

**A GUIDE TO OBTAINING
A MEDICAL DISCHARGE
FROM THE UNITED STATES ARMED
FORCES**

INFORMATION CONTAINED IN THE DOCUMENT IS NOT MEANT TO CONSTITUTE LEGAL
ADVICE OR THE CREATION OF AN ATTORNEY/CLIENT RELATIONSHIP

TABLE OF CONTENTS

I. WHEN IS A SERVICEMEMBER UNFIT TO CONTINUE MILITARY SERVICE?	1
A. PROVISIONS IN THE UNITED STATES CODE.....	1
B. PURPOSE OF MEDICAL DISCHARGE ON GROUNDS OF INJURY OR ILLNESS.....	2
C. THE “DISABILITY EVALUATION SYSTEM” (DES) PROCESS	2
II. IF YOU ARE INJURED OR ILL, HOW SHOULD YOU FILE FOR ENTRY INTO DES?.....	3
A. GENERAL REQUIREMENTS	3
B. COMMON INJURIES AND ILLNESSES REFERRED TO DES	3
i. MUSCULOSKELETAL SYSTEM	4
ii. SYSTEMIC DISEASES	5
iii. RESPIRATORY SYSTEM	6
iv. CARDIOVASCULAR SYSTEM.....	6
v. GASTROINTESTINAL SYSTEM	7
vi. ENDOCRINE SYSTEM AND METABOLIC CONDITIONS	7
vii. NERVOUS SYSTEM.....	8
viii. PSYCHIATRIC DISORDERS	8
C. LIMITATIONS ON ENTRY INTO DES.....	9
D. SERVICE-SPECIFIC RULES AND GUIDELINES	10
i. ARMY.....	10
ii. AIR FORCE.....	11
iii. NAVY & MARINES	11
III. ONCE ENTERED, WHAT IS THE PROCESS OF OBTAINING MEDICAL DISCHARGE THROUGH DES?.....	11
A. OVERVIEW	11
B. MEDICAL EVALUATION BOARD (MEB).....	12
i. PROCEDURAL LIMITATIONS	12
ii. POSSIBLE OUTCOMES OF MEB FINDINGS.....	13
iii. APPEALING THE MEB FINDINGS	13
C. PHYSICAL EVALUATION BOARD (PEB).....	14
i. PROCEDURAL LIMITATIONS	15
1. INFORMAL PEB	15

2. FORMAL PEB	16
ii. RESERVE COMPONENTS SERVICEMEMBERS	17
iii. SERVICE-SPECIFIC RULES AND GUIDELINES	18
1. ARMY.....	18
2. AIR FORCE.....	18
3. NAVY & MARINES	19
iv. POSSIBLE OUTCOMES OF PEB FINDINGS	19
v. APPEALING THE PEB FINDINGS.....	22
vi. SERVICE-SPECIFIC RULES AND GUIDELINES	22
1. ARMY.....	22
2. AIR FORCE.....	24
3. NAVY & MARINES.....	26
IV. CAN I STILL APPEAL THE DETERMINATIONS OF MY SERVICE BRANCH'S APPELLATE REVIEW AGENCY?.....	28
V. ENDNOTES.....	29

I. WHEN IS A SERVICEMEMBER UNFIT TO CONTINUE MILITARY SERVICE?

A servicemember is unfit to continue military service when a preponderance of the evidence demonstrates that one or more physical and/or mental condition(s) significantly interferes with the servicemember's ability to perform the duties of his/her office, grade, or rank.¹ The lower the rank of the servicemember, the more physical the requirements of his/her rank and office, and therefore, the more likely the servicemember will be considered unfit to continue military service. Obviously the priority in the case of a servicemember suffering from an illness or injury is to ensure that he or she receives proper medical attention, but often in spite of medical treatment, the servicemember may be unable to return to military service.

A. PROVISIONS IN THE UNITED STATES CODE

Title 10, U.S.C., chapter 61, provides the Secretaries of the Military Departments with authority to retire or separate members when found to be unfit to perform their military duties because of physical disability, either resulting from injury or illness. The Department of Defense (DoD) has various directives that provide general guidelines and procedures that must be adhered to by all service branches.² On top of that, each service branch of the military has its own specific provisions to comply with the guidelines provided by the DoD, and therefore it is important for each servicemember to follow the procedures of his/her service branch.

B. PURPOSE OF MEDICAL DISCHARGE ON GROUNDS OF INJURY OR ILLNESS

Each year thousands of servicemembers are injured while on duty. Following an injury, the military's first priority is to provide medical treatment to the servicemember with the goal of returning him or her to duty as soon as possible. Some servicemember, however, suffer from injuries or illnesses that may render them unfit for continued service. In order to best protect them and other servicemembers as well as to honor their dedication and sacrifice, unfit servicemembers are granted medical discharge through a uniform process followed by all service branches.

C. THE "DISABILITY EVALUATION SYSTEM" (DES) PROCESS

While each military service has established its own procedures for granting a medical discharge, they all follow the same general process called the "Disability Evaluation System" (DES). The DES was created by the DoD to provide a uniform procedure for the evaluation of a servicemember's medical condition and the member's ability to continue his or her military service.³ Generally, the DES takes place in the following sequence:

1. Evaluate a servicemember's fitness for duty;
2. Authorize a return to duty for those who are found fit and able;
3. Authorize disability separation or retirement, with disability benefits, for those who are found unfit.⁴

II. IF YOU ARE INJURED OR ILL, HOW SHOULD YOU FILE FOR ENTRY INTO DES?

A. GENERAL REQUIREMENTS

For most servicemembers, entry into the DES starts in a similar fashion. He or she suffers a wound, injury, or illness and is treated at a medical facility. For some, this condition will become a permanent one with long-lasting effects such that he or she will not be able to return to full duty within a reasonable period of time.⁵ In such a case, the treating physician/doctor will write a narrative summary of the condition and will send that, along with a copy of the servicemember's medical records, to the nearest designated Military Treatment Facility (MTF). The Commanding Officer of the MTF then assigns a Physical Evaluation Board Liaison Officer (PEBLO) to assist the servicemember in completing the DES to gain a medical discharge. This referral to an MTF is important as a servicemember cannot refer himself or herself to the DES; rather, the treating physician, unit commander or higher command, or an MTF commander must make the referral.⁶

Sometimes the treating physician will wait to see how the servicemember responds to treatment for a period of time before referring the case to DES, but it is required that a DES referral be made no later than a year of treatment for the same condition.⁷ There are certain injuries and illnesses that are common to the DES and these are listed below.

A. COMMON INJURIES AND ILLNESSES REFERRED TO DES

DoD Instruction 1332.38 provides a listing, mainly by body system, of medical conditions and physical defects which are always a cause for referral into the DES.⁸ While the listing below is

a sample and not all inclusive or complete, a service member who has one or more of the listed conditions or physical defects is also not deemed automatically unfit.⁹

i. MUSCULOSKELETAL SYSTEM

- The ability to pinch, grasp, or grip is prevented by disease, residuals of disease, acute injury, or chronic residuals of acute injury to the hand or fingers.
- Amputation of a part or whole of the upper extremity.
- Recurrent dislocation (not subluxation) when not surgically correctable.
- Ranges of Joint Motion (ROM) less than the listed measurements.
- Disease, residual of disease, acute injury, or residual of injury that interferes with ambulation or the wearing of military shoes and/or boots for a period in excess of 180 days.
- Any documented condition that precludes the ability to run or walk without a perceptible limp.
- Shortening of an extremity that exceeds two inches (5 cms).
- Inflammatory Condition. Any inflammatory condition involving the bones, joints, or muscles of the extremities, that after accepted therapy, prevents the military member from performing the preponderance of duties assigned.
- Prosthetic Replacement. Total or partial prosthetic replacement of a major joint, i.e. hip, knee, shoulder.

- Muscles. Atrophy of, loss of substance of, direct injury to (or residuals thereof) one or more muscles or muscle groups that prevents satisfactory use of the upper or lower extremity.
- Tendon and/or Ligament Transplantation: If restoration of function is not sufficient to adequately perform the preponderance of duties required.
- Spine. When more than mild symptoms cause deterioration in performance of required duties.
- Skull. Significant loss of substance without prosthetic replacement, or with prosthetic replacement in the presence of significant residuals.
- Eye Disease. Active eye disease or any progressive organic disease or degeneration, regardless of the stage of activity, that is resistant to treatment and affects the distant visual acuity or visual fields such that distant visual acuity is significantly affected or the field of vision of the better eye is less than 40 degrees.
- Ears. Otitis Externa, Mastoiditis, Meniere's syndrome or labyrinthine disorders of sufficient severity, Otitis Media

ii. SYSTEMIC DISEASES

Any acute or chronic condition that affects the body as a whole (systemic) and interferes with the successful performance of duty, or requires medication for control, or needs frequent monitoring by a physician, or that requires geographic assignment limitations or requires a temporary limitation of duty exceeding 180 days, or a permanent limitation of duty that effects the whole body (systemic).

- Infectious Diseases. Systemic Mycoses; Tuberculosis; Leprosy.
- Sexually Transmitted Diseases
- Arthritis

iii. RESPIRATORY SYSTEM

- Sinusitis. Sinusitis or rhinitis (atrophic), with Suppuration. Unresponsive to conventional therapy.
- Larynx. Obstructive edema of the glottis requiring tracheostomy; Vocal cord paralysis seriously interfering with speech or airway; Stenosis of such a degree as to cause respiratory embarrassment on moderate exertion.
- Infection. Pulmonary Tuberculosis; Histoplasmosis; blastomycosis; toxoplasmosis; or other mycosis not responding to accepted therapy.
- Asthma.
- Bronchiectasis or bronchiolectasis. Cylindrical or saccular with residuals requiring repeated medical care.
- Bronchitis. Chronic, severe, recurrent unresponsive to repeated medical care.
- Pulmonary Emphysema
- Pulmonary Fibrosis
- Lung Transplant.

iv. CARDIOVASCULAR SYSTEM

- Heart Disease.
- Cardiomyopathy.

- Hypertensive Cardiac Disease.
- Reconstructive Cardiovascular surgery.
- Cardiac Transplant.
- Major Cardiovascular Anomalies.
- Frostbite, if significant or with residuals.

v. GASTROINTESTINAL SYSTEM

Any organic condition of the Gastrointestinal System that prevents adequate maintenance of the service member's nutritional status, or requires significant dietary restrictions.

- Inflammatory and/or Infectious Conditions.
- Esophagitis.
- Reflux. When not responsive to therapy.
- Hepatitis.
- Persistent symptoms or persistent evidence of impaired liver function.
- Inability to serve as a blood donor.
- Total Gastrectomy, Pancreatectomy
- Fecal Incontinence.

vi. ENDOCRINE SYSTEM AND METABOLIC CONDITIONS

Any abnormality that does not respond to therapy satisfactorily or where replacement therapy presents significant management problems.

- Diabetes

- Hyper or Hypothyroidism.
- Heat Injury
- Recurrent Heat Exhaustion.
- Heat Stroke.

vii. NERVOUS SYSTEM

- Neurogenic Muscular Atrophy
- All Primary Muscle Disorders.
- Progressive Degenerative Disorders.
- Parkinson's Disease
- Huntington's Chorea.
- Multiple Sclerosis.
- Residuals of Traumatic Brain Injury.
- Headaches. Headaches, Migraine, Tension, Vascular, Cluster Types. When manifested by documented frequent incapacitating attacks.
- Seizure disorders.
- Narcolepsy.
- Paralysis.
- General Neurological Disorders. Any other neurological condition, regardless of etiology, when, after adequate treatment, residual symptoms prevent the satisfactory performance of duty.

viii. PSYCHIATRIC DISORDERS

- Personality Disorders.
- Psychosocial and Environmental problems.
- Sexual or Factitious Disorders.
- Substance-related Disorders.
- Mental Retardation.
- Disorders with Psychotic Features (Delusions or prominent Hallucinations).
- Affective Disorders (Mood Disorders).
- Anxiety, Somatoform Dissociative Disorders (Neurotic Disorders).
- Eating Disorders.

B. LIMITATIONS ON ENTRY INTO DES

While on active duty, there is no limit to the number of times a servicemember may go through the DES process.¹⁰ Furthermore, injuries or illnesses received or contracted while absent without leave or incurred while engaging in an act of misconduct or willful negligence may preclude compensation for the servicemember.¹¹

The inability to deploy cannot be a sole basis for determining unfitness per DoD instructions. Therefore, certain conditions, circumstances and defects of a developmental nature do not constitute a physical disability and are not grounds for referral to the DES, as designated by the Secretary of Defense. Such conditions, circumstances and defects should be referred for appropriate administrative action under other laws and regulations, and these are listed below.¹²

- Enuresis

- Sleepwalking and/or Somnambulism
- Dyslexia and Other Learning Disorders
- Attention Deficit Hyperactivity Disorder
- Stammering or Stuttering
- Incapacitating fear of flying confirmed by a psychiatric evaluation.
- Airsickness, Motion, and/or Travel Sickness.
- Phobic fear of Air, Sea and Submarine Modes of Transportation
- Certain Mental Disorders including: Uncomplicated Alcoholism or other Substance Use Disorder, Personality Disorders, Mental Retardation
- Impulse Control Disorders
- Sexual Gender and Identity Disorders, including Sexual Dysfunctions and
- Obesity.
- Psuedofolliculitis barbae of the face and/or neck.
- Medical Contraindication to the Administration of Required Immunizations.
- Significant allergic reaction to stinging insect venom.
- Unsanitary habits including repeated venereal disease infections.
- Deficiency, other inherited Anemia Trait, and Von Willebrand's Disease.
- Allergy to Uniformed Clothing.

C. SERVICE-SPECIFIC RULES AND GUIDELINES

While the DES framework is outlined by the DoD in its directives and is uniformly followed by all service branches, it is important to note that there are slight differences among the branches

on entering a servicemember into the DES.¹³ Therefore, it is imperative that each servicemember should comply with the guidelines for his or her respective branch into order to gain entry into the DES.

i. ARMY

The Army uses a physical profile system that measures servicemembers' physical limitations in six areas with a level between 1 (fully healthy) to a 4 (severally limited) in each. If a servicemember receives a permanent level 3 or 4 in any area, the doctor is required to refer the servicemember's case to the DES through an MBE evaluation.¹⁴

ii. AIR FORCE

The Air Force evaluates a servicemember for retention and if his or her condition is limiting (not unfitting), then an assignment limitation code is assigned to the servicemember for re-evaluation at a later date. If the condition is not expected to improve within 12 months and the condition is permanently unfitting, then the servicemember will be referred to DES through an MEB.¹⁵

iii. NAVY & MARINES

In the Navy and Marine Corps, the DES process begins with the doctor writing the narrative summary and no prior profiling requirement exists. This narrative summary is then submitted either directly to the MEB or, in some cases, to a PEB.¹⁶

III. ONCE ENTERED, WHAT IS THE PROCESS OF OBTAINING A MEDICAL DISCHARGE THROUGH DES?

A. OVERVIEW

The DES has two stages of review before a servicemember is eligible for medical discharge: the Medical Evaluation Board (MEB) and the Physical Evaluation Board (PEB). A servicemember must go through the MED first after being referred into DES by his or her service branch. In 2007, the average time to complete the DES processes for Active-Duty and Reservists servicemembers was 107 days and 149 days respectively, at least for the Army.¹⁷ This process should now be much faster due to an enhanced DES system in place since 2007 that allows increased efficiency and streamlining due to a single physical examination conducted to VA standards as part of the MEB and disability ratings by the PEB that are prepared to VA standards.¹⁸

B. MEDICAL EVALUATION BOARD (MEB)

The MEB evaluates the servicemember's condition and ongoing treatment in order to determine whether he or she can continue service in his or her current military assignment¹⁹ after medical treatment is complete. Basically, the goal is to evaluate whether the servicemember is fit to return to the same job. The MEB evaluates how the servicemember's condition will affect performance in the military environment, and specifically if he or she will be able to perform military service in such a manner as to "reasonably fulfill the purposes of their employment on active duty."²⁰ The MEB is directed now to perform its medical assessment with in line with VA standards so as to make benefits available sooner.

i. PROCEDURAL LIMITATIONS

While each service has individual rules, the MEB generally is made up of two or three medical care professionals, one of whom is the servicemember's treating physician.²¹ The MEB is not a

formal hearing and the servicemember is not expected to appear before the panel.²² Rather, the servicemember is expected to assist the PEBLO in putting together a packet of information containing his or her medical records, results from tests and medical exams related to the condition, letters from the servicemember's chain of command explaining how the condition impacts his or her duties, copies of the servicemember's evaluation reports, and other personnel records that the MEB may require.²³ Additionally, the PEBLO explains the MEB process to the servicemember as well as the outcome of the MEB determination. It is crucial to note that in spite of their assistance, PEBLOs are not advocates on behalf of the servicemember.

It is important for claimants to attend all appointments and to provide the following documents to the PEBLO:

- Leave and Earning Statement (LES).
- Enlisted/Officer Record Brief (ERB/ORB).
- Last three evaluation reports (OER/NCOER).
- Approved retirement or separation orders.
- Orders for recent promotions or demotions.²⁴

ii. POSSIBLE OUTCOMES OF MEB FINDINGS

The MEB can provide any of the following outcomes:

1. Return to active duty if the servicemember is found fit and able, or
2. Place the servicemember on Temporary Limited Duty (TLD) if it is determined that he or she is not fit to return to active duty yet but will be within a reasonable period of time.

This lasts normally eight months and will not exceed a total of 16 cumulative months.²⁵

3. Refer the servicemember to the Physical Evaluation Board (PEB) if MEB is unsure of servicemember's ability to return to active duty within a reasonable period of time or even after a TLD.²⁶

iii. APPEALING THE MEB FINDINGS

A servicemember dissatisfied with the findings of the MEB can appeal that decision in writing within three days of being informed.²⁷ The appeal is filed directly with the MEB. There is no specific form for the letter but it is important for the servicemember to be as specific as possible. Furthermore, certain servicemembers who are declared unfit may still be eligible to remain on active duty through the Continuation of Active Duty programs.²⁸

Certain servicemembers who are found unfit by the PEB may request to be placed in Continued on Active Duty (COAD) or in Active Reserve (COAR) status as an exception to policy.

Approval for COAD/COAR rests with Human Resources Command and the National Guard, and the PEB does not approve or disapprove a COAD/COAR request.²⁹ To be considered for COAD or COAR, you must have a condition that will not require undue loss of time from duty for medical treatment, must not pose a risk to the health and safety of yourself or other servicemembers, be physically capable of performing useful duty in an MOS/AFSC/NEC for which currently qualified or potentially trainable, and meet one of the following criteria:

- Have 15 but less than 20 years of active federal service (COAD) or qualifying service for nonregular retirement (COAR); or
- Be qualified in a critical skill or shortage MOS/AFSC/NEC; or
- Have a disability that resulted from combat operations or terrorism.³⁰

Normally a COAD/COAR application is submitted by a Soldier when his/her MEB is completed.

C. PHYSICAL EVALUATION BOARD (PEB)

A PEB is the administrative body that makes determinations concerning a servicemember's fitness for duty. While the MEB decides whether the servicemember is fit for his or her current assignment, the PEB decides whether the servicemember is fit to return to military duty at all. Furthermore, the PEB also determines the percentage of disability for ill or injured servicemembers which in turn affects his or her entitlement to VA benefits.³¹ For this reason, PEBs now conduct their evaluations and examinations in line with VA standards so as to avoid repetitive assessments.

i. PROCEDURAL LIMITATIONS

There are two types of PEB, informal and formal. Each type has its own structure, scope, and administration.

1. INFORMAL PEB

An informal PEB is the first step in any PEB evaluation process.³² The process here is similar to that of the MEB where the servicemember does not appear personally. The informal PEB is usually made up of three members with at least one senior medical officer and one field grade personnel officer.³³ The physician member(s) evaluate(s) the MEB determination on medical grounds while the nonmedical military officer examines what impact the servicemember's condition will have on his or her ability to perform military duties.³⁴ The PEBLO will again

assist the servicemember in this process. Usually, the president of the PEB is a Colonel or Navy Captain, depending on the service branch of the claimant.³⁵

The findings of this board are forwarded to the PEBLO, who is required to deliver the PEB findings to the servicemember within three working days from receipt. For this reason, servicemembers should be available to PEBLOs and should avoid regular leave, TDY, or any duty that would make the Soldier unavailable for counseling by the PEBLO. The PEBLO will deliver the findings in person, if possible, but can satisfy the notification requirement through telephonic or other verifiable means. The PEBLO will counsel the servicemember on the findings, assist in the completion of an election of options and notify the PEB of the S servicemember's decision on how to proceed. The servicemember must complete their election of options within a maximum of 10 calendar days.

If the servicemember disagrees with the findings of the Informal PEB, he or she may submit a written rebuttal that includes new medical information or performance data not previously available or considered by the Informal PEB. Other supporting material may also be presented. A servicemember found fit by an informal PEB does NOT have a legal right to a hearing; however, as an exception to policy he or she may request a formal PEB hearing from the PEB President.

If found unfit, however, the servicemember has the right to accept the findings, or can disagree with the findings and submit a written rebuttal and/or demand a Formal PEB with or without personal appearance. All written rebuttals will be considered by the informal PEB, which may issue revised findings based on the information provided or may affirm their original findings. A

servicemember does not give up his or her right to a formal hearing by submitting a rebuttal.

This is guaranteed by law which states that, “No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he or she demands it.”³⁶

2. FORMAL PEB

A formal PEB consists of three voting members, including at least one physician and one nonmedical officer.³⁷ This PEB reexamines a servicemember’s potential fitness for duty, but this time, it is a *de novo* hearing, meaning all factual questions are addressed as if for the first time.³⁸ It is audiotaped to create a record, and allows the servicemember to personally appear, present evidence and testimony (sworn or unsworn), call witnesses, and supplement his or her records with additional documentation.³⁹ Additionally, the servicemember also has a right to legal counsel for which he or she has to pay, and he or she has the right to personally appear before the formal PEB.

On the day of the formal PEB, the servicemember reports, in the appropriate uniform of the day for the locale, to the Presiding Officer of the Formal PEB. . The Formal PEB panel will inform the servicemember of his or her rights, including the right to make sworn or unsworn statements, rights under the Privacy Act and the right not to make any statements relating to the origin or aggravation of the injury. If the servicemember decides not to testify under oath, the Formal PEB panel will not question him or her.

ii. RESERVE COMPONENTS SERVICEMEMBERS

There is no difference in PEB case processing for a Reserve Components (RC) servicemember serving on a period of active duty, from that of an Active Component servicemember. Each

servicemember is entitled to the same determinations and disposition recommendations of the PEB. However, if an RC servicemember with twenty “good years” receives a rating from the PEB that would result in separation with severance pay, he or she is provided the option of waiving the separation pay and being placed in the retired reserve and drawing retired pay and benefits at age 60.⁴⁰

RC servicemembers not on active duty who have conditions that were not incurred as a result of military service will be processed by the PEB for a fitness determination only. These servicemembers are not entitled to disability benefits. These cases are referred by the reserve activity Commanding Officer to the PEB for a determination of fitness for continued service only. The decision to submit a case as “duty-related” or “non-duty related” resides with the servicemember’s command. The PEB will not intervene or overturn this decision. Normally an MEB is not conducted by an MTF on these individuals, nor is care provided by the MTF for the condition.⁴¹

iii. SERVICE-SPECIFIC RULES AND GUIDELINES

1. ARMY

The Army has three PEBs located at Walter Reed Army Medical Center in Washington DC; Sam Houston in San Antonio, TX, and Ft. Lewis, WA. Each of the MTFs that conduct MEBs is aligned with one of these three PEBs. This alignment determines which PEB will adjudicate the case.⁴²

The Army PEB is also broken up into two types of boards, informal and formal. A board, whether formal or informal, is comprised of a three-member panel trained on adjudication

standards and procedures. The Presiding Officer will normally be a Colonel. In addition, each board has a Personnel Management Officer (normally a field grade officer or civilian equivalent) and a Medical Member (normally a DA civilian physician). Almost all of the civilian board members at the Army PEBs are retired military with significant experience.⁴³ By law, all PEBs considering a Reserve Components (RC) soldier will have an RC member.⁴⁴

2. AIR FORCE

The Air Force PEB is a fact-finding body that investigates the nature, origin, degree of impairment, and probable permanence of the physical or mental defect or condition of any member whose case it evaluates. The disability system provides for two PEBs: an Informal PEB and a Formal PEB. The Informal PEB is located at Randolph AFB, TX while the Formal PEB is located at Lackland AFB, TX.⁴⁵

If either board finds a member unfit, it recommends appropriate disposition based on the degree of impairment caused by the disabling condition, the date incurred, and the member's line of duty status. Permanent and alternate members of the PEB board are appointed on Department of the Air Force Special Orders by direction of the Secretary of the Air Force.⁴⁶ The PEB must have at least three voting members. When appropriate, the permanent personnel member (if serving in the grade of Lieutenant Colonel or above) or the senior alternate non-medical member may serve as president.⁴⁷ One of the voting members is a physician while one of the voting members is in the Regular Air Force, if the evaluatee is in the Regular Air Force. One of the voting members is a Reserve officer, if the evaluatee is in a Reserve component.⁴⁸

3. NAVY & MARINES

The DES procedures for the Navy and Marine Corps are the same, under authority of the Secretary of the Navy.⁴⁹ Similar to the Army and the Air Force, the Navy has two types of boards: the informal PEB and the formal PEB. Both PEBs are composed of three members: two line officers (normally a Navy line officer and a Marine Corps officer), and a Medical Corps officer.⁵⁰ All members are senior military officers (O-6 preferred) selected on the basis of wide military experience, proven performance and education.⁵¹ The Navy & Marine Corps Informal PBE is located at Washington Navy Yard in Washington DC, and the Formal PEBs are located in Bethesda, MD, and San Diego, CA.

iv. POSSIBLE OUTCOMES OF PEB FINDINGS

The formal PEB can provide any of the following outcomes:

1. Declare the servicemember fit for duty in which case he or she returns to duty. No disability benefits are required, since you are allowed to continue in the service, though when you someday separate from the military, you may be eligible for benefits from the VA for a service-connected disability that could impact your earning potential after you leave the military.⁵²
2. Declare the servicemember unfit for duty which may lead to separation from the service with or without severance pay, or permanent retirement. Such servicemembers are entitled to compensation and benefits, based on their disability ratings.
 - i. Separate with severance pay: If one or more of your conditions is considered “unfitting” for continued service in the military, but the combined disability of all your unfitting conditions is between 0 and 20 percent, you may receive severance

pay based on your time in service and current pay grade.⁵³ The local finance office, or the Defense Finance and Accounting Service (DFAS) Wounded Warrior Pay Management Team (WWPMT), will help you calculate the amount of severance pay you are authorized. However, if you have served at least 20 years and are eligible for retirement, you will instead be retired from.

- ii. Separate without benefits: Some injuries are determined to be “not in the line of duty.”⁵⁴ These are injuries which are a result of intentional misconduct or willful negligence on your part or that took place when you were not on orders if you are a National Guard or Reserve member. If your injury is found to be “not in the line of duty” but is “unfitting,” you could be separated without benefits for those injuries. If your injury or illness resulted from a medical problem that you had before you entered service and the injury or illness was not aggravated by your service, you may also be separated without benefits. On the other hand, if you have served more than six months in the military, you could be eligible for benefits unless there is compelling medical evidence showing that the condition existed at the same level of severity before you joined.⁵⁵
3. Place the servicemember on the Permanent Disability Retirement List (PDRL). If all your unfitting conditions result in a combined disability rating of 30 percent or higher, and your condition is considered stable (meaning it is unlikely, in the doctor’s opinion, that your disability rating will change within five years), you will be permanently retired for disability and placed on the PDRL.⁵⁶ This provides you with disability retirement pay, access to TRICARE for you and your dependent family members enrolled in the Defense

Enrollment Eligibility Reporting System (DEERS), access to commissary and exchange shopping, and all other benefits of regular military retirement. If you have more than 20 years in service, and your combined disability rating is 0-20 percent, you will be allowed to retire with all the regular retirement benefits. The local finance office or the DFAS Wounded Warrior Pay Management Team will help you calculate the amount of retirement pay you will receive.

4. Place the servicemember on the Temporary Disability Retirement List (TDRL). The TDRL allows the service to ensure a medical condition stabilizes before making a final disability determination. If you are eligible for permanent disability retirement, but your condition is not considered stable, you will be temporarily retired and placed on the TDRL for a maximum of five years. Every 12-18 months, you will be re-evaluated to see if your condition has stabilized and if you can re-enter the service. The benefits of the TDRL are the same as those you would have received had you been retired under the PDRL. If, during those five years, the service determines that your condition is stable, and you are fit for duty, your service will offer you the chance to return to duty. If your condition stabilizes but you are not able to return to duty, you will be permanently retired.

v. APPEALING THE PEB FINDINGS

If the servicemember is dissatisfied with the findings of the formal PEB, then a request for reconsideration can be filed within ten days of notification.⁵⁷ This reconsideration takes place outside of the presence of the servicemember and his or her attorney. The formal PEB will send

its recommendations after reconsideration to a higher, appellate level review agency that is responsible for overseeing the DES process within the servicemember's branch of military service. For the Army, these recommendations go to the U.S. Army Physical Disability Agency (USAPDA); for the Air Force, they go to the Secretary of Air Force Personnel Council; the Secretary of the Navy Council of Review Boards reviews the recommendations for servicemember in the Navy and the Marines.⁵⁸

vi. SERVICE-SPECIFIC RULES AND GUIDELINES⁵⁹

1. ARMY

Your case will go before the informal PEB without you being present. Only your record from the MEB will go to this board. The PEB will discuss your case and return a disposition. If you are found fit, you can either concur (agree) or non-concur (disagree) with the board's findings. If you non-concur, you will be allowed to present a written rebuttal to the PEB regarding why you disagree. This is your chance to provide more information on your condition and how it affects your duty performance. Because you were found fit, you do not have a right to a formal PEB where you can discuss your case in person. However, you can request a formal PEB as an exception to policy.

If you are found unfit, you can agree or disagree with the findings. Like the appeal of a fit decision, you may send a written rebuttal to the PEB with new information on your condition and its effects on your duty performance. However, because you were found unfit, you also have the right to a formal hearing and, if you would like, you may appear at the hearing in person.

You may seek legal assistance to prepare for a formal PEB. You may be represented at the hearing by an attorney from the Judge Advocate General (JAG) Corps, or you can choose a civilian attorney or a representative from a Veterans Service Organization (VSO) like the Disabled American Veterans. If you choose to use your own counsel and not a representative from the JAG Corps, you will be responsible for any fees or payments that come from bringing in an outside counsel. Legal representation from the JAG Corps is free to you. When you appear before a formal PEB, you may present evidence, testimony and documents to support your case. The formal PEB will listen to your new information, ask you questions about your medical limitations, and give you a chance to make a final statement before they make a decision. You will be excused from the hearing after your statement, and the PEB members will discuss and vote on your case. The formal PEB makes decisions by majority vote. If some members of the board of proceedings that documents the board's actions.

The board will bring you and your counsel back into the room and tell you their decision. They will also provide you a written copy of the report of proceedings. You will have 10 calendar days after the board ends to decide if you agree or disagree with its findings.

If you disagree, you will again have an opportunity to provide a written rebuttal to the formal PEB. If the PEB does not accept your rebuttal and upholds its decision, your case will go to the U.S. Army Physical Disability Agency (USAPDA) for review. All cases decided by informal or formal PEBs are sent to the USAPDA, but only those where the soldier disagrees with the findings or where there is a minority report written are automatically reviewed. The USAPDA

also reviews about 20 percent of the rest of the cases to spot check PEB consistency and accuracy.

The USAPDA can uphold the PEB findings, issue revised findings, or send the case back to the PEB for another review. If the USAPDA revises the findings or sends the case back to the PEB for another review, you will again have the chance to agree or disagree with the findings and to provide a written rebuttal to the PEB before the findings are completed. If you didn't request a formal review before, you may request one based on revised findings by the USAPDA, and the formal review will take place at that level. Once the USAPDA makes a final decision on your case, you will have to follow that disposition. If that requires separation or retirement, then you will be separated or retired. However, you may still dispute the findings after you have separated or retired by filing a petition for relief with the Army Board for the Correction of Military Records (ABCMR) if you believe the findings are incorrect.

2. AIR FORCE

Like the other services, the Air Force PEB will start with an informal board that you do not attend. Your record will be forwarded from the MEB, and the informal PEB members will review it and decide your disposition. Within a few days of the board, your PEBLO will contact you to give you the results of the informal PEB. You will be asked to sign an Air Force Form-1180 to tell the PEB if you agree with the findings or not. If you disagree with a finding of fit, you will need to write a justification for why you would like a formal PEB and submit that justification with the Air Force Form-1180. Like the other services, formal PEBs are not guaranteed when you receive a fit for continued duty finding.

If you are found unfit, you do not have to provide a justification for requesting a formal PEB. You will need to contact the legal office at Lackland Air Force Base, where the formal PEBs are held to have a lawyer assigned to your case. You can also choose a civilian attorney or a representative from a Veterans Service Organization (VSO) like the Disabled American Veterans. If you choose to use your own counsel and not a military lawyer, you will be responsible for any fees or payments that come from bringing in outside counsel. Legal representation from the military is free to you. When you appear before a formal PEB, you may present evidence, testimony and documents to support your case.

If you have witnesses you wish to testify in person, you will have to pay for the expense of bringing them to the formal PEB location. If, after meeting with your legal counsel, you decide that you do not want to do a formal PEB after all, you can waive your rights to a board. However, the president of the board will decide whether or not to hold a formal PEB once you have requested one. Audio of the formal PEB is recorded in all cases. If you request it, video of the proceedings can also be recorded.

After you have presented your information to the formal PEB, they will meet privately to make a decision on your case. The formal PEB will either uphold the informal PEB findings or recommend different findings. The board will notify you of their decision, and you will have a day to tell them if you agree or disagree with their findings.

If you agree with the formal PEB findings, your case will be sent to the Physical Disability Division at Headquarters, Air Force Personnel Command, for finalization. The Physical Disability Division will review your case, the findings of the informal and formal PEB, and

decide if your case should be finalized or forwarded for further review by the Secretary of the Air Force Personnel Council (SAFPC). This only happens when the Physical Disability Division thinks a review by the SAFPC is in your best interest or the best interest of the Air Force.

If you disagree with the formal PEB findings, you will have 10 days to submit a rebuttal to the formal PEB for forwarding to the SAFPC. If the formal PEB does not receive your rebuttal in that time, your case will go to the Physical Disability Division for processing.

Even if the SAFPC upholds the formal PEB and you are separated or retired, you may still appeal that decision by applying to the Air Force Board for Correction of Military Records (AFBCMR). This is the highest administrative appeal available for the Air Force. The burden of proof is on you to show that an error or injustice happened in your case during the DES process.

3. NAVY & MARINES

The Navy and Marine Corps use the same PEB process. Like the other services, this process begins with an informal PEB and only moves to a formal PEB if the sailor or Marine requests it.

The informal PEB will take place without you being present, and the board will decide your disposition based off of your records and the MEB results. If the board finds you fit for duty, you will have an opportunity to agree or disagree with that decision. You can write a request for reconsideration to the board with new information on your medical condition and any other information the board did not have when reviewing your record. You also need to tell the board if you would like a formal PEB if they uphold the fit decision. Keep in mind that a formal PEB is not a right if you are found fit for continued naval service, and the board may choose not to

grant you a formal PEB. If you are found unfit, you have three choices. You can accept the findings of the PEB, disagree with the finding and request a formal PEB, or conditionally accept the findings and request a formal PEB.

If you request a formal PEB, the Navy will assign a judge advocate to help you prepare evidence, documents and statements to support your case. You may attend the formal PEB in person or just send information to the board. You may also choose to be represented by a civilian attorney of your choice or a representative from a Veterans Service Organization (VSO), but you will be responsible for any costs that arise from using a non-military appointed lawyer. If you choose not to testify under oath, you will be allowed to make a statement, but the board members will not ask you questions. If you choose to testify under oath, the board will ask you questions about your condition and the effect it has on your duty performance. After you have answered the board's questions, they will give you a chance to make a final statement then you will be excused while they make a decision on your case.

The board will tell you what it decided after they complete discussions of your case. At this point, you can either accept their findings, or you can file a "Petition For Relief" (PFR) with the Director, Secretary of the Navy Council of Review Boards (DIRSECNAVCORB). A PFR is another way to challenge the board's decision. The DIRSECNAVCORB can modify the findings of the board or uphold them. If you are separated or retired and still disagree with the findings of the PEB or the DIRSECNAVCORB, you can petition the Board for Correction of Naval Records (BCNR) for relief from any perceived injustice or inequity.

**IV. CAN I STILL APPEAL THE DETERMINATIONS OF MY SERVICE
BRANCH'S APPELLATE REVIEW AGENCY?**

As mentioned above, determinations of any service branch's Appellate Review Agency can be appealed to the appropriate Board of Correction of Records for that particular branch of service, and then ultimately to the Court of Federal Claims if the servicemember is still unsatisfied.⁶⁰

V. ENDNOTES

¹ DoD Instruction 1332.38 (Physical disability evaluation) at 28 (2006).

² See Directive 1332.18 (Separation or retirement for physical disability); Instruction 1332.38 (Physical disability evaluation); and Instruction 1332.39 (Application of the veterans administration schedule for rating disabilities).

³ Intrepid Fallen Heroes Fund, A Handbook for Injured Service Members and their Families 17, *available at* <http://www.fallenheroesfund.org/getdoc/bd6de713-53b3-4060-81b6-7190393f27dc/injuredhandbook.aspx> (July 2007) (*hereinafter* “Fallen Heroes Handbook”).

⁴ Department of Defense, Compensation and Benefits Handbook: For Seriously Ill and Injured Members of the Armed Forces 7 (2008) (*hereinafter* “DoD Handbook”).

⁵ Fallen Heroes Handbook, at 18.

⁶ *Id.*

⁷ DoD Handbook, at 8

⁸ Most recently updated in 2006.

⁹ DoD Instruction 1332.38 (Physical disability evaluation) at 45 – 65 (2006).

¹⁰ Fallen Heroes Handbook, at 26.

¹¹ *Id.*

¹² DoD Instruction 1332.38 (Physical disability evaluation) at 72 – 73 (2006).

¹³ DoD Handbook, at 7.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ U.S. GOV’T ACCOUNTABILITY OFFICE, MILITARY DISABILITY SYSTEM: INCREASED SUPPORTS FOR SERVICEMEMBERS AND BETTER PILOT PLANNING COULD IMPROVE THE DISABILITY EVALUATION PROCESS 9 (Sept. 2008).

¹⁸ *Id.*

¹⁹ The Army and the Marines calls it the Military Occupational Specialty (MOS) while the Air Force uses “Air Force Specialty Code” (AFSC), and the Navy uses the “Navy Enlisted Classification” (NEC) system with its own ratings and designations. Fallen Heroes Handbook, at 17.

²⁰ Fallen Heroes Handbook, at 18.

²¹ *Id.* at 17-18.

-
- ²² *Id.* at 18.
- ²³ DoD Handbook, at 8.
- ²⁴ U.S. DEP’T OF THE ARMY, ARMY PHYSICAL DISABILITY EVALUATION SYSTEM 7 (Mar. 2007) (*hereinafter* “APDES Handbook”).
- ²⁵ Fallen Heroes Handbook, at 19.
- ²⁶ *Id.*
- ²⁷ *Id.*
- ²⁸ *Id.* at 24.
- ²⁹ APDES Handbook, at 22.
- ³⁰ *Id.*
- ³¹ Fallen Heroes Handbook, at 20.
- ³² *Id.*
- ³³ DoD Handbook, at 8.
- ³⁴ Fallen Heroes Handbook, at 20.
- ³⁵ DoD Handbook, at 8.
- ³⁶ 10 U.S.C. § 1214.
- ³⁷ Fallen Heroes Handbook, at 22.
- ³⁸ *Id.*
- ³⁹ *Id.*
- ⁴⁰ APDES Handbook, at 19 (Mar. 2007).
- ⁴¹ *Id.*
- ⁴² APDES Handbook, at 7 (Mar. 2007).
- ⁴³ *Id.* at 8.
- ⁴⁴ *Id.*
- ⁴⁵ Air Force Instruction 36-3212 (2006).
- ⁴⁶ *Id.*
- ⁴⁷ *Id.*
- ⁴⁸ *Id.*
- ⁴⁹ *See* SECNAV Instruction 1850.4E (2002).
- ⁵⁰ *Id.*
- ⁵¹ *Id.*
- ⁵² DoD Handbook, at 12.
- ⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 12 – 13.

⁵⁶ *Id.*

⁵⁷ Fallen Heroes Handbook, at 25.

⁵⁸ *Id.*

⁵⁹ DoD Handbook, at 15 – 18.

⁶⁰ *Id.*