

**DISABILITY TRANSITION
ASSISTANCE
PROGRAM**

***PHYSICAL EVALUATION BOARD LIAISON
OFFICER:***

***EMC(SW/EXW) LITT
AEC(AW/SW) BARD
EMC(SW) QUEVEDO***

Schedule

0800-1030 DTAP

1030-1100 Vocational Rehabilitation

1100-1230 Lunch

1230-1300 DAV Rep

1300-1400 Federal VA Rep

1400-1430 Virginia VA

1430-1500 VEC

* **Restrooms**

PEBLO Office Information

- Location: Building 3, 7th Floor
- Phone numbers:
 - COMM: (757) 953-5578
 - DSN: 377-5578
 - FAX: (757) 953-5114
- E-MAIL:
- jonathan.bard@med.navy.mil
- creighton.litt@med.navy.mil
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Important WEB sites

- **PEB:** www.donhq.navy.mil/corb
- **VA:** www.va.gov
- **Tricare:** www.tricare.osd.mil
- **VASRD:** Use the VA Website, choose the “Benefits - Compensation and Pension” link, then the “Directives” link, last “38 CFR Part 4”

Instructions

- **TITLE 10, UNITED STATES CODE**
- **DOD Inst 1332.18 (38, 39)** - DOD DES
- **SECNAVINST 1850.4E** - Disability Evaluation Manual - Download from Internet at *<http://neds.nebt.daps.mil>*
- **NAVMED P-117 (ManMed)** – Art. 15, 16 & 18

Disability Transitional Assistance Program (DTAP)

- **PUBLIC LAW 101-510**
- Attendance is mandatory
- Must complete at least 90 days prior to involuntary discharge
- **If you wait until you get your FINDINGS, you're hurting yourself!**

Mission of the PEB

- Maintain a fit military force and protect the interest of the government (Ref (d), par. 3101)
- To Determine fitness for duty
- To rate your injuries/diseases incurred or aggravated while in receipt of basic pay
- To compensate you for being unable to complete your career and qualify for normal retirement benefits
- To ensure your right to a full and fair hearing

Mission of the PEB PEBLO

- Counsel and educate you at each stage of the DES Pilot review process
- Provide advice on the significant action being taken in your case, its probable effect on your future, and options available
- Your point of contact for any questions
- Notify you of Findings as soon as they are received by our office
- If you haven't heard from us....then we haven't received the results of your board

Common Misconceptions

- Diagnosis does not equal disability!!!
- Thinking that the medical board report is the final answer - the medical board does not have cognizance to make a fitness determination or establish any rights to benefits, it simply states your present state of health
- You are not Unfit just because the physician thinks you are - the PEB determines that

General Information

- Be leery of advice given by personnel outside of the DES Pilot - the PEB PEBLO is the duty expert on the DES Pilot process
- Rating not required by DOD/PEB to be rated by the VA
- To constitute a physical disability, the medical impairment or physical defect must be of such a nature and degree of severity as to materially interfere with your ability to adequately perform his/her duties (Ref (d), par. 2068)

Bottom Line

- Referral to DES Pilot does not always spell the end of a career
- Service HQ has final disposition authority
- A diagnosis may not be a disability
- CO's non-medical assessment is critical
- Evidence in Investigations must support GCMCA
Line of Duty determination

DOD vs. DVA

- **DOD**

- Determines medical fitness for military duty
- Compensates for a loss of military career earnings

- **DVA**

- Determine service connection of disability
- Compensate for the loss of future civilian earning capacity

DOD vs. DVA

- **DOD**

- Title 10 USC Chap 61
- Only unfitting conditions.
- Ratings are Permanent at PDRL/Separation

- **DVA**

- Any service connected illness/injury
- Ratings may change over time

- DOD and DVA are not bound by each other

When Does The Process Begin

- The DES Pilot process begins with the Joint DOD/VA Disability Evaluation Pilot Referral Form being submitted by the doctor to Medical Boards
- All treatments, surgeries, and recuperation time should be completed prior to submission

What Is a Medical Board Report

It is a finished document that includes:

- Case History
- Review of all body systems
- VA Compensation and Pension Exam
- All clinical findings
- Hospital course/treatment provided

Purpose of Medical Board Report

- To report upon the present state of health of any member of the Armed Forces and as an administrative board by which the convening authority or higher authority obtains a considered clinical opinion regarding the physical status of service personnel (Ref (d) par. 1005)
- To serve as the sole source document for fitness and disability determinations by the PEB and for assignment and retention decisions by PERS 835 or MMSR 4

Medical Board Composition

- Your reporting physician who believes that you may not be fit for duty
- An alternate member appointed at the discretion of the convening authority
- The convening authority who is usually the senior medical officer of that specialty
- At least one member must be a reservist if you are in a reserve status

Referral to the PEB

- When the attending physician believes that you are unfit for duty and not likely to become fit for duty within a reasonable time
- When Service Headquarters denies a period of limited duty recommend by the medical board
- When a reservist, who has received a Notice of Eligibility, is thought to be unable to become qualified within 12 weeks

Submitted to the PEB

- VA Compensation and Pension Exam
- Copy of entire health record
- Non-medical assessment information
- Line of duty investigation ???
- Notification of Eligibility (Res) ???
- Cover page (6100/1)
- Narrative summary
- Signature page (6100/2)
- Rebuttal/Surrebuttal (if applicable) ???
- Addendum ???

Special Notes

- If your Medical Board is for a Spine Injury, your doctor must complete a full Range of Motion
- Without the Range of Motion your case will be suspended until receipt, or possibly terminated
- For any other joint injury, a range of motion is not required, but is highly encouraged

Conditions Not a Disability

- Certain conditions and defects designated by the Secretary of the Navy do not constitute a Disability
- These conditions are not ratable within the DES Pilot in the absence of an underlying ratable causative disorder. (Ref (d) par. 2016)

Access to Information

You have a right to the following:

- A copy of the narrative summary
- Counseling regarding the opinions and recommendations of the MEB
- The opportunity to discuss opinions and recommendations with each member of the MEB
- Submit a rebuttal to any portion of MEB Report (Ref (d) par. 3208)

It Is Your Medical Board

- No one knows your condition better than you
- Ensure the package is complete and accurate
- Read the narrative summary carefully before signing it

Processing Time

- MEB Report sent to PEB within 100 days from referral to DES Pilot
- Informal Board Preliminary Findings sent to the PEB PEBLO within 45 days from receipt of MEB Report
- Formal Board Findings sent to PEB PEBLO within 90 days of receipt of MEB Report
- PFR determination within 45 days from receipt of Petition
- All times are approximations!!

Reasons for Rejection

- Missing Documentation
- Narrative Summary is more than 6 months old
- Medical Board Report is not addressed to the President of the Physical Evaluation Board
- VA Compensation and Pension Exam is greater than 6 months old
- You are not 6 months post operative or have surgery pending

Reasons for Suspension

- Incomplete cover sheet for the narrative summary
- No reserve physician on medical board of reservist
- No psychiatrist on medical board with psychiatric diagnosis
- Medical Board not dated
- No convening authority signature
- Request for additional information

Review Boards

There are two separate boards established within the Physical Evaluation Board

- Informal Board – conducts records review only
- Formal Board – conducts records review and personnel interviews

Informal PEB

- Located in Washington, D.C. aboard the Washington Naval Yard
- Normally consists of:
 - Marine Colonel
 - Navy Captain
 - Doctor-Navy Captain/CDR
- Cases normally stays 3 - 5 months with the board

Informal PEB

- Decides Fitness or Unfitness for Duty based on your current medical condition
- Unfit cases go to the VA Rating Panel for disability percentage rating
- Determines the Recommended Disposition
- Determines if the condition is combat related
 - Direct Result of Armed Conflict
 - Simulation of War
 - Instrumentality of War
 - Extra Hazardous Duty

Appeals of Combat Related

- A determination by the PEB that a disability is not combat-related may be appealed by the member to the JAG. The appeal shall be by letter addressed to the Judge Advocate General of the Navy (Code 131), Washington Navy Yard, 1322 Patterson Ave SE, Suite 3000, Washington, DC 20374-5066 and shall set forth the reasons the member disagrees with the determination of the PEB. The member's disability evaluation proceedings will not be delayed or abated pending action on the appeal by the JAG.

Review Process

- What is your diagnosis
- Are you able to perform your military duties
- Does the condition represent a medical risk to yourself or others
- Does the condition impose unreasonable requirements on military to maintain or protect you
- What are the nature of your duties for any remaining period of obligated service

Possible Findings

- Fit to Continue Naval Service
- Presumed Fit
- Unfit
- Physically Qualified – Inactive Reserves
- Not Physically Qualified – Inactive Reserves

Fitness vs. Unfitness

- The sole standard to be used in making determinations of physical disability as a basis for separation or retirement is the unfitness to perform the duties of office, grade, rank, or rating, to include duties during a remaining period of reserve obligation (Ref (d), Par. 3301)
- To constitute a physical disability, the medical impairment or physical defect must be of such a nature and degree of severity as to materially interfere with your ability to adequately perform your duties (Ref (d), par. 2068)

Fit to Continue Naval Service

- Reasonably able to perform your duties
- Does not mean you are Fit for Full Duty
- Does not preclude subsequent temporary determinations of unsuitability for deployment or physical training
- Does not prevent future administrative action resulting from such determination
- Next step is a Suitability Screening

Presumed Fit

- Evidence establishes that your functional impairment has not caused premature termination of career
- Applied to members who are pending retirement at the time they are referred to the PEB
- Does not require you to be 100% healthy
- Can be overcome if an acute, grave, or life threatening condition exists

Unfit to Continue Naval Service

- Evidence establishes you are unable to perform your duties
- Medical condition is considered permanent
- Medical condition is considered disabling
- Conditions not ratable
 - Incurred while UA or deserter
 - Incurred through misconduct or neglect
 - Existed Prior to Service

Performance of Duties

Determination of whether you can perform your duties includes consideration of:

- Individual Training Standards or
- Job Qualification Requirements
- PFT/PRT
- Deployability
- Special Qualification (Flying, Diving, etc)

Existing Prior To Service

- Waiver in Medical Record
- Statement made to doctor
- Family History
- Genetic diseases/disorders
- Condition discovered within 6 months of starting active duty
- Can be overcome with Service Aggravation
- Disability Percentage can be reduced

Unfit Dispositions

- Unfit for duty, Separate Without Benefits
 - Existing Prior to Service
 - Willful Neglect
 - Intentional Misconduct
- Unfit for Duty, Separate With Severance Pay
- Unfit For Duty, Placement on the Temporary Disability Retired List (TDRL)
- Unfit For Duty, Placement on the Permanent Disability Retired List (PDRL)

TDRL Simplified

- Maximum 5 years
- Requires periodic reevaluation by PEB
- Entitles you to all retirement pay and benefits
- The procedures and your options stay the same during the reevaluation process
- Not all cases are changed to PDRL
 - Downgrade to Severance Pay
 - Fit to Return to Active Duty

Categories of Findings

All diagnosis reviewed individually and placed into one of four categories

- Category I – Any Unfitting Condition
- Category II – Contributes to Category I Condition
- Category III – Not separately unfitting, and does not contribute to a Category I Condition
- Category IV – Those conditions that are not ratable by the PEB, and will not be considered disabling

Findings Issued

- Findings sent to PEB PEBLO via email
- You are notified of Findings by a PEB PEBLO within 3 working days
- All Findings are returned to PEB if you can not be contacted
- You have 10 calendar days to make a decision on PEB Findings and submit response to PEB after being notified of Findings

Fit Findings Options

- Accept Findings
 - Determine Suitability for Duty
 - Possible Administrative Discharge
- Request a Formal PEB to be found Unfit
 - Can be denied by PEB
 - Results in case being finalized with Fit Finding

Unfit Findings Options

- Accept Findings
 - Date determined by Service Headquarters
- Accept Findings and request PLD
- Request Reconsideration to have disability percentage changed by the VA Rating panel
- Demand a Formal PEB to be found Fit

Reconsideration of disability percentages forwarded to VA for adjudication after PEB approval

Formal PEB

- Located in Washington, D.C. aboard the Washington Naval Yard
- Same composition as Informal PEB
- Hearing dates Tuesdays and Thursdays
- Right to appear in person before the Board
- Legal counsel provided to assist you
- Fresh start - new members on the board
- TAD Orders issued

Petition for Relief

- Rebuttal of Formal PEB Findings
 - New or newly discovered evidence
 - Fraud, misrepresentation, misconduct
 - Mistake of Law
- Submitted to Director, Naval Council of Personnel Boards
- Separate Legal and Medical Review
- You have 15 calendar days to submit a PFR after receiving Formal PEB Findings

BCNR available after discharge if dissatisfied

Discharge Date

- Normally within 30 to 90 days after accepting PEB Findings
 - Marine – given time to take all leave as terminal or request home awaiting orders
 - Navy – can request a specific date
- Officers who have incurred obligated service from special education or training, may be required to fulfill the obligation prior to discharge by service headquarters

Permanent Limited Duty

- To complete 20 years of active and qualify for normal retirement
- To complete a period of obligated service
- Requires endorsement by Commanding Officer
- Submitted to PERS-835 or MMSR-4 within 15 days of accepting Findings

Permanent Limited Duty

- To complete a period of obligated service.
- To complete current tour of service
- To complete a protocol or other course of medical care as requested by the Medical Treatment Facilities commanding officer.
- Fill a critical billet at the service member's present command until a relief arrives on board.

Permanent Limited Duty

- If CREO group is undermanned or NEC is critical.
- Service members who have attended a funded education program such as naval academy, NROTC, and armed forces health profession scholarships may be retained involuntarily.
- Other reasons such as: service member's spouse to give birth, or children to finish school.

Severance Pay

- You have more than 6 months but less than 20 years of Active Duty time
- Awarded 0, 10, or 20% Disability
- One time cash settlement
- $2 \times \text{Basic Pay} \times \text{Years of Active Duty}$
- Guaranteed minimum 3 years - increased to 6 years for conditions incurred in armed conflict
- Normally Taxable at 28% Federal - plus State ???
- Combat Related – Federal Tax Exempt

VA Withholding

- VA can not pay for the same condition at the same time as the PEB
- VA will withhold payments for Unfitting Condition until equal to Severance Pay
- Conditions that are a direct result of armed conflict are not subject to VA withholding
- All conditions the PEB did not compensate for are payable immediately by the VA
- Reimbursement of Federal Taxes through DFAS after DD 214 issued and VA Ratings received

Example

- DOD Severance Pay calculated at \$16,000 before taxes - \$12,000 after taxes
- VA payment for Unfitting Condition calculated at \$250 per month
- For 48 months you will not receive VA payment of \$250. $48 \times \$250 = \$12,000$
- All VA payments for conditions not rated by PEB are started immediately
- \$4,000 Federal Tax reimbursement through DFAS

TDRL Pay

- Awarded 30% or greater disability percentage
- Monthly Payment
- Percentage of highest 3 years basic pay average based on disability percentage awarded
- Minimum 50%, Maximum 75%
- Normally Taxable at 28% Federal - plus State ???
- Combat Related – Federal Tax Exempt

VA Withholding

You are not eligible for concurrent receipt unless you have over 20 years of Active Duty

- VA will make all payments for Unfitting Condition first
- An equal amount is subtracted from your retirement check prior to payment
- All Conditions PEB did not compensate for are payable immediately by the VA

PDRL Pay

- Awarded 30% or Greater Disability
- Monthly Payment
- Percentage of highest 3 years basic pay average based on disability percentage awarded
- Minimum 30%, Maximum 75%
- Normally Taxable at 28% Federal - plus State ???
- Combat Related – Federal Tax Exempt
- Do not assume PDRL pay will equal TDRL Pay

CRSC

- Combat Related Special Compensation
- Only for conditions that are deemed combat related on TDRL or PDRL Findings
- Third source of income
- Paid by DFAS
- Forms and instructions provided by PEB PEBLO with Receipt of Findings

Disciplinary Action

- PEB proceedings does not preclude administrative discharge or court martial
- Misconduct separation will take precedence
- Does not matter if you have Findings or not

Leave Policy

- Before Boards mailed to PEB, you are required to be in the local area
- After Boards mailed to PEB, you can take annual leave
- Required to inform PEB PEBLO of your leave dates and location
- PEB PEBLO can conduct all actions via phone and fax

Home Awaiting Orders

- Available to Marines only
- Reference MCO P1900.16 par. 8504
- Only for an Unfit Finding
- Not for PLD requests
- Requires Commanding Officer's approval
- Must have completed all discharge classes
- Check out, turn in gear, and leave

Hospitalization or Surgery

- Have elective procedures done prior to PEB submission
- Emergency situations can suspend or terminate the PEB process
- Pending treatment or surgery at time of PEB submission can result in rejection your of package

Legal Assistance

- In accordance with NDAA of 2008
- Everyone entitled to legal help in all stages of DES Pilot process
- Not detailed counsel, advisory attorney only
- Received special training

Other Pertinent Information

- Promotions
 - You must be eligible
 - You can not be denied just because of PEB
- Communication with PEB
 - Informal Board is records review only
 - Formal PEB allows discussion of case with PEB members

PEB PEBLO Expectations

- Be very familiar with the handout.
- Do not call us, we will call you when the results come in or if there is a problem
- If you go on leave, let us know
- If your home, work, or cell phone number changes, let us know
- Understand that we have an open door policy, but appointments have priority

QUESTIONS

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