "DoD Financial Management Regulation: Reimbursable Operations Policy," July 2013
- (g) DoD Instruction 4000.19, "Support Agreements," April 25, 2013
- (h) DoD Instruction 5015.02, "DoD Records Management Program," February 24, 2015
- (i) DoD Instruction 5100.73, "Major DoD Headquarters Activities," December 1, 2007, as amended
- (j) DoD Instruction 8910.01, "Information Collection and Reporting," May 19, 2014
- (k) DoD Manual 1332.18, Volume 3, "Disability Evaluation System (DES) Manual: Quality Assurance Program," November 21, 2014
- (l) DoD Directive 5400.11, "DoD Privacy Program," October 29, 2014
- (m) DoD 5400.11-R "Department of Defense Privacy Program," May 14, 2007
- (n) Part 4 of Title 38, Code of Federal Regulations (also known as the "Department of Veterans Affairs Schedule for Rating Disabilities (VASRD)")
- (o) DoD Manual 1332.18, Volume 1, "Disability Evaluation System (DES) Manual: General Information and Legacy DES Timelines," August 5, 2014

¹ Copies may be obtained from the Internet at <http://warriorcare.dodlive.mil/files/2014/12/Signed-PDBR-Gov-by-PR-16May13.pdf>

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R):

a. Establishes policy for the PDBR and oversees implementation of this instruction, pursuant to the authority delegated in Reference (b).

b. Appoints a Director for the PDBR (referred to as “the PDBR President” in this instruction), as nominated by the lead agent.

c. Delegates the PDBR Executive Oversight Committee chairperson position to the Principal Deputy Under Secretary of Defense for Personnel and Readiness; in accordance with the PDBR Charter (Reference (e)).

2. ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS (ASD(HA)). Under the authority, direction, and control of the USD(P&R), the ASD(HA):

a. Establishes procedures to detail specialty medical members to the PDBR, as requested by the PDBR President, to provide medical advisory opinions and recommendations.

b. Issues PDBR policy updates as necessary for its effective operation and management.

c. Develops procedures to conduct DES Quality Assurance Program (QAP) as related to the PDBR.

d. Participates as a voting member of the PDBR Executive Oversight Committee in accordance with Reference (e).

3. UNDER SECRETARY OF DEFENSE (COMPTROLLER)/CHIEF FINANCIAL OFFICER, DEPARTMENT OF DEFENSE (USD(C)/CFO). The USD(C)/CFO will include financial requirements for implementation of this instruction in the DoD Component budgets for the PDBR.

4. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments:

a. Comply with chapter 61 of Reference (c), this instruction, and any implementing guidance.

b. Implement the procedures and processes established by the lead agent to meet the information requirements prescribed in paragraph 5i of this enclosure and paragraph 5a of Enclosure 3 of this instruction.

c. Develop procedures to inform, assist, and cooperate with former Service members in forwarding requests to the PDBR. Compile the records and information required by the PDBR or requested by the individuals covered by section 2 of Enclosure 3 of this instruction, including any applicable Department of Veterans Affairs (VA) disability ratings.

d. Establish procedures to obtain written agreement from individuals covered by section 2 of Enclosure 3 of this instruction acknowledging that:

(1) As a result of requests for PDBR review, the covered individual or a surviving spouse, next of kin, or legal representative may not seek relief from the Board for Correction of Military Records operated by the Secretary of the Military Department concerned.

(2) The recommendation of the PDBR, once accepted by the respective Military Department, is final.

e. Plan, program, and budget for review of cases of covered members of their respective Departments, according to the procedures prescribed by Chapter 1, Volume 11A of DoD 7000.14-R (Reference (f)) and DoDI 4000.19 (Reference (g)).

f. Provide representatives to the PDBR as required and requested by the lead agent, subject to the procedures in Enclosure 3 of this instruction.

g. Comply with the standards and processes in Enclosure 3 of this instruction, and those subsequently published under the authority of the lead agent.

h. Develop procedures to distribute DES quality assurance constructed cases for adjudication.

5. SECRETARY OF THE AIR FORCE. In addition to the responsibilities in section 4 of this enclosure and as the lead agent for the establishment, operation, and management of the PDBR for the DoD, the Secretary of the Air Force:

a. Acts as the single point of contact for the DoD to establish the operational relationships, capabilities, and system integration necessary for effective and efficient operation of the PDBR.

b. Organizes the PDBR, with representation from each of the Military Departments, and comply with section 1554a of Reference (c).

c. Operates the PDBR under the policy direction of the ASD(HA), in accordance with DoDI 5015.02, DoDI 5100.73, and DoDI 8910.01 (References (h), (i), and (j), respectively).

d. Nominates the PDBR President for appointment by the USD(P&R). The PDBR President must be an O-6 line officer or an equivalent-grade government civilian employee, and will possess high professional qualifications and demonstrated knowledge of the disability evaluation process.

e. Programs, obtains, and provides necessary administrative and operational resources to establish and support PDBR operations.

f. Delineates roles, responsibilities, and authorities among the organizations and elements that participate in or support the PDBR, including, but not limited to, DoD Components and the VA.

g. Establishes the operational and administrative relationships necessary to operate, publicize, and receive applications for the PDBR. Establishes the standard format for packaged records forwarded to the PDBR for review.

h. Publishes operating procedures that comply with Reference (d) and Volume 3 of DoD Manual (DoDM) 1332.18 (Reference (k)) and implements the procedures in Enclosure 3 of this instruction.

i. Determines the information required for review of cases by the PDBR. Such information may include, but is not limited to:

(1) The complete record of medical and non-medical material and evidence contained in the former Service member's PEB records that served as the basis for the original determination of unfitness and disability rating(s) assigned;

(2) Rating determinations by the VA, as applicable to the case under review; and

(3) New or newly discovered evidence not previously included in official records.

j. Complies with the procedures for the collection, storage, and release of information required by the PDBR as described in Enclosure 3 of this instruction.

(1) The procedures will be established in collaboration with the Military Departments and the VA, and will be in accordance with Reference (i).

(2) The lead agent will ensure the collection, maintenance, dissemination, and use of personally identifiable information is in accordance with the requirements of DoDD 5400.11 and DoD 5400.11-R (References (l) and (m), respectively).

(3) The lead agent will assess the operations and results of the PDBR, including a review of resources and provide a fiscal year report to the USD(P&R) no later November 30 of each year.

ENCLOSURE 3

PROCEDURES

1. GENERAL. The PDBR:

a. In accordance with section 3 of this enclosure, will review the combined disability ratings of individuals covered by section 2 of this enclosure.

b. As part of its review, may, at the request of an eligible member as described in Reference (c), review conditions identified but not determined to be unfitting by the PEB of the Military Department concerned.

2. MOTION TO REVIEW. The PDBR may, upon its own motion, review the findings and decisions of the PEB with respect to a covered individual.

a. If the PDBR proposes to review, upon its own motion, the findings and decisions of the PEB, the PDBR will notify the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual of the proposed review and obtain the consent of the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual before proceeding with the review.

b. Cases may be considered and presented to the PDBR upon completion of DD Form 294, "Application for a review by the PDBR of the rating awarded accompanying a medical separation from the Armed Forces of the United States," by the covered individual, or by his or her surviving spouse, next of kin, or legal representative. The DD Form 294 is available at <http://www.dtic.mil/whs/directives/infomgt/forms/efoms/dd0294.pdf> and the instructions for completing the form are on page 3 of the form.

3. ORGANIZATION AND DUTIES. The PDBR will be composed of military or senior career civilian members in the grade equivalent of O-5 or O-6, appointed by the Secretary of the Military Department that they represent.

a. The PDBR will consist of at least one member from each of the Military Departments. Upon the request of the lead agent, additional PDBR members will be appointed by the Secretaries of the Military Departments.

b. When in session and considering the case of a covered individual, the PDBR will be composed of three voting members.

(1) No voting member of the PDBR may have a personal interest in, or have been a member of another board that ever considered, the case under review.

(2) When the covered individual was a member of the Reserve Component, one voting member of the PDBR will be from the Reserve Component.

(3) A non-voting military medical officer, a non-voting legal advisor, and a VA advisor familiar with the application of part 4 of Title 38, Code of Federal Regulations (Reference (n)) may be invited to provide advice to the PDBR.

c. The PDBR President will:

(1) Notify the covered individual that the PDBR has begun to review the case after receipt of either the review request or the consent to review described in section 3 of this enclosure.

(2) Advise the covered individual of the final and non-appealable nature of the review, as described in paragraph 4c of Enclosure 2 of this instruction.

d. The PDBR will review the PEB record of findings and the combined disability rating decisions regarding the specific military unfitting medical conditions with respect to the covered individual. The review will be based on the records of the Military Department concerned and such other evidence as may be presented to the PDBR, in accordance with the information requirements prescribed in paragraph 5i of Enclosure 2 of this instruction.

e. The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD) in effect at the time the covered individual's disability rating was assigned will be used for recommendations, along with all applicable statutes, and any directives in effect at the time of the contested separation (to the extent they do not conflict with the VASRD in effect at the time of the contested separation).

f. The PDBR will make one of the following recommendations to the Secretary of the Military Department concerned for each case reviewed with respect to a covered individual:

(1) Do not re-characterize the separation of such covered individual or modify the combined disability rating previously assigned such covered individual.

(2) Re-characterize the separation of such covered individual to retirement for disability.

(3) Modify the combined disability rating previously assigned such covered individual by the Military Department PEB. This modified combined disability rating may not be a reduction of the disability rating previously assigned such covered individual by that PEB.

(4) Issue a proposed new combined disability rating for such covered individual. No reduction of the previously issued combined disability rating will result as a product of this review.

g. If, upon review of the PDBR, the PDBR decides that a previous "not-unfit" determination of a medical condition by the PEB of the Military Department concerned should be changed to

“unfit,” the PDBR will make the recommendation and assign a rating to that condition, which will be combined with the other disability rating(s).

h. Support the DES quality assurance process consistent with References (d) and (k).

4. ADMINISTRATION. The following minimum actions are required to operate the PDBR:

a. The Military Departments will obtain records and other information required for review of cases by the PDBR.

(1) Evidence to be reviewed by the PDBR will be primarily documentary in nature.

(2) All new or newly discovered records or other relevant evidence gathered and considered by the PDBR will be made a part of the covered individual’s PEB records.

(3) A witness may present evidence to the PDBR by affidavit or by any other means considered acceptable by the PDBR President.

(4) If the former Service member indicates that a VA disability award has been made, he or she will be requested to provide a copy of the VA determination letter and sign a release form authorizing the PDBR access to the information.

(5) The Military Department concerned will obtain VA rating determinations issued on behalf of the former Service member. Once obtained, the PDBR will:

(a) Compare any VA disability rating for the specifically military-unfitting condition(s) with the PEB combined disability rating; and

(b) Consider any variance in its deliberations and any impact on the final PEB combined disability rating, particularly if the VA rating was awarded within 12 months of the former Service member’s separation.

b. The Military Departments will provide the lead agent with the:

(1) Medical records and non-medical documents that were reviewed and considered by the Military Department PEBs in making their final disability rating determinations.

(2) Documents detailing the final decisions of the Military Department PEBs.

(3) Documents or decisions subsequently issued on appeal(s), as requested by the lead agent for case review.

c. Any covered individual who petitions the PDBR will have no less than 2 weeks from notice of pending review to submit documentary evidence outside DoD possession.

d. For each case referred to the PDBR, the PDBR will review the complete case record that served as the basis for the final Military Department PEB rating determination and, to the extent feasible, collect all the information necessary for competent review and recommendation.

e. The PDBR President will obtain the advice and assistance of specialized medical authorities for cases involving specific medical disabilities, if needed. Any assistance provided by these medical authorities will be documented in the covered individual's case.

f. The PDBR will conduct reviews of the disability rating(s) of the covered individual in accordance with the VASRD in effect at the time of separation.

(1) If the case was adjudicated by the Military Department PEB and the covered individual was separated from military service before January 28, 2008, the PDBR will review the disability rating(s) of the covered individual in accordance with the VASRD in effect at the time of the covered individual's separation.

(2) Any DoD provisions, Military Department regulations, or guidelines inconsistent with the VASRD in effect at the time of the former Service member's separation will not be considered by the PDBR.

(3) If the covered individual was separated from the military on or after January 28, 2008, the PDBR will use the VASRD in accordance with Enclosure 4, Volume 1 of DoDM 1332.18 (Reference (o)).

(4) The following will be subject to review by the PDBR:

(a) Medical conditions determined to be specifically unfitting for continued military service, as previously determined by the Military Department PEB.

(b) Conditions identified but not determined to be unfitting by the Military Department PEB; as requested by the covered individual.

g. The PDBR will:

(1) Establish recommendations based on a majority vote of the board members.

(2) Render recommendations, in a written report signed by the PDBR President and forwarded to the Secretary of the Military Department concerned, either to affirm or change the rating of the Military Department PEB being reviewed, in accordance with paragraph 3f of this enclosure.

h. If the PDBR recommends a change to the covered individual's separation characterization or disability rating, the recommendation letter will contain a brief explanation of the rationale for such change.

i. The lead agent will maintain statistical review data categorized by Military Department and component (Active Component or Reserve Component) of cases reviewed. A key element of this statistical review will include an accounting of PDBR recommendations that were rejected by the Secretary of the Military Department.

5. TIMELINE GOALS. The timeline goals for the review, adjudication, and notification processes include:

a. The PDBR will adjudicate and issue an appropriate recommendation report for 80 percent of cases within 105 calendar days of obtaining the necessary records.

b. The Secretary of the Military Department concerned will accept or reject recommendations of the PDBR within 45 calendar days of receipt from the PDBR.

c. The Secretary of the Military Department concerned will notify covered individuals of the Military Department's decision on the recommendation within 10 calendar days of the decision.

6. CORRECTION OF MILITARY RECORDS. The Secretary of the Military Department concerned:

a. Will correct the military records of a covered individual in accordance with a recommendation made by the PDBR under paragraph 3f of this enclosure. Any such correction will be made effective as of the date of the action taken on the report of the Military Department PEB to which such recommendation relates.

b. May delegate, in writing, the decision authority for corrections no lower than:

(1) For the Army and Air Force, to the directors of the review board agencies.

(2) For the Navy, to the Assistant Secretary of the Navy (Manpower and Reserve Affairs).

c. Shall ensure that, in the case of a former Service member previously separated pursuant to the findings and decision of a Military Department PEB together with a lump sum or other payment of back pay and allowances at separation, the amount of pay or other monetary benefits to which the covered individual would be entitled, based on the member's military record as corrected, shall be reduced to take into account receipt of such lump sum or other payment.

d. Will ensure that, if the PDBR makes a recommendation not to correct the military records of a covered individual, the action taken on the Military Department PEB's report to which such recommendation relates will be treated and recorded as final as of the date of such action.

e. Will accept or reject, in whole or in part, the recommendation of the PDBR and will notify the covered individual of such decision.

(1) If the recommendation is accepted, the Secretary of the Military Department concerned will notify the covered individual of the result (medical retirement or separation with severance pay) and effective date of the acceptance of the recommendation.

(2) In those cases warranting a record change resulting from a rating increase or retirement, the Secretary of the Military Department concerned will notify the VA of the change.

7. CONSISTENCY REVIEWS. The PDBR will administer DES quality assurance consistency reviews in accordance with section 4 of Enclosure 2 of Reference (d).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ASD(HA)	Assistant Secretary of Defense for Health Affairs
DES	disability evaluation system
DoDD	DoD directive
DoDI	DoD instruction
DoDM	DoD manual
PDBR	Physical Disability Board of Review
PEB	physical evaluation board
QAP	quality assurance program
USD(C)/CFO	Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense
USD(P&R)	Under Secretary of Defense for Personnel and Readiness
VA	Department of Veterans Affairs
VASRD	Department of Veterans Affairs Schedule for Rating Disabilities

PART II. DEFINITIONS

These terms and their definitions are for the purposes of this instruction:

combined disability ratings. Assignment of disability ratings are based on the VASRD as implemented by References (n) and (o). An individual with more than one unfitting condition receives a disability percentage rating for each condition, which are then combined using the “whole person concept” into a combined disability rating, as described in paragraph 4.25 of part 4 of Reference (n). A rating of 30 percent for unfitting conditions in cases characterized as “in line-of-duty” is required for medical retirement in accordance with chapter 61 of Reference (c).

consistency reviews. Targeted reviews of specific issues, conditions, or high-level interest items using constructed cases. A review board, external to the Military Departments, will construct the cases and evaluate PEB performance on the targeted policy issues within the constructed cases.

constructed cases. Notional DES cases are created to simulate specific situations focusing on targeted policy issues; each includes distracting information to add realistic case evaluation conditions.

DES. The DoD mechanism for determining return to duty, separation, or retirement of Service members because of disability in accordance with chapter 61 of Reference (c).

PEB. A Military Department board of two or more civilian or military personnel, including at least one physician and one line officer, which determines the fitness of Service members with medical conditions to adequately perform their military duties.

physical disability

Any impairment due to disease or injury, regardless of degree, that reduces or prevents an individual's actual or presumed ability to engage in gainful employment or normal activity.

The term "physical disability" includes mental disease, but not such inherent defects as behavioral disorders, adjustment disorders (except Chronic Adjustment Disorders), personality disorders, and primary mental deficiencies. A medical impairment or physical defect standing alone does not constitute a physical disability.

To constitute a physical disability, the medical impairment or physical defect must be of such a nature and degree of severity as to interfere with the member's ability to adequately perform his or her duties.

QAP. An evaluation program designed to assess whether an organization performs work in accordance with established policy and procedures.

VASRD

The rating schedule in Reference (n) is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service.

The percentage ratings represent, as far as can be practicably determined, the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations.

Generally, the degrees of disability specified are considered adequate to compensate for considerable loss of working time from exacerbations or illnesses proportionate to the severity of the several grades of disability. For the application of this schedule, accurate and fully descriptive medical examinations are required, with emphasis upon the limitation of activity imposed by the disabling condition.