

PROCEDURES FOR PROCESSING REQUESTS
FOR REASONABLE ACCOMMODATION

CHAPTER 2

PROCEDURES FOR ASSESSING A DISABILITY CLAIM

I. ASSESSMENT OF THE DISABILITY CLAIM

A. Goal of Reasonable Accommodation: The goal of reasonable accommodation is to enable qualified individuals with disabilities to perform the essential functions of their position and to enjoy equal employment opportunities. Many disabled individuals are able to perform their jobs without accommodation. However, there may be barriers in the workplace that prevent others from performing tasks that they could otherwise do with accommodation. The Rehabilitation Act of 1973, which was modified by the Americans with Disabilities Act of 1990, requires federal agencies to accommodate applicants and employees who are qualified individuals with disabilities, unless to do so would impose an undue hardship on the operation of its programs and/or poses a direct threat to the employee or others.

B. Qualified Individual with a Disability: A "qualified individual with a disability" is an individual with a disability who, with or without reasonable accommodation, ***can perform the essential functions of the position in question and who meets the requisite skill, experience, education, and other job-related requirements of the position*** in question or meets the criteria for appointment under one of the special appointing authorities for individuals with disabilities. ***An employee or an applicant for employment must demonstrate that he/she is a qualified individual with a disability to trigger the agency's obligation to provide a requested reasonable accommodation.***

1. With respect to whether the employee is a qualified individual with a disability, the analysis is ***not limited to the position actually held by the employee, but also includes positions that the employee could have held as a result of job restructuring or reassignment.***

2. Only after determining that reassignment to a vacant position is not possible or would result in an undue hardship would the Rehabilitation Act permit the activity

to conclude that an employee is not a qualified individual with a disability.

C. Steps in Assessing a Disability Claim: The following are the steps the Advisory Team will utilize in determining whether an employee requesting a reasonable accommodation meets the definition of a "qualified individual with a disability" and therefore entitled to an accommodation.

1. A determination whether an individual is one who has a physical or mental impairment that substantially limits one or more of his/her major life activities.

2. A determination whether the individual is able to perform the essential functions of the position, with or without a reasonable accommodation.

Details regarding each step in the assessment of a disability claim are provided in the sections below.

II. DETERMINATION WHETHER AN EMPLOYEE HAS A DISABILITY

A. Definition of Disability: A person has a disability, for purposes of the Rehabilitation Act, if he/she **has a physical or mental impairment that substantially limits a major life activity.**

B. Physical Impairment: A physical impairment is any physiological condition or disorder, cosmetic disfigurement, anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, cardiovascular, reproductive, digestive, genitor-urinary, hemic, lymphatic, skin, and endocrine.

C. Mental Impairment: A mental impairment is any mental or psychological disorder such as, mental retardation or organic brain syndrome, and can also encompass emotional or mental illness and specific learning disabilities.

D. Exceptions: If an employee is currently using illegal drugs, to include illegal usage of legal drugs such as prescription medications, the employee does **not** meet the definition of an employee with a disability.

E. Major Life Activity: Once an individual establishes that he/she has a physical or mental impairment, he/she must be able to establish that the disability substantially limits (see paragraph H. below for more information on the term "substantially limits") one or more of his/her major life activities. Major life activities include such obvious characteristics as hearing, seeing, walking, speaking, breathing, caring for oneself, performing manual tasks, and working.

1. Generally, a major life activity is something of fundamental significance within the meaning of the Rehabilitation Act and not simply an activity important to a particular individual.

2. Major life activities do not include activities such as swimming, shopping, or enduring physical stress.

3. Individuals who claim they are limited in the major life activity of working must show that they are significantly restricted in their ability to perform either a class of jobs, or a broad range of jobs in various classes, as compared to the average person of comparable training skills, and abilities. For example, in Murphy v. United Parcel Services, Inc., the Supreme Court determined that UPS's mechanic jobs, which required the ability to drive commercial vehicles, was a single job and not representative of the class of mechanics jobs. According to the Supreme Court, UPS only viewed Murphy as unable to perform its unique job requiring a mechanic to drive a commercial vehicle, and not as unable to work in the class of mechanics jobs, which would include diesel mechanics, automotive mechanics, gas-engine repairers, and gas-welding equipment mechanics - none of which require an individual to drive commercial vehicles.

F. Substantially Limits: An impairment that substantially limits a major life activity if that impairment renders the individual either **unable** to perform a major life activity **or significantly restricts** his/her performance of that activity as compared to the average person's performance of the activity.

1. Not all medical conditions are substantially limiting. A person with a broken bone(s) or a sprained

ankle does not have a permanent or long-term impairment because the condition will heal within a reasonable time.

2. In addition, if an individual employs measures to mitigate his/her impairment, e.g., medication, eyeglasses, prosthetic devices, etc., the effect of these measures should be considered in determining whether the impairment is substantially limiting for the individual.

3. Some permanent impairments may not substantially limit a major life activity. For example, an individual with a mental impairment may not be substantially limited in the major life activity of sleeping if he/she had trouble getting to sleep or sometimes slept fitfully. Although this individual may be slightly restricted in sleeping, he/she is not significantly restricted as compared to the average person in the general population.

G. Individualized Assessment of a Disability:

1. To determine whether the individual has a disability, an individualized assessment must be made; assumptions based upon the condition itself should not be made. Decisions cannot be made based upon personal knowledge of, or experience with, a particular condition or generalizations based upon stereotypes or myths.

2. This, and other decisions made about reasonable accommodation, are very fact-specific and individualized. There is one condition which does not necessitate this individualized assessment, AIDS or HIV positive. Any individual who is HIV positive is disabled under the law even if he/she has no symptoms.

H. Medical Documentation:

1. In some situations, both the need and the appropriate type of accommodation are obvious, e.g., an individual who is blind, in a wheelchair, etc.

2. In those instances where the need and the appropriate type of accommodation is not obvious or otherwise unknown, it is necessary to engage in an interactive process with the employee. See section IV. below.

3. In the event the interactive process does not produce the necessary information, a request for medical documentation may be required. The request for medical documentation should be in writing and issued to the employee as soon as it has been determined that this step is required. If a request for medical documentation is issued to the employee, a signed, dated copy of the letter must be included in the reasonable accommodation case file. More specific guidance for requesting medical documentation may be found in Attachment 1 to this chapter. Attachment 2 may be used as a sample letter for requesting medical documentation.

4. The written request for medical documentation should include a copy of a waiver for the employee to sign giving permission for any official, with a need to know, to review the medical records. Attachment 2 includes a sample consent to release medical information form. A copy of the consent to release must be included in the reasonable accommodation case file.

5. Medical documentation must be provided by an appropriate medical professional. The medical documentation must explain the nature of the disability and the need for reasonable accommodation, or to clarify how the requested accommodation will assist the employee to perform the essential functions of the job.

6. The timeframes for processing a request for reasonable accommodation will be tolled from the time the written request for medical documentation is issued to the employee up to the point when the requested medical documentation is received by the supervisor.

7. If the information submitted is not sufficient to substantiate that the individual has a disability and/or needs the reasonable accommodation requested, supplemental medical information may be required including, if appropriate and with the employee's consent, an examination by a medical specialist of the activity's choosing and expense.

8. Medical information provided by the employee should be reviewed with the assistance of a medical specialist.

9. If the employee does not provide the requested medical documentation and there is insufficient information to process their request for accommodation, the request may be denied. See Section VI. below.

III. ESSENTIAL FUNCTIONS OF A POSITION

A. Essential Functions of the Position: The essential functions of a position are those functions that define the job. In other words, the job exists to perform those tasks.

1. The essential functions of a job are not the marginal or infrequently performed tasks that could be eliminated without altering the fundamental nature of the job.

2. The employee must be able to perform the essential functions of a position, with or without accommodation, in order to be considered to be "qualified" for the job. See paragraph I.B. above for a definition of a "qualified individual with a disability" as it applies to the Rehabilitation Act.

3. The law does not require the DON to change or alter the essential functions of a job. For example, an essential function of a security officer at a particular location is to the ability to read identification cards. It would be unreasonable for an applicant with a visual impairment to request an accommodation that would require DON to hire a reader to assist him/her so that the cards can be read. The law does not require an employer to reallocate the essential functions of the job to another individual. In this example, reading is an essential function. If reading were only a minor or unimportant aspect of the job, some form of accommodation would be in order.

4. In some cases, however, an accommodation may involve restructuring a job or altering the non-essential requirements of a particular position. Job restructuring includes modifications such as:

a. reallocating or redistributing marginal job functions that an employee is unable to perform because of a disability; and

b. altering when and/or how a function, essential or marginal, is performed.

B. Determining the Essential Functions of a Position: If the supervisor does not already have the essential functions of a position documented, as soon as he/she is notified of a request for accommodation, an assessment of the essential functions of the employee's position should be immediately initiated. Attachment 3 to this chapter, **"Guidance for Determining the Essential Functions of a Position"**, is provided as a sample to facilitate this determination. Attachment 4 is a sample form that can be utilized to document this step of the assessment process.

IV. INTERACTIVE DISCUSSIONS

A. Purpose of Interactive Discussions: These discussions will assist the Advisory Team in making the determination whether the employee is a qualified individual with a disability. Interactive discussions may also be useful in determining if additional medical documentation is necessary, obtaining information about the essential functions of the position and how they can be performed, the appropriate accommodation if the employee is found to be a qualified individual with a disability, the parameters of a job search (if applicable), etc.

B. Timing of Discussions: The supervisor and employee should immediately commence the interactive dialogue upon receipt of the request for accommodation to clarify the employee's needs and to identify the appropriate reasonable accommodation. Attachment 5, **"Guidance for the Interactive Process"**, to this chapter provides guidance on the type of information the supervisor should seek from the employee during the interactive discussion.

C. Frequency of Discussions: A continuing dialogue throughout the reasonable accommodation process is highly encouraged. These discussions will provide critical information necessary for making the decision to accommodate or not to accommodate the individual. These discussions should also be used as an opportunity to keep the employee advised of the status of their request for accommodation.

V. DISABILITY ANALYSIS

A. Analysis by the Advisory Team: After all the relevant information has been obtained from the employee, the Reasonable Accommodation Advisory Team must conduct an analysis to determine whether the employee meets the definition of an qualified individual with a disability as defined in the Rehabilitation Act and the Americans with Disabilities Act. This analysis should include all the steps outlined in section I.C. of this chapter. The analysis and resultant decision must be documented in writing by the RA POC and filed for the record in the case file.

B. Other Information to be Considered by the Advisory Team: Additional sources of information that may assist the Advisory Team in its analysis may include past medical records, current medical examinations, and the employee's work history.

C. Timing of Analysis: Every effort should be taken to complete this portion of the reasonable accommodation process as soon as possible to avoid unnecessary delays in providing accommodation to qualified individuals. Where there is a delay in processing a request for reasonable accommodation, the supervisor must notify the individual of the reason for the delay. Extenuating circumstances that may result in a delay in providing an accommodation may include situations in which equipment must be back-ordered or the vendor typically used by the agency has unexpectedly gone out of business. To the extent possible, the individual will be kept informed of the date when the reasonable accommodation process is expected to be complete. If there is a delay, the supervisor must investigate whether there are temporary measures that could be taken to assist the individual with a disability. For example, temporary job restructuring or the use of equipment that might permit the individual to perform some of the functions of his/her job may be appropriate.

D. Required Documentation: A copy of the disability analysis and copies of all the documentation considered in the analysis will be retained in the reasonable accommodation case file.

VI. DECISION TO ACCOMMODATE/NOT ACCOMMODATE

A. Employee is Determined Not to be an Individual with a Disability: There is no requirement to provide a reasonable accommodation if the disability analysis establishes that the employee did not establish that he/she: has a disability; an impairment that substantially limits a major life activity; or, has requested an accommodation that is related to a disability. The employee must be notified of this decision, in writing. A sample letter is provided as attachment 6. A copy of this determination will be included as part of the reasonable accommodation case file.

1. There may be occasions when a determination has been made that no accommodation is required. Even with this determination, an activity may still provide some form of assistance to the employee based on the desire to be a good employer, not out of legal necessity. Caution should be taken in these circumstances to maintain consistency with similar requests to avoid disparate treatment claims and precedent-setting situations. The activity must document the reasons for providing a form of assistance to the employee, in writing, in language that clearly states what is being provided and why it is being provided. A sample letter is provided as attachment 7.

2. The employee's option for disability retirement should be discussed with him/her at this point. If no other options, including reassignment, are available, the employee may be removed for inability to perform the essential functions of his/her current position.

3. A written summary of the case detailing the information considered, analysis performed, and the reasons for denying the request for accommodation will be forwarded to the major claimant's Command Deputy EEO Officer (CDEEO) for review and tracking purposes. The written summary, to include all documentation considered in the activity's determination and a copy of the decision letter, must be submitted to the CDEEO within 14 calendar days after the issuance of the decision to deny the request for accommodation.

4. The closed case file will be maintained by the activity's EEO Office. To safeguard the confidentiality of medical and/or other sensitive information contained in the case file, access will be granted on a strictly limited basis.

B. Decisions to Grant an Accommodation: If the Advisory Team determines that providing an accommodation is the appropriate course of action, all reasonable alternatives to accommodate the individual in their current position will be explored, e.g., assistive software/devices, modified furniture, location of desk, job restructuring, telework, etc.

1. The Advisory Team should consult with all appropriate resources to identify potential accommodations. These resources include:

a. The job applicant or employee who can advise the supervisor what he/she thinks is needed to enable them to perform the job.

b. Consultation with other management officials, safety and/or medical personnel, as appropriate, to determine whether the employee's proposed accommodation is feasible and/or whether other accommodations can be made.

c. State agencies and nonprofit organizations that are dedicated to assisting individuals with disabilities in the workplace, e.g., State Department of Rehabilitation. Information on some of these resources are listed in Appendix C.

2. The Advisory Team is responsible for determining whether an accommodation is necessary and what the appropriate effective accommodation would be. The employee may have some suggestions or may be aware of resources to contact. However, it is the Advisory Team's responsibility, not the employee's, to explore the various possibilities such as assistive devices, workplace modifications, scheduling changes, etc. If there are multiple accommodations which would be equally effective in permitting the employee to perform the job, it is the Advisory Team's choice which one of the accommodations will be implemented.

3. Once potential accommodations are identified, it is the Advisory Team's responsibility to determine whether the potential accommodations are reasonable. Considerations include whether the potential accommodation would:

a. Eliminate or alter the essential functions of the job.

(1) There is no requirement to reduce the expectations of an employee's quantitative or qualitative performance standards as an accommodation.

(2) The employee requesting an accommodation is expected to satisfactorily perform the essential functions of their position at the same level as any other employee in the same or similar position.

b. Impose an undue hardship on the DON. There are a number of factors which must be considered before making a determination that a particular accommodation would constitute an undue hardship.

(1) Expense. The overall economic resources available to an agency are an important factor for consideration. However, there is no formula to use in making the determination whether or not an accommodation is too costly for implementation. Generally, an economic defense is not successful as a reason for undue hardship, especially for an agency as large as the DON.

(2) Impact on Operations. Another undue hardship defense is that providing an accommodation would significantly interfere with the operation of the program. The Advisory Team should consider the nature of the accommodation, the number of employees at the activity, the impact on the operations, the potential for accommodation at another activity, the composition/structure/function of the workforce at the activity, and the geographic location/separateness of the activity. There may be occasions when it simply is not feasible to provide an accommodation due to the impact on the activity's operations.

c. Violate the seniority provisions of a collective bargaining agreement.

d. Fail to eliminate or reduce the direct threat of harm. Direct threat is a significant risk of substantial harm to the health or safety of the employee or others that cannot be reduced or eliminated by reasonable accommodation.

(1) The Advisory Team must believe that the danger posed by the employee is connected to the disability itself, medication taken for the disability, or an assistive device used for the disability. If the risk is for reasons not associated with the disability, then it is not a direct threat issue.

(2) In making the determination whether or not there is a "significant risk of substantial harm", the Advisory Team must consider several factors: duration of risk; nature and severity of the potential harm; likelihood of the harm; imminence of harm. The determination that there is a danger must be based on an objective assessment of the employee, not generalizations or stereotypes, and in order to conduct a further inquiry when there is a belief, there must be a legitimate reason for the belief.

4. The activity is not required to provide personal use items. These items include those which may be needed on the job but are also needed by the employee to perform other daily activities outside the workplace, e.g., glasses, hearing aids, wheelchairs.

5. The employee's preferences, the effectiveness of each accommodation and its costs should be considered by the Advisory Team. The accommodation selected should be the one most appropriate for both management and the individual. The chosen accommodation need not be the best or most expensive, or even the one preferred by the employee. As long as the accommodation is reasonable and enables the employee to perform the essential functions of their position, it is acceptable. The individual's supervisor is responsible for making the ultimate decision as to what accommodation, if any, will be adopted.

6. A listing of all reasonable alternatives for accommodating the employee in his/her position should be compiled and documented with supporting documentation, if appropriate. A copy of this listing must be included in the reasonable accommodation case file.

7. If the Advisory Team determines that an employee can be accommodated in his/her current position, that decision and the adopted accommodation is documented in the case file and implemented. The determination to accommodate an employee should be completed within 30

calendar days from the date the individual's supervisor receives the request for accommodation. This timeframe may be extended due to extenuating circumstances. The employee will be notified, in writing, of the decision to approve the request for accommodation. The decision letter will include the date the accommodation will be provided or the implementation schedule, whichever is applicable. A sample approval letter is provided as attachment 8. The closed case file will be maintained in the activity's EEO Office. To safeguard the confidentiality of medical and/or other sensitive information contained in the case file, access will be granted on a strictly limited basis.

C. Determination that the Employee Cannot be Accommodated in his/her current position: If it is determined as a result of the analysis of the available accommodation options that the employee cannot be accommodated in his/her current position, the employee will be notified of this decision, in writing, and the interactive process continues.

1. At this point in the process, the following options are available to both the activity and/or the employee:

a. Reassignment to a vacant position within the activity and/or DON. This option is only available for current DON employees. Once it has been determined that there is no feasible, effective accommodation that would enable the employee to retain his/her current position, then DON must consider reassignment of the employee to a vacant position. See Chapter 3 for more detailed guidance on this option.

b. Removal for inability to perform the essential functions of the employee's current position if the employee declines an offer of reassignment. See attachment 6 for a sample denial letter.

c. Application for disability retirement. Attachment 9 provides a sample template for notifying the employee he/she cannot be accommodated in their current position and gives the option of a reassignment. Attachment 10 is a sample form for the employee to document their decision to accept/decline the offer of reassignment. Attachment 11 is guidance for the interactive discussion(s) that should take place at this point in the reasonable

accommodation process. The results of this interactive discussion must be documented in writing and signed and acknowledged by the employee. To simplify this step in the process, attachment 10 may be used to document that this discussion took place.

GUIDANCE FOR REQUESTING MEDICAL DOCUMENTATION

When a disability and/or need for accommodation is not obvious or otherwise already known, reasonable documentation may be required to support the existence of a disability and the need for the accommodation requested. This documentation must come from an appropriate medical professional to explain the nature of the disability and the need for reasonable accommodation, or to clarify how the requested accommodation will assist the employee to perform the essential functions of the job.

The Advisory Team must consider medical information that the employee's physician(s) may provide to determine job-related limitations and how they could be overcome.

Other important sources of information that will assist the Advisory Team in determining the employee's abilities and limitations include: past medical records, current medical examinations, and work history.

The following information must be provided, in writing, by the employee's first level supervisor to the employee's health professional to assist him/her in providing the required medical documentation:

- Description of the nature of the job.
- Description of the essential functions the job.
- Any other information that is relevant to evaluating the request for accommodation.

If the information provided by the employee's health professional is not sufficient to substantiate that the individual has a disability and/or needs the reasonable accommodation requested, supplemental medical information may be required including if appropriate, examination by a medical specialist of the activity's choosing and expense.

Medical information obtained in connection with the reasonable accommodation process must be kept confidential. Mishandling of information relating to an individual's disability or medical condition may constitute a violation of the Privacy Act and/or the Rehabilitation Act for which DON may be liable for damages. Supervisors and managers who have a need to know the information to perform their responsibilities may be told about the necessary medical restrictions or the need for accommodations, but medical information should be disclosed only when necessary.

SAMPLE LETTER FOR REQUESTING MEDICAL DOCUMENTATION

MEMORANDUM

From: (Supervisor)

To: (Employee)

Subj: REQUEST FOR CURRENT MEDICAL DOCUMENTATION

Ref: (a) Rehabilitation Act of 1973
(b) Americans with Disabilities Act (ADA) of 1990
(c) DON CHRM Subchapter 1606

Encl: (1) Position Description
(2) Permission to Release Medical Documentation

1. The purpose of this letter is to request information regarding your current medical condition and its impact on your ability to perform the duties of your position as a *Job Title, Pay Plan-Series-Grade*, in the *organizational title*. This information will assist me in determining the agency's obligation to provide you reasonable accommodation in accordance with references (a) through (c) and to assist me in making informed decisions regarding your employment status.

2. *Paragraph 2 should contain a narrative summary of events leading to the request for additional medical documentation. For example: On (date), you provided me a copy of a return to work certificate which placed the following temporary restrictions on your work: "no heavy lifting of more than 30 lbs., no climbing up ladders or general ship board work for 2 weeks." On (date) you submitted a letter from your doctor, Dr. _____ dated _____. In her/his letter, Dr. _____ states that you are suffering from high blood pressure and degenerative joint disease. She/he recommends that "the following action be taken to minimize further exacerbation of these conditions: (a) Prolonged standing or walking should be avoided; (b) Undue stress to knee such as but not limited to, working aboard boats or ships, step or ladder climbing and walking or climbing in sand or uneven surfaces should absolutely be avoided. (c) Carrying of heavy equipment should be limited or avoided." Dr. _____ further recommended that you*

Attachment 2

"not be assigned to projects that would result in any of the above-related conditions, as this would contribute to further exacerbation and deterioration of his knees."

3. "Reasonable Accommodation" refers to changes in the work environment or in the way that things are customarily done that would enable an individual with a disability to perform the essential functions¹ of their position and remain productively employed. Accommodations may include, but are not limited to: making facilities readily accessible or usable by individuals with a disability, job restructuring, modification of work schedules, acquisition or modification of equipment or other similar actions.

4. Federal agencies are required to provide reasonable accommodation to employees and applicants that meet the criteria of a qualified disabled employee as outlined in references (a) through (c) unless the agency can show that the accommodation that has been requested would be overly burdensome to the agency. It should be noted that an entitlement to accommodation requires more than a documented medical condition or diagnosed disability.

5. Entitlement to accommodation is dependent on an employee meeting the criteria of a "qualified individual with a disability" under the ADA. The ADA defines a "qualified individual with a disability" as a person having a physical or mental impairment that substantially limits one or more major life activities (i.e., activities an average person would be able to perform, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working). Furthermore, the accommodation that is requested must be of a nature that would enable an applicant or employee to perform the essential functions of the position and remain productively employed. To meet the criteria of a "qualified individual with a disability" the employee must be able to perform the essential duties of the position either with or without accommodation. Employees who do not meet the definition of a "qualified individual with a disability" under the ADA do not have a specific entitlement to accommodation.

¹ The essential functions of a job are those duties that are so fundamental to the position that the individual cannot do the job without being able to perform those job duties. A function can be "essential" if, among other things, the position exists specifically to perform that function, or the function is specialized and the incumbent is hired based on his/her ability to perform it.

6. In order for me to make an informed decision regarding your employment status, I am requesting that you provide your physician's medical opinion on the following. I am also providing a copy of this letter to *Dr. _____* so *she/he* will be aware of the information that is needed.

a. The nature, severity, and duration of your medical condition and physical impairment;

b. Explanation of the impact of your medical condition on your activities both on and off the job;

c. The extent to which your impairment(s) limits your ability to perform an activity or activities;

d. Explanation whether the impairment is or can be controlled by medication or other medical intervention;

e. Estimate of expected date of full or partial recovery;

f. On the basis of *his/her* medical expertise and knowledge of your position from the information provided, an assessment of your ability to successfully perform the essential elements (see below) of your position, with or without accommodation;

g. If an accommodation is required, the particular accommodation requested, with explanations as to how the accommodation will assist you in performing the essential functions of your position.

7. The Health Insurance Portability and Accountability Act of 1996 (HIPAA), which became effective 14 April 2003, imposes new requirements on medical providers, employers, health plans and plan administrators to ensure that your individual medical and health information is kept confidential. In adhering to this regulation, your health provider will not release medical documentation without your permission. In order for this office to obtain the required medical documentation, it is requested you complete enclosure (2) and fax it to me at _____.

8. The following information regarding the essential functions and physical requirements of your position as *Title, Pay Plan-Series-Grade* is provided to assist your physician in responding to these questions. The *organizational title* is responsible for *insert mission of employee's department, division, branch or section*. As a *job title* in the *department, division branch or section*, the essential functions of your position require you to *insert physical requirements of the position i.e., travel,*

climbing, lifting etc. A summary of the essential functions of your position is as follows:

- a. *Insert essential functions*
- b.
- c.
- d.
- e.
- f.
- g.

The physical demands of your position are summarized in your position description, enclosure (1). In the position description it indicates that the work requires *insert actual physical tasks required of the position, i.e., considerable and strenuous physical exertion, requires long periods of standing, recurring bending, crouching, stooping, or recurring lifting of moderately heavy items (50 pounds), transport to and from ships by helicopter, etc.*

9. It is imperative that the Agency receive a response to this request for information to assess and address your entitlement to reasonable accommodation. **Please forward this information to (*identify POC*) by (*date*)** at the following address:

COMMANDER
Insert activity's address

10. If you have any questions or concerns, please contact _____, Human Resources Department, at _____.

Supervisor's signature

Copy to:
Dr. _____

PERMISSION TO RELEASE MEDICAL INFORMATION

By my signature on this document, I give permission to
(name of personal physician) to release medical information
to the following authorized agency officials, (*identify the
specific officials who will have access to the medical
information*), in order to respond to my request for
reasonable accommodation.

Signature: _____ Date: _____

GUIDANCE FOR DETERMINING THE ESSENTIAL FUNCTIONS OF A POSITION

The essential functions of a job are those functions that define the job. In other words, the job exists to perform those tasks. The essential functions of a job are not the marginal or infrequently performed tasks that could be eliminated without altering the fundamental nature of the job.

A job function may be considered essential for several reasons, including but not limited to, the following:

- The function may be essential because the position exists to perform that function.
- The function may be essential because of the limited number of employees available to whom the performance of the job function can be distributed.
- The function may be highly specialized so that the incumbent in the position is hired for his/her expertise or ability to perform the particular function.

Some examples of essential functions:

1. An electronics technician whose primary duty is servicing radar. An essential function would be the requirement to climb radar equipment.
2. A photographer whose primary duty is to photograph test events. Essential functions might include the requirement to travel, to climb ladders aboard ship and to transport equipment weighing up to 50 pounds each.

Evidence of whether a particular function is essential includes, but is not limited to, the following:

- The employer's judgment regarding a determination as to which functions are essential.
- Written job descriptions.
- The amount of time spent performing the function.
- The consequences of not requiring the incumbent to perform the function.

- The terms of a collective bargaining agreement.
- The work experience of past incumbents in the job.
- The current work experience of incumbents in a similar job.
- Actual duties performed by a person holding the job.

The essential functions of the job are determined on a case-by-case basis. Do not presume that any two jobs are necessarily alike. For example, the actual responsibilities of an electrician may vary depending on the tour, operation, size, age and configuration of the facility. Similarly, the actual functions for a shipyard electrician may vary significantly from that of an electrician at a Naval Air Station or Marine Base.

Job descriptions and job announcements can assist you in determining the essential functions of the job. However, these may only generically describe the requirements of the job. It may be necessary to interact with others to ascertain beyond written descriptions the actual essential functions of the particular job at your facility.

Involve the employee by asking questions such as:

1. At the present time, the essential functions are performed in this manner. Can you tell us how you could achieve the same results using a different method?
2. This equipment is used on a regular basis in this manner. Can you describe how you would use it in a different manner to complete required tasks?
3. Historically, this job has been done using this sequence and method. Do you feel you could accomplish the same results in this or in another way within your limitations?
4. This is the normal arrangement of the work area. Do you have any suggestions regarding changes or modifications that may be necessary to enable you to perform the job?

Sometimes an accommodation involves a job restructuring or altering the nonessential requirements of a particular job. The law, however, does not require change or alteration of the essential functions of a job.

DOCUMENTATION OF ESSENTIAL FUNCTIONS OF POSITION

Name of employee:	Title, series, grade of position:
Activity and Organization code:	Name of supervisor, Organization, Code, Telephone Number:

Identify the essential functions of the position in the space provided below. Provide a brief explanation describing why these functions are essential to the position.

Supervisor's signature:

Date:

Attachment 4

**GUIDANCE FOR THE INTERACTIVE PROCESS
BETWEEN THE SUPERVISOR AND EMPLOYEE**

Information obtained during interactive discussions will assist the Advisory Team in making the determination whether the employee is a qualified individual with a disability. Interactive discussions may also be useful in determining if additional medical documentation is necessary, obtaining information about the essential functions of the position and how they can be performed, the appropriate accommodation if the employee is found to be a qualified individual with a disability, the parameters of a job search (if applicable), etc.

The interactive discussion(s) between the supervisor and the employee should be used to obtain the following information in order to assess the disability claim:
(NOTE: The interactive process is usually between the supervisor and the employee. However, under certain circumstances, the Advisory Team may determine that some other agency official should engage in the interactive process with the employee.)

1. Does the person claim that they have a present physical or mental impairment? If so, what is the impairment?

The employee should be asked to describe the impairment in some detail, if it is not otherwise obvious (i.e., the individual is blind or deaf or uses a wheelchair etc.)

2. Does the impairment substantially limit a major life activity?

The employee should be asked to describe the limitation(s) in detail.

An impairment substantially limits a major life activity if that impairment renders the individual either unable to perform a major life activity or significantly restricts his or her performance of that activity as compared to the average person's performance of the activity. Not all medical conditions are substantially limiting. A person with broken bones or a sprained ankle does not have a permanent or long-term impairment because the condition

will heal within a reasonable time. In addition, if an individual employs measures to mitigate his or her impairment (e.g., medication, eyeglasses), the effect of those measures should be considered in determining whether an impairment is substantially limiting as to that individual. Furthermore, some permanent impairments may not substantially limit a major life activity.

The employee should be asked if they employ any measures that may mitigate their impairment.

Major life activities include such obvious characteristics as hearing, seeing, walking, speaking, breathing, caring for oneself, performing manual tasks, and working. Generally, a major life activity is something of fundamental significance within the meaning of the Rehabilitation Act and not simply an activity important to a particular individual. Major life activities do not include activities such as swimming, shopping, or enduring physical stress. It is important to note that where individuals claim that they are limited in the major life activity of working, they must show that they are significantly restricted in their ability to perform either a class of jobs, or a broad range of jobs in various classes, as compared to the average person of comparable training, skills, and abilities. Generally this requirement could not be met simply by asserting inability to work in any particular job for a particular employer.

If the individuals' impairment substantially limits a major life activity, the person should be asked to describe the limitation(s) in some detail.

If the individual establishes he/she has a present physical or mental impairment that substantially limits a major life activity, they establish that they have a disability as that term is defined under the Rehabilitation Act. If they are unable to establish that they have a disability, there is no obligation under the Rehabilitation Act to provide an accommodation. However, you may have to consider other programs that may require accommodation such as the Federal Employees' Compensation Act or USERRA.

3. Is the person "qualified?"

If the individual establishes that he/she has a disability, it must then be determined whether he/she:

(1) satisfies the requisite skill, experience, education and other job-related requirements of the job, and

(2) can perform the "essential functions of the job", with a reasonable accommodation or without a reasonable accommodation. Involve the employee by asking questions such as:

(a) At the present time, the essential functions are performed in this manner. Can you tell us how you can achieve the same results using a different method?

(b) This equipment is used on a regular basis in this manner. Can you describe how you would use it in a different manner to complete required tasks?

(c) Historically, this job has been done using this sequence and method. Do you feel you could accomplish the same results in this or in another way within your limitations?

(d) This is the normal arrangement of the work area. Do you have any suggestions regarding changes or modifications that may be necessary to enable you to perform the job?

Remember that in making a determination as to whether or not the individual is "qualified", he/she must meet these two criteria as they relate to either their present job or the job they are seeking (either as an applicant or through the accommodation of last resort; reassignment.)

4. What accommodation has the employee requested?

Determine from the employee or applicant what he/she thinks is needed to enable them to perform the job. You will need to consult with Human Resources, safety and/or medical personnel, as appropriate, to determine whether the employee's proposed accommodation is feasible and whether other accommodations can be made. Consider the individual's preferences and the effectiveness of each accommodation and its cost. Select the most appropriate for both management and the individual. The chosen

accommodation need not be the best or most expensive or even the one preferred by the individual. The accommodation must, however, be reasonable and enable the individual to perform the essential functions of his or her position. The employer makes the ultimate decision as to what accommodations, if any, will be adopted.

SAMPLE LETTER DENYING REQUEST FOR ACCOMMODATION

MEMORANDUM

From:

To:

Subj: DENIAL OF REQUEST FOR ACCOMMODATION

1. On (date) , you submitted a request for reasonable accommodation. You identified your disability as , your limitation(s) as , and requested the following as an accommodation(s) .

2. This is to notify you that after assessing all of the information you have provided, as well as using the resources available to me, your request for reasonable accommodation is denied. The basis for this decision is that **(select one of the following:)**

- you do not meet the definition of an individual with a disability.
- you did not provide the requested medical documentation necessary to make an informed determination.
- there is no accommodation we can provide that will enable you to perform the essential functions of your job or any other available position.
- you declined the offer of a reassignment as a form of accommodation.

This decision is based on the following information. **Be specific and provide as much detail as necessary to justify the decision, e.g., why the accommodation would not be effective or why it would result in undue hardship.**

3. You have the right to:

- Invoke the Alternative Dispute Resolution (ADR) process;
- Submit a request for reconsideration; or

Attachment 6

- File a grievance under the negotiated procedure; or
- File a discrimination complaint.

To invoke the ADR process, you must submit a written request to (provide point of contact information) within 14 calendar days of your receipt of this initial denial.

a. If the ADR process is used but resolution is not reached, you may request reconsideration of this initial denial. If you elect to request reconsideration, you must submit a written request for reconsideration to (provide name and contact information for deciding official) within 14 calendar days of your receipt of this initial decision or if the issues are not resolved in the ADR processes, within 14 calendar days of the conclusion of the ADR process. **You are not required to participate in the ADR process in order to request reconsideration.** NOTE: ADR may also be appropriately considered as an option in the negotiated grievance and/or discrimination complaint procedures.

b. (for bargaining unit members) You have the right to file a negotiated grievance, in accordance with (reference appropriate provisions of the collective bargaining agreement)

c. You also have the right to initiate a discrimination complaint pursuant to 29 CFR 1614. To initiate an EEO complaint, you must contact (provide contact information for EEO Counselor) within 45 calendar days from your receipt of this notification of the initial denial. You may submit a request for reconsideration as set forth above and initiate an EEO complaint so long as the individual identified above receives your request for reconsideration within 14 calendar days of your receipt of the initial decision.

NOTE: 29 Code of Federal Regulations 1614.301 states that when a person is employed by an agency subject to 5 U.S.C. 7121(d) and is covered by a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance, a person wishing to file a complaint or a grievance on a matter of alleged employment discrimination must elect to raise the matter under either 1614 or the negotiated grievance procedure, but not both. The sample, generic appeal language provided above should be modified, as appropriate, at the activity level.

Unless noted as an exception above, you must file a request for ADR, reconsideration, negotiated grievance or a discrimination complaint within the applicable timeframes for it to be considered a timely filing.

4. If you are eligible, you also have the option of applying for disability retirement. For further information regarding this option, please contact _____ . You are further advised that if you are unable to perform the essential functions of your position, appropriate administrative action up to and including your removal may be taken.

5. If you have any questions on the above, please contact (provide contact information).

**SAMPLE LETTER
DENIAL OF REASONABLE ACCOMMODATION REQUEST,
WITH OFFER OF OTHER ASSISTANCE**

From:

To:

Subj: DENIAL OF REASONABLE ACCOMMODATION REQUEST WITH
OFFER TO PROVIDE AN ALTERNATE FORM OF ASSISTANCE

1. 1. On (date), you submitted a request for accommodation. You identified your disability as _____, your limitation(s) as _____, and requested the following accommodation(s) _____.

2. This is to notify you that, after assessing all of the information that you have provided, as well as using the resources available to me, I have made the determination that we are unable to accommodate you in your current position due to the following reasons: **Be specific and provide as much detail as necessary to justify the decision, e.g., why the accommodation would not be effective or why it would result in undue hardship.**

Select one of the following:

- You do not meet the definition of a qualified individual with a disability.
- You did not provide the requested medical documentation to make an informed determination.

3. Although your request for reasonable accommodation has been denied, the command, in its desire to be a good employer, not out of legal or regulatory necessity, is offering to provide the following assistance to you. The intent of this offer of assistance is to alleviate some of the difficulty you are experiencing in accomplishing the essential functions of your position.

Describe in detail the assistance the command is willing to provide.

Attachment 7

4. If you are interested in any of the above forms of assistance, please contact your Reasonable Accommodation (RA) POC within 14 calendar days of the date of your receipt of this correspondence. If you fail to contact the RA POC within this timeframe, it will be assumed you are not interested in the assistance offered and your case will be closed.

5. Please be advised that because you (**insert reason from paragraph 2**), and the determination has been made that there is no obligation to accommodate you in your current position, you have the right to:

- Invoke the Alternative Dispute Resolution (ADR) process.
- Submit a request for reconsideration; or
- File a grievance under the negotiated grievance procedure.
- File a discrimination complaint.

To invoke the ADR process, you must submit a written request and it must be received by _____ within 14 calendar days of your receipt of this initial denial. **Provide point of contact information for ADR process.**

a. If the ADR process is used but resolution is not reached, you may request reconsideration of this initial denial. If you choose to request reconsideration, you must submit a written request for reconsideration to (**identify contact information for reconsideration official**) within 14 calendar days of your receipt of this initial decision or if the issues are not resolved in the ADR processes, within 14 calendar days of the conclusion of the ADR process. **You are not required to participate in the ADR process in order to request reconsideration.**

b. You may elect to file a negotiated grievance, in accordance with **provide applicable collective bargaining agreement information to include appropriate timeframes (for bargaining unit members)**.

c. You also have the right to initiate an Equal Employment Opportunity (EEO) complaint pursuant to 29 C. F. R. 1614. To initiate an EEO complaint, you must contact (**provide EEO Counselor contact information**) within 45 calendar days from your receipt of this notification of the initial denial.

NOTE: 29 Code of Federal Regulations 1614.301 states that when a person is employed by an agency subject to 5 U.S.C. 7121(d) and is covered by a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance, a person wishing to file a complaint or a grievance on a matter of alleged employment discrimination must elect to raise the matter under either 1614 or the negotiated grievance procedure, but not both. The sample, generic appeal language provided above should be modified, as appropriate, at the activity level.

You may submit a request for reconsideration as set forth above and initiate an EEO complaint so long as the individual identified above receives your request for reconsideration within 14 calendar days of your receipt of this initial decision.

4. If you are eligible, you also have the option of applying for disability retirement. For further information regarding this option, please contact (provide contact information).

5. If you are unable to perform the essential functions of your position, even with the offer of assistance described in paragraph 3 above, appropriate administrative action up to and including your removal may be taken.

SAMPLE LETTER APPROVING REQUEST FOR ACCOMMODATION

From:

To:

Subj: APPROVAL OF REQUEST FOR ACCOMMODATION

1. On (date), you made an oral or written request for accommodation. You identified your disability as _____, your limitation(s) as _____, and requested the following accommodation(s) _____.

2. This is to notify you that, after assessing all of the information you provided, as well as using the resources available to me, your request for accommodation has been approved. The following is a list of the equipment that will be provided to you and the date of expected receipt.

- a.
- b.
- c.

OR

2. This is to notify you that, after assessing all of the information you provided, as well as using the resources available to me, your request for accommodation has been approved. You are advised that it has been determined that an alternative form of accommodation will allow you to effectively perform the essential functions of your position. Therefore, the following is a list of the equipment that will be provided to you and the date of expected receipt.

- a.
- b.
- c.

3. If you have any questions or concerns regarding this please do not hesitate to contact me at _____.

b. Please respond with your decision to accept or decline the option to be considered for a reassignment by completing enclosure (1) and returning it to me within 7 calendar days of receipt of this notice. If you accept this option, you may indicate your position preferences, if any, and the parameters of the job search on enclosure (1).

c. If you accept the option to be considered for a reassignment, you must submit an updated resume so that a determination of the positions for which you qualify can be accomplished. If you do not provide a resume at the same time you submit enclosure (1), your current series, grade and position description will be used to make this determination. You are encouraged to submit an updated resume because your position description may not describe your duties to the extent needed for an accurate qualification determination.

d. If you decline the option to be considered for a reassignment, you will be issued a decision on your request for reasonable accommodation.

4. This is to advise you that you may also be eligible to apply for disability retirement. For further information regarding this option, please contact _____ . You are further advised that if you decline the option to be considered for a reassignment and you are unable to perform the essential functions of your position, appropriate administrative action up to and including your removal may be taken.

5. If you have any questions on the above, please contact _____ .

**SAMPLE ACCEPTANCE/DECLINATION LETTER FOR OPTION TO BE
CONSIDERED FOR REASSIGNMENT**

From: Employee
To: First level supervisor

Subj: ACCEPTANCE/DECLINATION OF OPTION TO BE CONSIDERED
FOR A REASSIGNMENT

1. _____ I want to be considered for a reassignment outside of (*identify employee's current activity*) as a reasonable accommodation. My preferences for the job search process are indicated below.

_____ I do not want to be considered for a reassignment outside of (*identify employee's current activity*) as a reasonable accommodation.

2. My preferences for the parameters of a job search of vacant positions are provided below (please provide a response to all the questions):

a. If there are no appropriate, available positions at my current activity, I want to be considered for placement into appropriate, vacant positions at other activities with the (*identify major command and/or geographic area*) within the commuting area.

Yes _____ No _____

b. If there are no available positions within the (*identify major command and/or geographic area*) in the commuting area, I want to be considered for placement in a position at any command in the commuting area.

Yes _____ No _____

c. If there are no available positions at any command in the commuting area, I want to be considered for placement at any activity within the (*identify major command and/or geographic area*) Navy-wide.

Yes _____ No _____

d. If there are no available positions at any of the activities within the (*identify major command and/or geographic area*), I want to be considered for placement in any position, at any command, Navy-wide.

Yes _____ No _____

e. I would like to be considered for the following positions:

_____ Any position for which I am qualified.

_____ Only the positions identified below: **NOTE: The employee is required to identify the specific positions that he/she wants to be considered for placement if this box is checked.**

3. I further understand/acknowledge that:

a. If the job search results in my placement outside of my current commuting area, I may be required to relocate at my own expense.

b. If I am placed at a lower grade level than my current position, I will be changed to the lower grade with saved pay.

c. If a position is not identified for placement, within the parameters I specified in paragraph 2 above or I do not want to be considered for reassignment, I understand that I may be removed for medical inability to perform the duties of my position.

d. If I want to be considered for a reassignment, I must submit an updated resume within 5 calendar days of the date on this document. If I do not submit an updated resume by this date, job placement efforts will be based on my current series, grade and position description.

e. I may be eligible to apply for disability retirement.

My signature below documents that I have identified the parameters of the job search and acknowledges that I was advised of and understand the information contained in this document.

Employee's Signature

Date

**GUIDANCE FOR INTERACTIVE DISCUSSION WITH EMPLOYEE ON
OPTIONS AVAILABLE AFTER NON-ACCOMMODATION DETERMINATION**

When the employee is issued the letter notifying him/her that he/she cannot be accommodated in their current position, an interactive dialogue must take place between the employee and supervisor to document the employee's understanding of the following information. The results of the dialogue must be documented in writing and should be signed/acknowledged by the employee.

- Advise the employee of his/her options for:
 - reassignment,
 - disability retirement, or
 - removal for inability to perform

The employee must be asked the following questions with respect to the option of reassignment:

- If no positions within the activity are found, is he/she willing to accept a reassignment at **another activity within the major command and/or geographic area in the commuting area**? Yes _____ No _____
- If no positions with the major command in the commuting area are found, is he/she willing to accept a position with **another major command and/or geographic area in the commuting area**? Yes _____ No _____
- If no positions with other major commands in the commuting area are found, is he/she willing to accept a position within the **major command Navy-wide**?
Yes _____ No _____
- If no positions with the major command Navy-wide are found, is he/she willing to accept a position in **another major command Navy-wide**?
Yes _____ No _____

The employee must be advised that if the option of reassignment is selected:

- relocation costs may be at his/her expense
- an up-to-date resume is critical for this process

- he/she is responsible for submitting an up-to-date resume
- qualifications for vacant positions will be determined based on their current series and grade if an up-to-date resume is not submitted
- may result in a voluntary change-to-lower grade, with pay retention
- he/she understands that he/she will be referred only to those geographical areas for which they have indicated a preference
- he/she may provide his/her job preferences, if any (NOTE: The employee should be advised that identification of job preferences does not guarantee their availability for placement purposes.)