

Medical Evaluation Boards

Service members may become physically unfit for duty due to illness or injury. A service member is unfit for duty when they are unable to perform the duties considering their rank and duty position. Determining whether a member can reasonably perform their duties includes consideration of deployability. This applies to both the Active and Reserve Components of that Service. The process will generally begin with a Medical Evaluation Board (MEB). The MEB is tasked with preparing a report documenting the service member's medical history, current physical status and recommend duty limitations. This report documents whether a medical condition(s) interfere significantly with the member's ability to carry out the duties of the member's rank and rate. This is generally referred to determining whether the member meets "retention criteria" to remain in the service. The service member has the right to respond to the report of the medical board. If the MEB determines that there is a significant medical issue with a service member's ability to perform their duties then the case is referred to an Informal Physical Evaluation Board. The IPEB will make the initial determination whether the service member is fit or unfit for duty. If the member is dissatisfied with the IPEB finding, the member can appeal it by requesting a hearing before the FPEB. The determination of the IPEB is not binding in any respect on the FPEB. Thus, it is possible to have a worse outcome at the FPEB than was obtained at the IPEB. It is, therefore, very important to know how the entire process works before making a decision to appeal the determination of the IPEB. If it is determined that a service member is unfit for duty then the PEB must determine whether the injury or illness is service connected. This means that a determination must be made whether the illness or injury that caused the member to be found unfit was the result of the member's military service. There is a rebuttable presumption that an illness or injury was incurred incident to service. There are, however, a number of situations where the presumption is overcome and the illness/injury will be found not to be service connected unless the member can provide evidence to demonstrate that it was service connected. When the condition is considered to be service connected, then the IPEB will continue to process the matter for determination of separation or medical retirement. The principal determining factor will be what disability "rating" is given to the member's medical conditions. Disability ratings are calculated at 10% increments from 0% to 100%, although not all medical conditions are rated at every 10% increment from 0% to 100%. The final calculation of the disability rating determines the percentage of base pay to be awarded to a member. The most significant aspect of this is that ratings of 0%, 10% or 20% will result in being separated with a single separation payment; whereas disability ratings of 30% or higher will result in being placed on either the Temporary Disability Retired List (TDRL) or the Permanent Disability Retired List (PDRL). When a Soldier is medically separated, they receive a single separation check calculated at two times base pay, times years of service; not to exceed 12 years of service; for a total separation check not to exceed 24 months of base pay. If a Service member is found to be rated disabled at 30% or more, then they will either go on the TDRL for a period not to exceed 5 years; or be placed on the PDRL. If a member is placed on the TDRL, then every 18 months they will undergo a new evaluation and the same process will be completed. Not later than the end of the 5 years, the member will be returned to duty; found fit, but

unsuitable and separated; be medically separated; or medically retired. While on the TDRL the member will receive not less than 50% of their base pay. Once a member is placed on the PDRL, they are permanently retired from the military at the specified disability rating and will receive that percentage of their base pay from the military. A member can receive benefits from the VA while still in the service, after being separated from the service, and after being retired from the service. The VA will make its own disability rating determination. Because the military services and the VA systems evaluate disabilities for different purposes, it is often the case that the VA will rate a member at a higher disability rating than the service will rate that same service member. However this is likely to change with passage of the wounded warrior bill which calls for just one evaluation for both the Branch of Service and the VA. If you are facing a Medical Retirement issue you should contact the Service Members law firm to learn what your rights and benefits are. Greg Rinckey

is a former JAG attorney. Moreover, Tully Rinckey PLLC is a Service Disabled Veteran owned firm. To set up a consult call us at 518-218-7100.

Contact us during normal business hours via Skype

. Click on the image above to schedule a time to speak with an attorney.