



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

AHRC-DZB

FEB 28 2005

MEMORANDUM FOR PHYSICAL EVALUATION BOARD PRESIDENTS

SUBJECT: Policy/Guidance Memorandum #3: Enactment of 10 USC 1207a and 10 USC 12731b for Disabilities Existing Prior to Term of Service (EPTS)

1. Supersession: This memorandum supersedes HQUSAPDA memorandum, 8 April 2002, subject above. Besides editorial revisions and updating of the signature block, changes include --

- (a) Clarification of the phrase, "existed prior to term of service," (EPTS).
- (b) Statutory interpretation that coverage under 10 USC 1207a requires the Soldier to be on active duty at the time of the informal PEB findings and recommendations.
- (c) Application of the PEB 7 years, 9 month cut-off to cases of mobilized Reserve Component (RC) Soldiers.
- (d) Completion of DA Form 199, blocks 8c through 8g.
- (e) Impact of Section 521 of the National Defense Authorization Act (NDAA) 05 on 10 USC 1207a.
- (f) Additional information concerning applicability/implementation of 10 USC 12731b.

2. Purpose: To provide guidance to implement the "eight-year rule" of 10 USC 1207a and additional clarification concerning the implementation of 10 USC 12731b.

3. Discussion:

a. The phrase "EPTS" relates to medical impairments incurred (originated) outside of the military statuses set forth at 10 USC 1201(c) and 10 USC 1204(2). In general, for Active Component (AC) Soldiers, EPTS refers to impairments incurred before the Soldier entered onto active duty or incurred during a break in service. For Troop Program Unit (TPU) and Individual Ready Reserve (IRR) Soldiers, EPTS refers to disabilities incurred between periods of active duty (AD) and Inactive Duty Training (IDT). Note that an impairment that is incurred or aggravated in the line of duty (hereafter referred to as LD-yes) during a previous active duty period is not an EPTS impairment.

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b. The NDAA 2000 included two provisions concerning EPTS conditions.

(1) A new section, 10 USC 1207a was added and applies to Regulars and RC Soldiers on ordered active duty of more than 30 days. The guidance at para 4, below, implements this law.

(2) A new section, 10 USC 12731b, was added and applies to RC Soldiers of the Selected Reserve. It makes permanent the temporary Early Qualification for Retired Pay (10 USC 12731a), which expired on 31 December 2001. Para 5, below, provides guidance on this law.

c. Department of Defense (DOD) policy was issued by Memorandum, OSD FMP, 20 Oct 99, subject: Implementation of the National Defense Authorization Act for Fiscal Year 2000 – Disability Compensation for Certain Members with Pre-existing Medical Conditions. In summary, this memo set forth that 10 USC 1207a applied to Soldiers on a call to duty of more than 30 days and that 10 USC 12731b applied to RC Soldiers not entitled to military disability compensation.

4. Policy and procedures for 10 USC 1207a:

a. Per 10 USC 1207a, a Soldier ordered to AD for more than 30 days, who would be covered by 10 USC 1201 thru 1203 but for the fact that the Soldier's disabilities were neither incurred nor permanently aggravated while the Soldier was entitled to basic pay, is entitled to disability retired or severance pay, as applicable, if the Soldier has more than 8 years of active service at the time of disability separation.

b. Per 10 USC 101(d)(4), "active service" is "service on active duty or full-time National Guard duty." RC membership and inactive duty training points are not included in the computation of active service.

c. The law's phraseology of, "before the member became entitled to basic pay in the member's current period of active duty," is interpreted to require the member to be on AD of more than 30 days at the time the PEB determines the member to be unfit due to physical disability.

d. If the disability was due to intentional-misconduct, willful neglect, incurred while absent without leave, or was the result of willful failure to comply with Department of the Army standards and qualifications for retention, the disability remains non-compensable.

e. The eight years of active service does not require a continuous 8-year period of AD.

f. The DA Form 199 will document when a Soldier is awarded disability compensation under 10 USC 1207a. The following rationale is recommended: "This disability existed prior to

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service and was not permanently aggravated by service, but it is compensable under the provisions of 10 USC 1207a.”

g. “N” will be listed in blocks “8c” thru “8f.”

h. If an AC Soldier, Active Guard Reserve (AGR), or mobilized Soldier has 7 years and 9 months of active service at the time of the PEB’s informal findings and recommendations (the date DA Form 199, block 12, is signed), the PEB shall rate the Soldier as if he or she has eight years of active service. This cut-off time considers that it generally takes at least 90 days from an informal PEB to complete the case and the transition of an AC and AGR Soldier. Application to cases of mobilized RC is an exception to the 30-day separation standard applied to other mobilized cases to avoid disparate application of the law.

i. A statement will be included on the DA Form 199 that the Soldier is not to be separated, retired, or placed on the Temporary Disability Retired List (TDRL) until the date the Soldier reaches the 8-years of active service.

j. HQUSAPDA will modify cases adjudicated with less than 7 years and 9 months should the Soldier reach the requisite service by the time of separation.

k. A Soldier referred from a TPU or IRR status who is determined unfit by the PEB for a nonaggravated EPTS condition cannot be placed on active duty orders of over 30 days prior to the separation date for the purpose of covering the Soldier under 10 USC 1207a.

l. Section 521 of NDAA 05 adds a new section, 10 USC 1206a. This section precludes 10 USC 1207a from being applied to Soldiers who are released within 30 days of being called to AD for more than 30 days when the release is due to failure to meet retention standards and or medical or dental standards for deployment due to a pre-existing condition not aggravated during the current period of AD. This new section supports the statement at “j,” above.

5. Additional guidance concerning 10 USC 12731b.

a. Per 10 USC 12731b, members of the Selected Reserve who no longer meet qualification for membership in the Selected Reserve solely because the member is unfit due to physical disability not LD-yes may transfer to the Retired Reserve if the member has 15 qualifying years of service towards a nonregular retirement.

b. The law’s phrasology of “unfit because of physical disability” does not require an unfit finding by the PEB. An RC determination of medical disqualification suffices.

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c. A medically disqualified RC Soldier who is subsequently found fit by a PEB is not covered under 10 USC 12731b.

d. An AGR and mobilized RC whose EPTS condition is compensable under 10 USC 1207a is not eligible under 10 USC 12731b to transfer to the Retired Reserve. This is because 10 USC 1207a deems the Soldier's disability to be LD-yes, and thus compensable. Accordingly, HQUSAPDA will not offer an election between disability severance pay and transfer to the Retired Reserve or otherwise hold the case for the member to obtain a 15-year letter.

6. Point of contact: Mr. Dennis E. Brower, Agency Legal Advisor, DSN 662-3002 and commercial (202) 782-3002.

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