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INFORMATION PAPER

MCJA-OSC
24 February 2015

SUBJECT: Physical Evaluation Board Findings of "Fit" for Duty.

1. Purpose: To provide information to Soldiers going through the Integrated Disability Evaluation System (IDES) on factors the Physical Evaluation Board (PEB) will consider when determining if a Soldier is fit or unfit for continued military service due to their medical condition(s).

2. References:

a. DoDI 1332.18, Department of Defense Instruction, Disability Evaluation System, 5 August 2014, Appendix 2 to Enclosure 3; and

b. AR 40-501, Medical Fitness Standards for Retention and Separation, Including Retirement, 14 December 2007/RAR 23 August 2010, Chapter 3.

3. Facts:

a. The PEB determines whether medical conditions identified by the Medical Evaluation Board (MEB) prevent the Soldier from performing the duties and Soldier skills required of his or her grade and Primary Military Occupational Specialty (PMOS). This is called a fitness for duty determination. The PEB's decision is performance-based and highly fact-specific. The outcome may vary significantly from case to case based upon each individual Soldier's particular circumstances. For example, a medical condition that may be unfitting for an infantryman may not necessarily be unfitting for a Soldier holding a non-combat arms MOS.

b. The PEB evaluates whether the Soldier can perform the duties required of his or her PMOS, at the current rank/grade, as well as the Soldier's ability to perform basic Soldier skills. In general, the PEB considers whether the Soldier's condition(s):

(1) Render the Soldier unable to perform his or her duties in a variety of conditions, in both a garrison and field setting;

(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;

(5) Prevent the Soldier from taking the APFT; and

(6) Prevent the Soldier from performing common military tasks.

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c. The PEB reviews the following documents when making a fitness determination:

(1) DA Form 3947, Medical Evaluation Board Proceedings, and the MEB physician's Narrative Summary (NARSUM). These two documents describe the Soldier's medical condition(s), and provide the PEB with an opinion from the MEB physicians on whether the Soldier's conditions "meet" or "fail" medical retention standards as defined by AR 40-501, Chapter 3, Medical Fitness Standards for Retention and Separation, Including Retirement, 14 December 2007/RAR 23 August 2010.

(2) The VA Compensation and Pension (C&P) Exam report.

(3) DA Form 3349, Physical Profile. The MEB will generate a permanent profile which must be signed by two physicians. This document identifies the Soldier's performance limitations (such as ability to take APFT, live in an austere environment, evade direct and indirect fire) based upon the Soldier's current medical condition.

(4) DA Form 7652, Commander's Performance and Functional Statement. The Soldier's commander indicates what duties the Soldier has been performing, whether the Soldier can perform the duties of their PMOS, and makes a recommendation as to whether the Soldier should be retained. The Commander's opinion should be based upon observation of the Soldier's performance.

(5) DA 705, Army Physical Fitness Test Scorecard. The most recent APFT scorecard indicates whether the Soldier has been able to take and pass the APFT.

(6) Evaluation Reports. The PEB review process to determine "fitness" for duty places great importance on a Soldier's performance history. NCOERs or OERs that show the Soldier is able to perform to a level that meets and/or exceeds the standard can be persuasive evidence that the Soldier is "fit for duty". Alternatively, evaluations that show poor performance due to the Soldier's medical conditions could be persuasive in establishing that a Soldier is "unfit". In either case, the PEB will look at the Soldier's evaluations to help determine how the Soldier has been performing in their PMOS.

d. Soldiers in the MEB/PEB process, who desire to be found "fit," and returned to duty, can benefit from gathering relevant evidence in advance of the PEB review. Useful documents may include some or all of the following:

(1) A Physical Profile with as few restrictions as possible. Soldiers should carefully review and discuss all restrictions with their physician. The Soldier may also ask the Commander to request a review of the restrictions. If a Soldier's condition has improved, or the Soldier does not feel the restrictions on the profile are correct, the Soldier should talk to their physician about having a new profile generated. Additionally, the Soldier's Commander may write, "Profile does not prevent Soldier from performing duties," in the 'Continuation' block of DA Form 3349.

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(2) Statements from the Soldier's chain of command indicating that he or she can perform their duties despite their medical condition. Such statements should be based upon personal observation and include a brief explanation of how the witness knows the Soldier; how the medical conditions do or do not impact the Soldier's performance, and the statement should be signed and dated by its author. The focus should be on the Soldier's ability to perform the duties of their PMOS and basic Soldier skills.

(3) Statements or other evidence that show that the Soldier is physically fit and medically capable of performing as many of their duties as possible.

(4) Recent NCOERs or OERs that indicate the Soldier has successfully performed military duties despite his or her medical condition(s).

(5) Letters to the PEB from the Soldier's family, friends, civilian colleagues, etc., that address relevant aspects of the Soldier's ability to perform their duties. Statements in regard to participation in non-military activities may be helpful if participation in the activity shows physical ability (such as white water rafting, rock climbing, etc.). Statements based on personal observation of the Soldier are more persuasive.

(6) Letters or medical notes from their primary or specialist physicians that explain the Soldier's ability to perform military duties despite their medical condition(s). The Soldier's treating physician may believe that the Soldier can perform military duties despite a physical condition even if the MEB NARSUM and DA Form 3947 say the Soldier cannot. If so, the Soldier should get a letter from the doctor providing that opinion and the reason for it. The Soldier should look to other health care providers as well. Physical therapists, chiropractors, nurse practitioners, counselors and others who have been working with the Soldier may know the Soldier's condition well, and may provide valuable information to the PEB. A Soldier should get a written statement from any medical provider that supports the Soldier's contention that they can continue to perform their Army job.

e. A Soldier found unfit for duty may request a Continuation on Active Duty (COAD) or Active Reserve (COAR). Please see the separate Information Paper on COAD/COAR. A COAD or COAR application must be filed within the 10 day election period starting with after the Soldier's receipt of their informal PEB decision from their PEBLO.

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 your PEBLO or see our website for contact information at <https://www.jagcnet.army.mil/otjagosc>.

Approved by: Ms. Joyce A. Hamel

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