PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
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WASHINGTON, D.C. 20301-4000

MAR 13 2008

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT

SUBJECT: Directive-Type Memorandum (DTM) on Implementing Disability-Related Provisions of the National Defense Authorization Act of 2008 (Pub L. 110-181)

References: (a) Department of Defense Directive 1332.18, "Separation or Retirement for Physical Disability," November 4, 1996
(b) Department of Defense Instruction (DoDI) 1332.38, "Physical Disability Evaluation," November 14, 1996
(c) DoDI 1332.39, "Application of the Veterans Administration Schedule for Rating Disabilities," November 14, 1996
(d) Policy Guidance for the Disability Evaluation System and Establishment of Recurring Directive-Type Memoranda, dated May 3, 2007

This DTM provides supplemental and clarifying guidance on implementing those disability-related provisions of the National Defense Authorization Act for fiscal year 2008 (Pub L. 110-181) which are time-sensitive and impact immediate decisions pertaining to the rating of conditions and the calculation of separation severance pay. As indicated in the attached guidance, this DTM revises and supplements references (a) and (b). Guidance on use of the current version of reference (c) is also contained in the attached, which will preclude conflict with the statute requiring adherence to the Veterans Administration Schedule for Rating Disabilities (VASRD) to the extent feasible.

Reference (c) is currently under expedited review and will be addressed in a separate DTM. The Department of Veterans Affairs (DVA) will provide OSD agencies and the Military Departments applicable legal interpretation of the schedule by the United States Court of Appeals for Veterans Claims and will issue subsequent guidance if the Court's decision impacts the interpretation of the VASRD for use by the Department of Defense.

The attached guidance also promulgates four new Special Program Designator (SPD) codes – one for standard use and one for use by the DES Pilot ("Enhanced"). These new SPD codes reflect the categorization of combat-related disability directed by Pub L. 110-181 and will be utilized on the DD Form 214 of all Service members with disabilities incurred in combat-related operations.

The attached guidance incorporating these revisions will, when appropriate, be formally consolidated and published in the appropriate issuances. Until such time and as required, the Department will continue to issue regular directive-type memoranda pertaining to these issuances, reflecting changes in statute and consideration of findings and recommendations from the various commissions, task forces, and study groups. Publications such as this memorandum are integral in the Department's continuous improvement process related to the care, reintegration, and compensation of our wounded, ill, and injured Service members.

This policy is issued pursuant to the delegation of authority in paragraph 6.7 of DoDD 5124.02, "Under Secretary of Defense for Personnel and Readiness," November 17, 2006, to the USD (P&R). This DTM was coordinated with DVA and is effective immediately. Related statutory provisions were effective on the date of enactment, January 28, 2008.

David S. C. Chu

Attachments:
As stated

cc:
Assistant Secretaries of the Military Departments
(Manpower and Reserve Affairs)
Director, Defense Accounting and Finance Center
Director, Defense Manpower and Data Center
Director, Wounded, Ill, Injured Senior Oversight Committee Staff

## REVISED AND NEW POLICIES TO IMPLEMENT THE NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) FOR FISCAL YEAR 2008

The directives below implement specific disability-related sections of the FY 2008 NDAA (Pub. L. 110-181). These sections are time-sensitive and critical to accurate Military Department decisions for disability ratings and compensation.

The respective DoD issuances cited below are revised as indicated. Text in **BOLD** is new/added. Text with ~~strikethrough~~ is deleted. References cited in the numbered paragraphs below pertain to the reference listings in the respective DoD issuances, not the reference listing cited in the cover memorandum.

Military Departments will implement these policies immediately. Payments and rating decisions may need to be adjusted to the date of NDAA enactment (January 28, 2008). *Unless otherwise noted in statute, provisions contained herein apply to Service members not separated or retired as of January 28, 2008.*

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NDAA 2008, Section 1613. Return of recovering service members to active duty in the Armed Forces.

- *Revise paragraph 3.1 of DoDD 1332.18, "Separation or Retirement for Physical Disability," November 4, 1996, to reflect:*

3.1. The DES shall be the mechanism for ~~implementing~~ **determining** retirement or separation **and return to duty of Service members** because of physical disability in accordance with Chapter 61 of 10 U.S.C. (reference (b)). **Policy for returning recovering service members to active duty is set forth at paragraph 3.12.**

- *Revise paragraph 3.12 of DoDD 1332.18, "Separation or Retirement for Physical Disability," November 4, 1996, to reflect*

3.12. ~~As an exception to general policy,~~ The Secretary concerned, upon the request of the member or upon the exercise of discretion based on the needs of the Service, may continue in a permanent limited duty status either on active duty or in the Ready Reserve a member determined unfit because of physical disability when the member's service obligation or special skill and experience justifies such continuation. **Transfer to another Service may also be considered.**

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NDAA 2008, Section 1641. Utilization of veterans' presumption of sound condition in establishing eligibility of members of the Armed Forces for retirement for disability.

- *Replace paragraph E3.P4.5.2 and E3.P4.5.3 of DoDI 1332.38, "Physical Disability Evaluation," November 14, 1996, (and all sub-paragraphs) with the following paragraph:*

**E3.P4.5.2. Presumptions for Members on Active Duty of More than 30 days. The presumption listed in paragraphs E3.P4.5.2.1. through E3.P4.5.2.4., below, apply to members on orders to active duty of more than 30 days, for purposes of determining whether an impairment was incurred or aggravated while a member was entitled to basic pay.**

**E3.P4.5.2.1. Presumption of Sound Condition for members ordered on active duty for more than thirty days and have six months or more of active military service. This presumption applies in all cases in which a member, on active duty for more than 30 days and has six months or more of active military service, is found to have a disability and the disability was not noted at the time of the member's entrance on active duty. This presumption is overcome if compelling evidence or medical judgment is such to warrant a finding that the disability existed before the member's entrance on active duty. Absent such compelling evidence or medical judgment, the PEB will conclude that the disability was incurred or aggravated during military service.**

**E3.P4.5.2.2. Hereditary and/or Genetic Diseases. With respect to any member described in paragraph E3.P4.5.2.1, hereditary or genetic disease shall be evaluated to determine whether compelling evidence or medical judgment establishes that the disability was incurred prior to entry on active duty. However, even if the conclusion is that the disability was incurred prior to entry on active duty, any aggravation of that disease, incurred while the member is entitled to basic pay, beyond that determined to be due to natural progression shall be determined to be service aggravated.**

**E3.P4.5.2.3. Presumption of Aggravation. The presumption that a disease is incurred or aggravated in the line of duty may only be overcome by compelling evidence or medical judgment that the disease was clearly neither incurred nor aggravated while serving on active duty or authorized training. Such medical evidence or judgment must be based upon well-established medical principles, as distinguished from personal medical opinion alone.**

**E3.P4.5.3. Prior Service Impairment. Any medical condition incurred or aggravated during one period of active service or authorized training in any of the Armed Forces that recurs, is aggravated, or otherwise causes the member to be unfit, should be considered incurred in the line of duty, provided the origin of the such impairment or its current state is not due to the member's misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the member was not in a duty status.**

- *Replace paragraph E3.P4.5.4.1 of DoDI 1332.38, "Physical Disability Evaluation," November 14, 1996, to reflect:*

**E3.P4.5.4.1. Signs or symptoms of chronic disease identified so soon after the date of entry on Military Service but not exceeding six months that the disease could not have originated in that short a period will be accepted as proof that the disease manifested prior to entrance into active military service.**

- *Revise paragraph E3.P4.5.5 of DoDI 1332.38, "Physical Disability Evaluation," November 14, 1996, to reflect:*

E3.P4.5.5. Medical waivers. Members who entered the Service with a medical waiver for a pre-existing condition and who are subsequently determined unfit for the condition shall not be entitled to disability separation or retired pay unless ~~M~~**m**ilitary ~~S~~service permanently aggravated the condition or hastened the condition's rate of natural progression. Members granted medical waivers shall be advised of this provision at the time of ~~the~~ waiver **application and when it is** granted.

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NDAA 2008, Section 1642. Requirements and limitations on Department of Defense determinations of disability with respect to members of the Armed Forces.

- *Revise paragraph 3.7 of DoDD 1332.18, "Separation or Retirement for Physical Disability," November 4, 1996, to reflect:*

3.7. The standards for referring and determining unfitness because of physical disability or medical disqualification and the compensability of unfitting disabilities shall be uniform among the Services and between components within an individual Service. (See DoD Instruction 1332.38 (reference (e)).) **In making a determination of a member's disability rating, the Military Department shall take into account all medical conditions, whether individually or collectively, that render the member unfit to perform the duties of the member's office, grade, rank or rating.**

- *Revise paragraph 3.8 of DoDD 1332.18, "Separation or Retirement for Physical Disability," November 4, 1996, with the following, including new subparagraphs 3.8.1-3.8.3:*

3.8 **In making a determination of a member's disability rating, the Military Department shall, to the extent feasible, utilize the VA Schedule for Rating Disabilities (VASRD) in use by the Department of Veterans Affairs.** ~~The assignment of disability ratings shall be based on the Veterans Administration Schedule for Rating Disabilities (VASRD) (reference (h)) as implemented by reference (e) and DoD Instruction 1332.39 (reference (f)).~~

**3.8.1. Except as provided in paragraph 3.8.2, the Military Department concerned may not deviate from the VASRD or any such interpretation of the VASRD.**

**3.8.2. In making a determination described in paragraph 3.8, the Military Department concerned may utilize in lieu of the VASRD such criteria as the Departments of Defense and Veterans Affairs may jointly prescribe through policies announced by way of reference (f) (DoDI 1332.39, "Application of the Veterans Administration Schedule for Rating Disabilities"), if the utilization of such criteria will result in a determination of a greater percentage of disability than would be otherwise determined through the utilization of the VASRD.**

**3.8.3. Criteria other than the VASRD will be proposed by the DoD Disability Advisory Council to the Benefits Executive Council, which is co-chaired by the Department of Veterans Affairs, and promulgated by revision of reference (f) or by separate memorandum from the USD (P&R).**

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NDAA 2008, Section 1646. Enhancement of disability severance pay for members of the Armed Forces.

- *Add paragraph 5.5.8 (with subparagraphs 5.5.8.1 and 5.5.8.2) under paragraph 5.5 (Responsibilities of the Secretaries of the Military Departments) of DoDI 1332.38, "Physical Disability Evaluation," November 14, 1996, as follows:*

**5.5.8. Identify and certify members with a disability incurred in the line of duty in a combat zone tax exclusion area or incurred during performance of duty in combat-related operations as designated by the Secretary of Defense.**

**5.5.8.1. The determination of "incurred during performance of duty in combat-related operations" shall be made consistent with criteria set forth in paragraph E3.P5.1.2.**

**5.5.8.2. This provision contained herein applies to Service members not disability separated or retired as of January 28, 2008. Military Departments shall ensure the appropriate severance pay is calculated (in accordance with section 1212, of title 10, United States Code) and paid.**

**5.5.9. For cases of RC members who lose dual status in the Selected Reserve due to physical disability, certify whether the disability was combat related.**

- *Add paragraph* E3.P5.3 *(Administrative Determinations) of DoDI 1332.38, "Physical Disability Evaluation," November 14, 1996, as follows:*

**E3.P5.4. Determination for RC members who are technicians and determined unfit by the DES (10 U.S.C. 10216g). The Record of Proceedings for RC members who are technicians and determined unfit by the DES will include a determination of whether the member was determined unfit due to a combat-related determination.**

***(There is no change to E3.P5.1.2 Armed conflict. The following text of E3.P5.1.2 is provided for information only.)***

E3.P5.1.2. Armed conflict (5 U.S.C. 3502, 5532, 6303)(Reference (c)). The physical disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. The fact that a member may have incurred a disability during a period of war or in an area of armed conflict, or while participating in combat operations is not sufficient to support this finding. There must be a definite causal relationship between the armed conflict and the resulting unfitting disability.

E3.P5.1.2.1. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or terrorists.

E3.P5.1.2.2. Armed conflict may also include such situations as incidents involving a member while interned as a prisoner of war or while detained against his or her will in custody of a hostile or belligerent force or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

## SEPARATION PROGRAM DESIGNATOR (SPD) CODES
## FOR IMPLEMENTATION OF
## SECTION 1646 OF NDAA 2008 (PUB L. 110-181)

| FAMILY | CODE | REASON (BLOCK 28) | EXPLANATION (NOT TO BE RELEASED OUTSIDE OF DOD) |
|---|---|---|---|
| **FI** | **FI** | **DISABILITY, COMBAT** | **Physical disability evaluation (COMBAT)** |
| FJ | JFI | DISABILITY, SEVERANCE PAY, COMBAT RELATED | Service initiated discharge in accordance with established directive, resulting from physical disability with combat related severance pay and entitlement, as amended by section 1646 of Pub L. 110-181 - retirement not authorized. |
| **FO** | **FO** | **DISABILITY, NON COMBAT** | **Physical disability evaluation (NON-COMBAT)** |
| FO | JFO | DISABILITY, SEVERANCE PAY, NON-COMBAT RELATED | Service initiated discharge in accordance with established directive, resulting from physical disability with non-combat related severance pay and entitlement, as amended by section 1646 of Pub L. 110-181 - retirement not authorized. |
| **EA** | **EA** | **DISABILITY, COMBAT, ENHANCED** | **Physical disability evaluation (COMBAT), Pilot** |
| EA | JEA | DISABILITY, SEVERANCE PAY, COMBAT RELATED (ENHANCED) | Service initiated discharge n accordance with established directive, resulting from physical disability with combat related severance pay and entitlement, as amended by section 1646 of Pub L. 110-181 - retirement not authorized. (DES Pilot/Enhanced) |
| **EB** | **EB** | **DISABILITY, NON COMBAT, ENHANCED** | **Physical disability evaluation (NON-COMBAT), Pilot** |
| EB | JEB | DISABILITY, SEVERANCE PAY, NON-COMBAT (ENHANCED) | Service initiated discharge in accordance with established directive, resulting from physical disability with non-combat related severance pay and entitlement, as amended by section 1646 of Pub L. 110-181 - retirement not authorized. (DES Pilot/Enhanced) |