



DEPARTMENT OF THE ARMY
UNITED STATES ARMY PHYSICAL DISABILITY AGENCY
BUILDING 7 WRAMC
WASHINGTON DC 20307-5001

AHRC-DZB

FEB 28 2005

MEMORANDUM FOR PHYSICAL EVALUATION BOARD PRESIDENTS

SUBJECT: Policy/Guidance Memorandum #2: Conditional Adjudication

1. Supersession: This memorandum supersedes USAPDA memorandum, 8 April 2002, subject above. Changes include the addition of a reference paragraph, review of eligibility for formal hearing in connection with the reversal of a favorable LOD determination, editorial revisions, and update of the signature block.

2. Purpose: To provide policy for adjudicating cases when a line-of-duty determination (LOD) is appealed by the Soldier or when HQUSAPDA refers the LOD for review.

3. Reference:

a. DoDI 1332.38, para E3.P4.4.3.

b. AR 600-8-4, para 4-17a(1).

c. AR 635-40, para 4-19g(1).

4. Policy:

a. Soldier appeal of line of duty: Per reference at para 3a, above, a case that requires a line-of-duty (LOD) determination cannot be forwarded to the Physical Evaluation Board (PEB) until the LOD determination is accomplished. This policy is applied as described below for cases with a LOD-no finding.

(1) The case should be forwarded to the PEB upon the Soldier electing not to appeal the adverse finding, or upon the General Courts Marital Convening Authority's (GCMCA) action on the Soldier's appeal.

(2) Per reference at para 3b, above, when the GCMCA denies the Soldier's appeal, the LOD determination requires review by Commander, Human Resources Command, (AHRC-PEZ). When the PEB receives the case, the PEB will conditionally adjudicate the case based on the LOD-no finding. HQUSAPDA (AHRC-DOE) will coordinate with HRC to confirm the final LOD determination. If HRC grants the Soldier's appeal, HQUSAPDA will return the case to the PEB to adjudicate the disability rating.

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b. PEB request for review of a favorable determination: When the PEB questions the validity of a favorable LOD determination, reference 3c, above, applies.

(1) The PEB will conditionally adjudicate the case based on the approved LOD finding.

(2) The PEB will forward the case file to HQUSAPDA with a memorandum thru HQUSPDA (AHRC-DOE) to Commander HRC (AHRC-PEZ) justifying the request for review.

(3) If review by HQUSAPDA results in no change to the PEB findings and recommendations, USAPDA will hold the case and coordinate the LOD review with HRC.

(4) If HRC reverses the favorable determination, HQUSAPDA will modify the PEB findings and recommendations. Note that AR 635-40, para 4-22g(3), provides that modifications resulting from HRC final LOD-no determinations cannot be appealed to the U.S. Army Physical Disability Appeal Board. However, as provided by the same cite, the Soldier remains entitled to a formal hearing to appeal the unfit finding if he or she has not previously had a formal hearing.

c. PEB request for review of unfavorable determination:

(1) The guidance in subparas b(1) - (3), above, applies. Note that AR 635-40, para 4-19g(2), provides that the PEB will conditionally adjudicate as though the LOD determination was in line of duty. This guidance is incorrect since an approved line-of-duty is an actionable decision made by competent authority. The PEB must conditionally adjudicate the case based on the finding made.

(2) If HRC overturns the adverse finding, HQUSAPDA will return the case to the PEB to adjudicate the rating.

5. POC: Ms. Frances Dennis, Policy Officer, DSN 662-3064 and commercial (202) 782-3064.

FOR THE COMMANDER:



DANIEL L. GARVEY

COL, AV

Deputy Commander

CF:

HQUSAPDA Senior Staff
DASG-HPS (COL Arroyo)
APDAB (COL Sutton)