



DEPARTMENT OF THE ARMY  
UNITED STATES ARMY PHYSICAL DISABILITY AGENCY  
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AHRC-DZB

**FEB 28 2005**

MEMORANDUM FOR PHYSICAL EVALUATION BOARD PRESIDENTS

SUBJECT: Policy/Guidance Memorandum #4: Processing Reserve Component (RC) Nonduty-Related (NDR) Cases

1. Supersession: This memorandum supersedes USAPDA memorandum, 8 April 2002, subject above. Changes include editorial revisions, deleting of the listing of "PEB MTFs," a requirement for the NDR packet to include DA Form 3349 and RC Points Statement, further clarification of medical documentation, and a requirement that the medical documentation be current within six-months of receipt at the PEB.
2. Purpose: To provide policy and procedures for implementing DoD policy that Reserve Component Soldiers pending separation for medical disqualification may request referral of their case to the Physical Evaluation Board for a fitness determination.
3. Policy: Pending the publication of the revision of AR 635-40, the enclosed procedures govern the processing of RC nonduty-related cases. Procedures were originally implemented effective 7 July 1998.
4. Point of contact. Ms. Frances Dennis, Policy Officer, DSN 662-3064 and commercial (202) 782-3064.

FOR THE COMMANDER:

Encl as

  
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PROCEDURES FOR PROCESSING RESERVE COMPONENT  
NONDUTY RELATED CASES

1. Purpose: To establish procedures for referring into the Physical Disability Evaluation System (PDES) Soldiers of the Reserve Components (RC) with nonduty-related impairments who are pending separation for medical disqualification.

2. References:

a. DoD Directive 1332.18, para 3.5 (page 3).

b. DoD Instruction 1332.38, Part I, paras E3.P1.2.1 (page 16); E3.P1.3.3 (page 19); and E3.P1.3.4 (page 21).

c. DoD Instruction 1332.38, Part II, para E3.P2.3 (page 27).

3. Definition: DoD Instruction 1332.38, definition E2.1.20 (page 9), defines nonduty-reported impairments as: "Impairments of members of the RC that were neither incurred nor aggravated while the member was performing duty, to include no incident of manifestation while performing duty which raises the question of aggravation. Members with nonduty-related impairments are eligible to be referred to the Physical Evaluation Board (PEB) for solely a fitness determination but not a determination of eligibility for disability benefits."

4. Procedures:

a. Determination of case-type: The determination of whether a case is forwarded to the PEB as a nonduty-related case (as opposed to a duty related case) rests with the RC. The Soldier may not challenge this determination before the PEB.

b. Initial personnel action: Soldiers who fall below the medical retention standards of AR 40-501, chapter 3, and who are pending separation for medical disqualification, may request a PEB. Separation action must be initiated in accordance with RC regulations prior to the Soldier requesting the PEB. The Soldier's request for PEB evaluation must be in writing.

c. Medical evaluation:

(1) To enhance processing and avoid needless delays and duplication of medical examinations, the medical review used for the medical disqualification process should be sufficient for the PEB process. The following documents are acceptable to adjudicate cases: DD Forms 2807-1 and 2808; DA Forms 7349 or 3081; SF 507; or, detailed civilian medical documentation. This documentation must not be older than six months upon receipt at the PEB. The medical documentation can be presented in the form of an examination, evaluation or medical update to the preceding forms of documentation. The medical evaluation need not address every condition of the Soldier, but must provide a clear and adequate description of the medical condition(s) that cause the Soldier not to meet medical retention standards as set forth in

AR 40-501. Cases received by the PEB in which the medical evaluation is inadequate for a determination of fitness by the PEB will be returned to the referring organization with a memorandum documenting the insufficiency.

(2) If the evaluation/examination/medical update is accomplished by other than an Army Medical Treatment Facility (MTF), the medical evaluation/examination/medical update must be reviewed and approved by The State Surgeon, Regional Readiness Medical Command Surgeon or medical approving authority designated by the RC.

d. Counseling: The RC is responsible for counseling RC Soldiers on their right to a PEB. If a Soldier elects to be referred to the PEB, the Soldier's commander (or designee) is responsible for counseling the Soldier on his or her rights under each phase of disability evaluation. These rights are addressed in DoD Instruction 1332.38, Part I, para E3.P1.3 (page 18). Counseling and Soldier's election shall be documented in writing and included in the case file. Attached is a guide of the minimum information of which the Soldier is to be advised concerning the process and related Soldier rights and responsibilities.

e. Referring organization: U.S. Army Reserve cases will be forwarded to the PEB by the Command Surgeon's Office. Army National Guard cases will be forwarded by the appropriate personnel office within the State Headquarters. The designated PEB will normally be the PEB that supports the MTF that processes duty-related cases for the RC unit. The designated PEB may be changed upon the referring organization's request to USAPDA. .

f. Case file: The case file forwarded to the PEB will include the following documents:

(1) A transmittal document containing the following information (see AR 635-40, DA Form 5889-R for an example of a transmittal document.)

- (a) Statement that the case is forwarded to the PEB as a nonduty-related case.
- (b) Address, POC, and phone number of the forwarding organization.
- (c) Address, POC, and fax and phone number of Soldier's unit.
- (d) Name, rank, social security number, mailing address, and residential phone number of Soldier.
- (e) List of exhibits/enclosures being forwarded.

(2) Copy of the notification to Soldier that he or she is pending separation for medical disqualification.

(3) Copy of Soldier's request to be referred to a PEB.

(4) DA Form 3349 (Permanent Profile) signed and approved per AR 40-501.

(5) Medical evaluation no older than six months. DD Forms 2807-1 and 2808 may be updated using a DA Form 7349 or ARNG Annual Medical Certificate that is no older than six months. (Also see paragraph 4c, above).

(6) DA Form 705 (APFT Scorecard) reflecting a minimum of the last three APFT results or a memorandum stating the reason for no score cared or less than the required number of APFT results.

(7) Statement from Soldier's commander describing the impact of Soldier's medical condition upon his or her duty performance.

(8) Any documents submitted by the Soldier as evidence of his or her physical ability to adequately perform his or her military duties.

(9) Current DA Form 2 (Personnel Qualification Record-Part I) and DA Form 2-1 (Personnel Qualification Record-Part 2) or the Officer Record Brief for officers, both no older than six months. (Submit the corresponding record if the DA Form 2 and DA Form 2-1 is no longer used.)

(10) All performance reports submitted on the Soldier during the three-year period preceding referral to the PEB.

(11) RC Points statement current within 12 months and which includes the most recent Retirement Year Ending (RYE) entry.

(12) For cases in which the Soldier has been determined mentally incompetent, the documentation to substantiate the Soldier's incompetence and statement confirming the name, address, telephone number, and relationship of individual authorized to act on behalf of the Soldier; whether this person is available for counseling following PEB action; and whether the person has been advised of the referral to a PEB. This requirement anticipates the rare instances when, for whatever the reason, a family member insists on evaluation by a PEB before the Soldier is separated.

g. Responsibilities of the PEB:

(1) Upon receipt of case file, PEB will log in the case and review the case file. If the file is not complete, the PEB will return the case to the RC forwarding organization with a memorandum stating what is required for adjudication.

(2) All cases will be initially adjudicated under informal PEB procedures. A formal PEB will be conducted if the Soldier is determined unfit, disagrees with the informal finding, and requests a formal hearing.

(3) The PEB will document its determination of fitness on DA Form 199.

(a) The DA Form 199 will include rationale to support the finding made and document that the case was adjudicated as a nonduty-related case.

(b) Statements concerning rating, compensation, line of duty, or proximate result will not be listed. An RC Soldier processed as a nonduty-related case is ineligible to challenge these issues before the PEB.

(4) The PEB will send notification of its decision to the Soldier by certified mail with a copy furnished to the RC forwarding organization. A written election form will be sent with the notification to the Soldier. The election process will be the same as for any other case.

(5) If, in response to the informal findings, the Soldier requests a formal hearing, the PEB will notify the Soldier and the RC POC at the forwarding organization of the formal date and the name and telephone number of the appointed attorney's number.

h. Responsibilities of Headquarters, United States Army Physical Disability Agency (HQUSAPDA): Appellate and quality assurance review will be conducted by HQUSAPDA per AR 635-40 and Agency standard operating procedures. In cases where the Soldier has nonconcurred with the PEB's findings, HQUSAPDA will notify the Soldier by memorandum, with copy furnished to the RC forwarding organization, of the results of its review. If HQUSAPDA modifies the findings of the PEB, notification to the Soldier will be by certified mail.

Counseling Guide  
for  
Reserve Component Soldiers who Request a Nonduty-Related Physical Evaluation Board

1. Authority for referral to PEB: It is DoD policy that Reserve Component (RC) members pending separation for medical disqualification are entitled to a fitness determination by their respective Service's PEB when requested by the Service member. The difference in standards between "medical disqualification" and "unfitness due to physical disability" is the basis for this policy. (See DoD Directive 1332.18, November 4, 1996, para 3.5 (page 3); DoD Instruction 1332.38, November 14, 1996, Part II, para E3, P2.3 (page 27); and para 3, below.)
2. Limited adjudication: RC Soldiers should only request referral to the PEB if they believe they can perform their duties despite their medical condition. As a nonduty-related case, only the issue of fitness will be adjudicated by the PEB. Issues relating to line-of-duty, permanent service aggravation, and entitlement to disability compensation will not be considered. (See DODI 1332.38, Part I, para E3.P1.3.4 (page 21)). Whether a case comes into the Physical Disability Evaluation System (PDES) as a duty related case or a nonduty-related case is the decision of the RC chain of command.
3. PDES standard of fitness: The fact that a Soldier has a medical condition which falls below the medical retention standards of AR 40-501, chapter 3, medically disqualifies the Soldier for retention in the Army. However, within the PDES medical disqualification does not equate to unfitness due to physical disability. Under DoDD 1332.18 and DODI 1332.38, a member is unfit when the medically disqualifying impairment prevents the member from reasonably performing the duties of his or her office, grade, rank, or rating, to include duties during a remaining period of Reserve obligation. The factors below are considered in determining "reasonable performance of duty." (See DoDD 1332.18, para 3.3 (page 2) and DoDI Instruction 1332.38, Part 3 (page 30)).
  - a. Common military tasks that are a routine part of the member's MOS.
  - b. Member's ability to pass any authorized version of a record physical fitness test.
  - c. Deployability, but not as a sole criteria. Specifically, under DoD policy inability to perform the Soldier's assigned duties in every geographical location under every conceivable circumstance cannot be used as a sole criteria for unfitness.
  - d. Loss of special qualifications in relation to current duty assignment, alternate specialties, and the feasibility of reclassification.
4. Soldier's responsibilities and rights concerning request for a formal PEB. The initial PEB determination is made by the Informal PEB conducting a records review. Soldiers who are determined unfit by the Informal PEB are entitled by DoD policy to a formal PEB when they request one upon being informed of the Informal PEB's findings. Soldiers have, at a minimum,

the rights listed below before the formal PEB (see DoDI 1332.38, Part I, para E3.P1.3.3 (page 19)).

a. The right to personally appear at the formal hearing. Personal travel, lodging, and other related expenses are normally at no cost to the government. The exception occurs when the PEB directs a formal hearing.

b. The right to a formal hearing without personal appearance. If the Soldier elects not to appear, the PEB has no authority to direct personal appearance. Adjudication will be accomplished based on the records and the presentation of the Soldier's counsel or personal representative, and witnesses.

c. The right to the assistance of a detailed military counsel provided at no expense to the member or a personal representative provided at no expense to the Service.

d. The right to make a sworn statement or an unsworn statement.

e. The right to remain silent. When the Soldier exercises this right, he or she may not selectively respond to questions. The Soldier must remain silent throughout the hearing.

f. The right to introduce witnesses, depositions, documents, sworn or unsworn statements (affidavits) or other evidence in the Soldier's behalf and to question all witnesses who testify at the hearing. Travel-related expenses of witnesses who appear on the Soldier's behalf are at no expense to the government.

g. The right of access to all records and information received by the PEB, before, during, and after the formal hearing which may affect the findings of the PEB or appellate review authority.

h. The right to a written rationale explaining the findings and recommendations of the formal PEB.

i. The right to appeal the findings and recommendations of the formal PEB according to AR 635-40.

PROCESSING OF RESERVE COMPONENT NONDUTY RELATED CASES  
USAPDA SUPPLEMENTING INSTRUCTIONS

1. Completion of the DA Form 199

- a. PDCAPS Code. For PDCAPS to recognize a nonduty related case, enter code N1.
- b. Block 8a. Do not list a code from the DVA Schedule for Rating Disabilities for unfitting conditions. This is a change from the E-mail guidance provided on 5 Dec 97.
- c. Block 8b. State whether the Soldier is fit or unfit and add rationale to support the finding. Include the following statement: "This case was adjudicated as a nonduty-related case under the provisions of DoD Directive 1332.18, para 3.5 (page 3) and DoD Instruction 1332.38, Part II, para E3.P2.3 (page 27)." This statement has been added as a rationale in PDCAPS.
- d. Blocks 8c-8g. State, "NA."
- e. Block 9. State, "The board finds the Soldier physically [fit, unfit] and that the Soldier's disposition be: Referred for case disposition under RC regulations." This statement has been added in PDCAPS.
- f. Block 10. Leave blank (PDCAPS prints out as "not applicable").

2. Election form. Use the election form applicable to cases on or after 15 May 1997.

3. Disposition of case file

- a. PEB. After processing the Soldier's election and or rebuttal, the PEB will forward two copies of the case file to HQ, PDA, retaining one copy for PEB files, the same as for duty related cases.
- b. PDA. PDA will forward a copy of the completed case to the RC referring organization.