

(UNCLASSIFIED)

INFORMATION PAPER

MCJA-OSC
1 October 2013

SUBJECT: Disposition of Cases and Results of PEB Adjudication.

1. Purpose: To provide information for Soldiers going through the Integrated Disability Evaluation System (IDES) process on disposition of cases and results of Physical Evaluation Board (PEB) adjudication and appeal options available.

2. Facts:

a. The PEB determines whether a Soldier is fit or unfit for duty based upon medical conditions identified by the Medical Evaluation Board (MEB) and whether those conditions prevent the Soldier from performing military duties. In order to make its determination, the PEB evaluates whether the Soldier can perform the duties required by his or her Primary Military Occupational Specialty (PMOS) and basic Soldier skills expected at the Soldier's rank/grade. In general, the PEB considers whether the Soldier's condition(s):

- (1) Render them unable to perform their duties in a variety of conditions;
- (2) Create a danger to the Soldier or other Soldiers;
- (3) Create an unreasonable burden on the unit;
- (4) Render the Soldier unable to deploy.

b. The PEB evaluates each case individually. The disposition of each case depends upon the facts and evidence particular to the case, to include but limited to:

- (1) The nature and severity of the Soldier's illness or injury;
- (2) The Soldier's ability to perform military duties;
- (3) Length of service;
- (4) The circumstances under which the injury occurred or illness began.

(a) Soldiers whose disabilities are: the direct result of armed conflict; caused by instrumentalities of war; incurred while undergoing training simulating war (combat training) or incurred while performing ultra-hazardous activities receive additional benefits, which may include federal tax exemption, additional disability pay from the VA, and Federal and state employment preference.

(UNCLASSIFIED)

(UNCLASSIFIED)

(b) Soldiers with disabilities incurred in a combat zone are entitled to enhanced severance pay (no VA offset).

3. Possible PEB Dispositions:

a. Fit for Duty. Soldiers with medical conditions not preventing them from reasonably performing their PMOS duties, basic Soldier skills, or deploying may be found "Fit" and retained in the Army.

b. Unfit for Duty. When a Soldier is determined to be "Unfit" by the PEB and the decision is approved by the US Army Physical Disability Agency (PDA), the Soldier will be discharged from the Army.

(1) Compensable Unfit for Duty Discharge. If the Soldier's illness or injury is determined to be compensable, i.e. rated by the Department of Veterans Affairs (VA), the Soldier will be discharged with disability benefits. The VA determines the appropriate rating for each of the Soldier's medical conditions and the PEB adopts the VA rating for those conditions the PEB found unfitting. If the Soldier's unfitting condition is determined to be compensable the Soldier will be separated with severance pay, permanently retired for disability or temporarily retired for disability.

(a) Separation with Severance pay. Soldiers found Unfit for compensable condition(s) with combined rating of the unfitting conditions of 0% - 20% will receive severance pay. However, if the Soldier has more than 20 years of active duty service, the Soldier will qualify for retirement regardless of the disability rating. A Soldier may elect length of service retirement in lieu of severance pay if the Soldier is otherwise entitled to length of service retirement (20 years plus).

(b) Permanent Disability Retirement List. Generally, Soldiers will be permanently retired for disability when the unfitting conditions are permanent and stable and the combined rating for all compensable conditions is 30% or higher; or the Soldier has at least 20 years of active duty service. Permanent Disability Retirement entitles Soldiers to all the benefits of a length of service retirement without having length of service. The main benefit is TRICARE benefits for the Soldier and the Soldier's family.

(c) Temporary Disability Retirement List (TDRL). Soldiers will be placed on the Temporary Disability Retirement List when one or more unfitting conditions are unstable and the combined rating for all compensable conditions is 30% or higher; or the Soldier has at least 20 years of active duty service. A condition is unstable when there is clear and convincing medical evidence that the rating is likely to change within the next five years. A Soldier on the TDRL receives all the benefits of length of service retirement, including retirement pay, while on the TDRL. A Soldier on the TDRL with a combined rating of 50% or less receives retirement pay equal to 50% of the Soldier's active duty base pay. A Soldier on the TDRL with a combined rating of 60% or higher will receive the higher percentage up to the maximum of 75%. Soldiers who are placed on the TDRL will be required to appear for a physical examination for periodic review at least every 18 months while on the TDRL for a maximum of five (5) years. During

(UNCLASSIFIED)

(UNCLASSIFIED)

periodic reviews, a determination will be made if the condition(s) is stabilized enough to give a permanent rating at any point during the TDRL (5) year period.

(2) Separation without severance pay. Soldiers found Unfit as a result of an illness or injury that is determined to be non-compensable will be discharged without disability benefits or compensation. Generally, unfitting conditions incurred by Soldiers with more than eight years of active duty service are compensable. Unfitting conditions are non-compensable under the following circumstances:

(a) There is clear and unmistakable evidence that the condition existed prior to military service and was not permanently aggravated by military service;

(b) The condition was incurred while the Soldier was in a duty status as the result of the Soldier's misconduct or the Soldier was Absent Without Leave (AWOL);

(c) The condition was incurred by a Reserve Component (RC) Soldier while he or she was not in a duty status. For example, an injury incurred by a RC Soldier while performing his or her civilian job would not be compensable. However, an RC Soldier with at least 15 qualifying years towards a length of service retirement may request transfer to the Retired Reserve if they are found Unfit; or,

(d) It is a condition the Department of Defense has determined does not constitute a physical disability for Disability Evaluation System purposes, to include sleepwalking, Attention Deficit Hyperactivity Disorder (ADHD), personality disorders, uncomplicated alcohol/substance abuse disorders, obesity, or allergy to uniform clothing, etc.

4. This Information Paper is provided as a service to Soldiers in the MEB/PEB process and is intended as general information only. A Soldiers' Counsel is available to provide specific legal advice to Soldiers involved in the MEB/PEB process. Contact your local Office of Soldiers' Counsel for more information. If you don't know how to reach your local OSC office please contact you PEBLO or see our website for contact information at <https://www.jagcnet.army.mil/otjagosc>.

Approved by: Ms. Joyce A. Hamel

(UNCLASSIFIED)