AR 635-40

Army Regulation 635–40

Personnel Separations

FEB 9

Physical Evaluation for Retention, Retirement, or Separation

Headquarters
Department of the Army
Washington, DC
1 September 1990

SUMMARY of CHANGE

AR 635-40
Physical Evaluation for Rentention, Retirement, or Separation

This revision--

- Deletes "worldwide under field conditions" as a sole criterion for determining physical unfitness (para 3-1d).
- Deletes "clear and convincing" as the standard of evidence to overcome the presumption of physical fitness for soldiers processing for nondisability retirement at the time of referral into the disability system (para 3-2).
- Prohibits rating disabilities which are neither unfitting nor contribute to the physical unfitness of a soldier (para 3-5).
- Authorizes NCO's to be appointed the PEBLO (para 3-8).
- Includes special rules applicable to the disability processing of general and medical corps officers (para 3-13).
- Establishes that separation or retirement for physical disability will normally occur within 20 days from the date of approval of the determination of physical unfitness for the SA (para 3-14).
- Establishes the policy that the effective date of separation or retirement for physical disability may be adjusted for accrued leave in excess of that which cannot be sold back to the Government (para 3-14).
- Establishes the policy that cases of soldiers who have a prognosis of imminent death will be processed in a comparable manner and procedural sequence to the disability cases of all other soldiers (para 3-14).
- Requires the date of the physical examination to be stated on the NARSUM (para 4-11).
- Contains updated instructions on documents to be forwarded to the PEB with the MEBD (para 4-15).
- Updates guidance on composition of the PEB (para 4-17).
- Requires advisory statements on the DA Form 199 for specific circumstances (para 4-18).

- Establishes a limited approval authority for PEB presidents to approve PEB findings and recommendations for the SA (para 4-19).

- Requires determination of physical fitness to be made on the soldier's primary MOS (para 4-19).

- Deletes the provision for the presumption of service aggravation in cases where an EPTS condition has become unfitting through natural progression after 3 years of service (para 4-19).

- Establishes procedures for PEB to implement when an LD decision is challenged during a formal hearing (para 4-19).

- Provides a limited approval authority for PEB presidents to approve PEB findings and recommendations for the SA (para 4-19).

- Provides approval authority for the DCO and the PEB president and alternate president to determine LD for specific types of cases (para 4-19).

- Requires the soldier and his or her counsel be provided a copy of any minority report prepared for PEB findings (para 4-19).

- Provides new guidance on election timeframes and the preparation of rebuttals to findings (paras 4-20, 4-21, and 4-22).

- Prescribes PEBLO counseling forms (para 4-20).

- Prescribes a rights counseling form (para 4-21).

- Prescribes a form for acknowledgement of formal hearing date and release of records (para 4-21).

- Provides guidance on invitational travel orders for the next-of-kin acting in behalf of a mentally incompetent soldier (para 4-21).

- Deletes restriction prohibiting PEB members from questioning soldier on the origin or aggravation of any disease or injury (para 4-21).

- Designates the special court-martial convening authority as the approving authority for separation (for non-service aggravated EPTS conditions) upon soldier's waiver of PEB (para 5-4).

- Establishes new criteria for approval of COAD for soldiers of the Active Components (para 6-3).

- Advises that PERSCOM may authorize an attendant to accompany a soldier who is on the TDRL and physically incapable of travelling alone to the periodic physical examination (para 7-10).

- Requires the PEB to provide PERSCOM copies of travel orders endorsed by the PEB authorizing soldiers on the TDRL, their attendant or next-of-kin, funded travel to a formal hearing (para 7-21).

- Establishes eligibility for referral into the disability system, soldiers of the RC who incur a disease subsequent to 14 November 1986, while performing duty for 30 days or less (para 8-2).

- Provides for referral of an RC soldier to the PEB, prior to consideration of his or her request to continue in the Active Reserve (para 8-7).

- Updates guidance for Army application of the VASRD.

- Updates guidance on PCSH (para E-5).

Headquarters
Department of the Army
Washington, DC
15 August 1990

*Army Regulation 635–40

Effective 15 September 1990

Personnel Separations

Physical Evaluation for Retention, Retirement, or Separation

This UPDATE printing publishes a revision of this publication. Because the publication has been extensively revised, the changed portions have not been highlighted.

By Order of the Secretary of the Army:

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Summary. This regulation governs the evaluation for physical fitness of soldiers who may be unfit to perform their military duties because of physical disability. It updates policy and procedures resulting from the Department of Defense Directive 1332.18 dated February 25, 1986; the reorganization of the Physical Disability Agency; the implementation of streamlined procedures for case processing; and the passage of Public Law 99–661 as it relates to disability processing of soldiers in the Reserve Components.

Applicability. This regulation applies to the Active Army, the Army National Guard, and the U.S. Army Reserve.

Internal control systems. This regulation is subject to the requirements of AR 11–2. It contains internal control provisions but does not contain checklists for conducting internal control reviews. These checklists are being developed and will be published at a later date.

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without approval from HQDA (DAPE–MP).

Suggested improvements. The proponent agency of this regulation is the Office of the Deputy Chief of Staff for Personnel. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Commander, U.S. Army Physical Disability Agency, ATTN: TAPD–OEA, Forest Glen Section—WRAMC, Washington, DC 20307–5001.

Distribution. Distribution of this publication is made in accordance with the requirements on DA Form 12–09–E, block number 2266, intended for command level A for the Active Army, the Army National Guard, and the U.S. Army Reserve.

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Chapter 1
Introduction

1–1. Purpose
This regulation establishes the Army Physical Disability Evaluation System according to the provisions of chapter 61, title 10, United States Code (10 USC 61) and Department of Defense Directive (DODD) 1332.18. It sets forth policies, responsibilities, and procedures that apply in determining whether a soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. If a soldier is found unfit because of physical disability, this regulation provides for disposition of the soldier according to applicable laws and regulations. The objectives of this regulation are to—

a. Maintain an effective and fit military organization with maximum use of available manpower.

b. Provide benefits for eligible soldiers whose military service is terminated because of a service-connected disability.

c. Provide prompt disability processing while ensuring that the rights and interests of the Government and the soldier are protected.

1–2. References
Required and related publications are listed in appendix A. Prescribed and referenced forms are also listed in appendix A.

1–3. Explanation of abbreviations and terms
Abbreviations and special terms used in this regulation are explained in the glossary.

1–4. Ineligibility for processing
a. Section 1217, title 10, United States Code (10 USC 1217) excludes cadets of service academies from eligibility for disability benefits under 10 USC 61. However, USMA cadets may be entitled to compensation administered by the Department of Veterans Affairs (VA). Section 101(21)(D), title 38, United States Code (38 USC 101(21)(D)) includes service as a cadet at the United States Military Academy (USMA) within the definition of active duty for purposes of entitlement to VA compensation.

b. Reserve Officers' Training Corps (ROTC) cadets are not eligible for processing under this regulation. Senior ROTC cadets may be eligible for VA disability benefits under section 101(22)(D), title 38, United States Code (38 USC 101(22)(D)) as explained above for USMA cadets.

Chapter 2
Responsibilities and Functions

Section I
Responsible Individuals

2–1. Secretary of the Army (SA)
The SA will prescribe regulations to carry out the provisions of 10 USC 61. Unless otherwise specified in this regulation, the SA reserves all powers, functions, and duties of the Army Physical Disability Evaluation System.

2–2. Deputy Chief of Staff for Personnel (DCSPER)
The DCSPER has overall Army Staff responsibility for the Army Physical Disability Evaluation System. Policy guidance will be provided by the Director of Military Personnel Management (DMPM), Office of the Deputy Chief of Staff for Personnel (ODCSPER).

2–3. Commander, U.S. Total Army Personnel Command (Commander PERSCOM)
The commander, PERSCOM will—

a. Operate the Army Physical Disability Evaluation System under the general staff supervision of the DCSPER.

b. Accomplish final administrative actions in processing physical disability cases; issue needed orders or other instructions for the SA, based on decisions of the Commanding General, U.S. Army Physical Disability Agency (CG, USAPDA) or higher authority (chap 4 and app E).

c. Notify the VA of all individuals being separated or retired from the Army for physical disability.

d. Coordinate, control, and manage all soldiers on the Temporary Disability Retired List (TDRL)

2–4. CG, USAPDA
The CG, USAPDA, under the operational control of the Commander, PERSCOM, will operate the Army Physical Disability Evaluation System, to include—

a. Interpreting and implementing policies coming from higher authority.

b. Developing the policies, procedures, and programs of the system.

c. Coordinating with other military departments to ensure applicable laws, policies, and directives are interpreted uniformly. (A uniform interpretation is required to ensure that a soldier of the Army will be granted substantially the same benefits as a member of another Service under similar conditions.)

d. Commanding and managing the subordinate elements of the USAPDA.

e. Reviewing Physical Evaluation Board (PEB) proceedings to ensure that soldiers are given uniform and fair consideration under applicable laws, policies, and directives.

f. Making the final decision whether a soldier is unfit because of physical disability except when such decisions are reserved to higher authority. Included as higher authority are the Office of the Secretary of the Army (OSA) and the Office of the Secretary of Defense (OSD).

g. Determining percentage rating and disposition.

2–5. The Surgeon General (TSG)
TSG will establish and interpret medical standards for retaining soldiers on active duty (see AR 40–3 and AR 40–501).

2–6. The Judge Advocate General (TJAG)
The TJAG will—

a. Interpret laws and regulations governing the Army Physical Disability Evaluation System.

b. Train and provide sufficient legal counsel to represent soldiers appearing before a PEB.

c. Train Army attorneys in disability law.

2–7. Commanding Generals of Health Services Command (HSC); 7th Medical Command/Europe (7 MEDCOM/EUR); and 18th Medical Command (18 MEDCOM)
The commanding generals of the Health Services Command (HSC); the 7th Medical Command/Europe (7 MEDCOM/EUR); and the 19 Medical Command (19 MEDCOM) will—

a. Ensure that Army medical treatment facilities (MTFs) under their control fulfill their responsibilities in connection with the Army Physical Disability Evaluation System as outlined in AR 40–3 and this regulation.

b. Appoint MTFs responsible for accomplishing periodic medical evaluation for TDRL members (chap 7).

2–8. Commander, MTF
The commander, MTF will—

a. Provide a thorough and prompt evaluation when a soldier's medical condition becomes questionable in respect to physical ability to perform duty.

b. Appoint a Physical Evaluation Board Liaison officer (PEBLO) to counsel soldiers undergoing physical disability processing.

c. Ensure medical evaluation board (MEBD) proceedings referred to the PEB are complete, accurate, and fully documented as outlined in AR 40–3, chapter 7, and chapter 4 of this regulation.

2–9. Unit commander

The unit commander will—

a. Become thoroughly familiar with the purpose of the Army Physical Disability Evaluation System.

b. Ensure that any physical defects impacting on a soldier's performance of duty are reflected in the soldier's evaluation report.

c. Refer a soldier to the servicing MTF for medical evaluation when the soldier is believed to be unable to perform the duties of his or her office, grade, rank, or rating.

d. Upon request of the MTF commander, provide the information, statements, and records on soldiers of their command being processed for physical disability evaluation.

e. Ensure timely compliance with AR 600–8–1 to prevent delay in the disability processing of soldiers under their command.

Section II
Related Boards

2–10. Board Elements

a. The Army Physical Disability Evaluation System consists of—

(1) MEBDs (a function of the Army Medical Department).

(2) PEBs (elements of the USAPDA).

(3) Case reviews, when applicable, by USAPDA.

b. Certain Department of the Army (DA) boards, though not a part of the disability system, are closely related to disability evaluation because of their assigned function to review disability decisions upon request of the soldier, former soldier, or when otherwise required. These boards are described in paragraphs 2–11 through 2–13 below.

2–11. Army Physical Disability Appeal Board (APDAB)

The APDAB is a component of the Army Council of Review Boards (ACRB). APDAB was established to review disability evaluation cases forwarded by the CG, USAPDA as provided under the circumstances prescribed in chapter 4.

2–12. The Army Board for Correction of Military Records (ABCMR)

The ABCMR is a statutory board established within the OSA under the provisions of section 1552, title 10, (10 USC 1552). The ABCMR provides a means for correcting an error or removing an injustice. Within 3 years of the first knowledge of an error or injustice, a soldier, former soldier, or individual acting on the soldier's behalf may submit an application to the ABCMR according to AR 15–185 if the individual—

a. Believes that his or her military records reflect an error or an injustice.

b. Has exhausted all administrative remedies offered by existing laws and regulations.

2–13. Army Disability Rating Review Board (ADRRB)

The ADRRB is a component of the Army Council of Review Boards (ACRB). The ADRRB reviews disability percentage ratings on request of a soldier who was retired because of physical disability (chap 4, sec VI). Requests for review must be made within 5 years from the date of retirement.

Chapter 3
Policies

3–1. Standards of unfitness because of physical disability

The mere presences of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the soldier reasonably may be expected to perform because of his or her office, grade, rank, or rating.

a. Objectives of standards. To ensure all soldiers are physically qualified to perform their duties in a reasonable manner, medical retention qualification standards have been established in AR 40–501, chapter 3. These standards include guidelines for applying them to fitness decisions in individual cases. These guidelines are used to refer soldiers to a MEBD. The major objective of these standards is to achieve uniform disposition of cases arising under the law. These retention standards and guidelines should not be interpreted to mean that possessing one or more of the listed conditions or physical defects signifies automatic disability retirement or separation from the Army. The fact that the soldier has one or more defects sufficient to require referral for evaluation, or that these defects may be unfitting for soldiers in a different office, grade, rank, or rating, does not justify a decision of physical unfitness.

b. Considering the overall effect of disabilities. The overall effect of all disabilities present in a soldier whose physical fitness is under evaluation must be considered. The effect will be considered both from the standpoint of how the disabilities affect the soldier's performance and the requirements imposed on the Army to maintain and protect him or her during future duty assignments. A soldier may be unfit because of physical disability caused by a single impairment or physical disabilities resulting from the overall effect of two or more impairments even though each of them, alone, would not cause unfitness.

c. Evaluating the soldier's fitness to perform duties. All relevant evidence must be considered in evaluating the fitness of a soldier. Findings with respect to fitness or unfitness for military service will be made on the basis of the preponderance of the evidence. Thus, if the preponderance of evidence indicates unfitness, a finding to that effect will be made. For example, when a referral for physical evaluation immediately follows acute, grave illness or injury, the medical evaluation may have the greater weight. This is particularly true if medical evidence establishes the fact that continued service would be harmful to the soldier's health or would prejudice the best interests of the Army. A soldier may be referred for physical evaluation under other circumstances. If so, evaluations of the performance of duty by supervisors (letters, efficiency reports, or personal testimony) may provide better evidence than a clinical estimate by the soldier's physician describing the physical ability to perform the duties of the office, grade, rank, or rating. Thus, if the evidence establishes the fact that the soldier adequately performed the normal duties of his or her office, grade, rank, or rating until the time of referral for physical evaluation, the soldier might be considered fit for duty. This is true even though medical evidence indicates the soldier's physical ability to perform such duties may be questionable. However, inadequate duty performance should not be considered as evidence of physical unfitness unless a cause and effect relationship exists between the inadequate duty performance and the presence of physical disabilities.

d. Deciding the soldier's unfitness to perform duties. Initial enlistment, induction, or commissioning physical standards are not relevant to deciding unfitness for continued military service. Once a soldier has been enlisted, inducted, or commissioned, the fact that the soldier may later fall below initial entry physical standards does not, in itself, authorize separation or retirement unless it is also established that the soldier is unfit because of physical disability as described above. Likewise, a lack of special skills in demand, inability to meet physical standards established for specialized duty such as flying, or transfer between components or branches within the Army, does not, in itself, establish eligibility for disability separation or retirement. Although the ability of a soldier to reasonably perform his or her duties in all geographic locations under all conceivable circumstances is a key to maintaining an effective and fit force, this criterion (world-wide deployability) will not serve as the sole basis for a finding of unfitness.

e. Prior-service disabilities. Prior-service medical conditions are to be considered according to the following standards and limitations.

(1) Despite any other provisions of this regulation, after a soldier has been enlisted, inducted, and appointed or commissioned,

the soldier will not be declared physically unfit for military service because of disabilities known to exist at the time of the soldier's acceptance for military service that have remained essentially the same in degree since acceptance, and have not interfered with the soldier's performance of effective military service.

(2) Nowithstanding the above, when a soldier enters the military with a waiver for a medical condition or physical defect, and the condition represents a decided medical risk which would probably prejudice the best interests of the Government were the soldier to remain in military service, separation without benefits may be appropriate, if initiated within 6 months of initial entry on active duty. Entry physical standards will be used in separating individuals with pre-existing medical conditions. Such cases will be referred to a PEB to determine if the pre-existing condition has been service-aggravated.

3–2. Presumptions

The following presumptions will apply to physical disability evaluation

a. Before and during active service.

(1) A soldier was in sound physical and mental condition upon entering active service except for physical disabilities noted and recorded at the time of entry.

(2) Any disease or injury discovered after a soldier entered active service, with the exception of congenital and hereditary conditions, was not due to the soldier's intentional misconduct or willful neglect and was incurred in line of duty (LD).

(3) If the foregoing presumptions are overcome by a preponderance of the evidence, any additional disability or death resulting from the preexisting injury or disease was caused by military service aggravation. (Only specific findings of "natural progression" of the preexisting disease or injury, based upon well-established medical principles are enough to overcome the presumption of military service aggravation.)

(4) Acute infections and sudden developments occurring while the soldier is in military service will be regarded as service-incurred or service-aggravated. Acute infections are those such as pneumonia, active rheumatic fever (even though recurrent), acute pleurisy, or acute ear disease. Sudden developments are those such as hemoptysis, lung collapse, perforating ulcer, decompensating heart disease, coronary occlusion, thrombosis, or cerebral hemorrhage. This presumption may be overcome when a preponderance of the evidence shows that no permanent new or increased disability resulting from these causes occurred during active military service or that such conditions were the result of "natural progression" of preexisting injuries or diseases as in (3) above.

(5) The foregoing presumptions may be overcome only by a preponderance of the evidence, which differs from personal opinion, speculation, or conjecture. When reasonable doubt exists about a soldier's condition, an attempt should be made to resolve the doubt by further clinical investigation and observation and by consideration of any other evidence that may apply. In the absence of such proof by the preponderance of the evidence, reasonable doubt should be resolved in favor of the soldier.

b. Processing for separation or retirement from active service.

(1) Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to soldiers whose service is interrupted and they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

(2) When a soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the soldier is scheduled for separation or retirement, creates a presumption that the soldier is fit. An enlisted solider whose reenlistment has been approved before the end of his or her current enlistment, is not processing for separation; therefore, this rule does not apply. The presumption of fitness may be overcome if the evidence establishes that—

(a) The soldier was, in fact, physically unable to perform adequately the duties of his or her office, grade, rank or rating for a period of time because of disability. There must be a causative relationship between the less than adequate duty performance and the unfitting medical condition or conditions.

(b) An acute, grave illness or injury or other significant deterioration of the soldier's physical condition occurred immediately prior to, or coincident with processing for separation or retirement for reasons other than physical disability and which rendered the soldier unfit for further duty.

(3) A soldier previously found unfit but approved for continuation on active duty (COAD) is evaluated according to chapter 6.

3–3. Conditions existing before active military service

a. According to accepted medical principles, certain abnormalities and residual conditions exist that, when discovered, lead to the conclusion that they must have existed or have started before the individual entered the military service.

(1) Examples of these conditions are as follows:

(a) Scars.

(b) Fibrosis of the lungs.

(c) Atrophy following disease of the central or peripheral nervous system.

(d) Healed fractures.

(e) Absent, displaced, or resected organs.

(f) Supernumerary parts.

(g) Congenital malformations and hereditary conditions

(h) Similar conditions in which medical authorities are in such consistent and universal agreement as to their cause and time of origin that no additional confirmation is needed to support the conclusion that they existed prior to military service.

(2) Likewise, manifestation of lesions or symptoms of chronic disease from date of entry on active military service (or so close to that date of entry that the disease could not have started in so short a period) will be accepted as proof that the disease existed prior to entrance into active military service.

(3) Manifestations of communicable disease within less than the minimum incubation period after entry on active service will be accepted as proof of inception prior to military service.

b. Standard in-service medical and surgical treatment reducing the effect of the disease or other conditions incurred prior to entry into military service does not constitute service aggravation unless the treatment was required to relieve disability that had been aggravated by military service.

c. Unexpected adverse effects, over and above known hazards, directly attributable to treatment, anesthetic, or operation performed or administered for a disease or medical condition existing before entry on active duty, may be considered service aggravation.

d. For separation guidance on non-service aggravated EPTS conditions when a soldier requests waiver of referral to a PEB, see chapter 5.

3–4. LD decisions

a. Under the laws governing the Army Physical Disability Evaluation System, soldiers who sustain or aggravate physically unfitting disabilities must meet the following LD criteria to be eligible to receive retirement and severance pay benefits.

(1) The disability must have been incurred or aggravated while the soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

b. LD decisions are reached according to policies and procedures prescribed in AR 600–8–1, chapters 39, 40, and 41. Copies of LD decision, DA Form 2173 (Statement of Medical Examination and Duty Status), or DD Form 261 (Report of Investigation—Line of Duty and Misconduct Status) must be included in the official records of the case. When a board or council has substantial evidence, however, showing that a prior decision may be incorrect for any reason, they must include such evidence in the case record and request PERSCOM (TAPC–PED–S) to review

the LD determination before final disposition of disability processing at HQDA level (para 4–19*g*).

c. In certain categories of activities, the Deputy Commander, PEB president, or alternate president have the authority to make findings of "in line of duty, not due to own misconduct" when no LD investigation has been completed and specific criteria have been met (para 4–19*g*).

3–5. Use of the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD)

a. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the soldier is physically unfit for duty. Under the provisions of 10 USC 61 these ratings are assigned from the VASRD.

b. Special guidance concerning Army use of the VASRD, as well as modifications and exceptions to it as prescribed by DODD 1332.18, are set forth in appendix B of this regulation.

c. The fact that a soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the soldier unable to perform the duties of his or her office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of his or her employment on active duty.

d. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. Any non-ratable defects or conditions will be listed in item 8 of DA Form 199, but will be annotated as non-ratable.

3–6. Length of hospitalization

Providing definitive medical care to active duty soldiers requiring prolonged hospitalization who are unlikely to return to active duty is not within the DA mission. The time at which a soldier should be processed for disability retirement or separation must be decided on an individual basis. The interest of both the Army and the soldier must be considered. A soldier may not be retained or separated solely to increase retirement or separation benefits. Soldiers who are medically unfit and not likely to return to duty should be processed for disability retirement or separation when it is decided that they have attained optimum hospital improvement.

3–7. Retaining soldiers on active duty after scheduled nondisability retirement or discharge date

A soldier whose normal scheduled date of nondisability retirement or separation occurs during the course of hospitalization or disability evaluation may, with his or her consent, be retained in the service until he or she has attained maximum hospital benefits and completion of disability evaluation if otherwise eligible for referral into the disability system.

a. Officers and warrant officers on extended active duty may be retained on active duty according to the provision of AR 635–100, chapter 3.

b. Enlisted soldiers on extended active duty may be retained on active duty according to the provisions of AR 635–200, chapter 1.

c. Soldiers in the Reserve Components (other than Active Guard/Reserve) (AGR)) may be retained according to the provisions of AR 135–381.

d. Reserve Component soldiers serving on AGR status will be retained on active duty as prescribed in AR 635–200.

3–8. Counseling provided to soldier

a. PEBLO counseling. The appointed PEBLO at the MTF is responsible for counseling soldiers (or the next of kin or legal guardian in appropriate cases) concerning their rights and privileges at each step in disability evaluation, beginning with the decision of the treating physician to refer the soldier to a MEBD and until final disposition is accomplished. For this purpose, the MTF commander will name an experienced, qualified officer, noncommissioned officer (NCO), or civilian employee as the PEBLO. At least one additional qualified officer, NCO, or civilian employee will be designated as alternate PEBLO. Only personnel whose duties will not conflict with their counseling responsibilities will be selected. The MTF commander will notify the recorder of the applicable PEB, of the name and telephone number of the PEBLO and alternate PEBLO. PEBLOs will use the Disability Counseling Guide (app C) to assist them in providing thorough counseling. Counseling will be documented (para 4–20*d*). Counseling will cover as a minimum, the following areas:

(1) Legal rights (including the sequence of and the nature of disability processing).

(2) Effects and recommendations of MEBD and PEB findings.

(3) Estimated disability retired or severance pay (after receipt of PEB findings and recommendations).

(4) Probable grade upon retirement.

(5) Potential veteran's benefits.

(6) Recourse to and preparation of rebuttals to PEB findings and recommendations.

(7) Disabled Veterans Outreach Program (DVOP).

(8) Post-retirement insurance programs and the Survivor Benefit Plan (SBP).

b. Legal counseling. Counseling by the appointed legal counsel is provided when the soldier requests a formal hearing.

3–9. The TDRL

a. The TDRL is used in the nature of a "pending list". It provides a safeguard for the Government against permanently retiring a soldier who can later fully recover, or nearly recover, from the disability causing him or her to be unfit. Conversely, the TDRL safeguards the soldier from being permanently retired with a condition that may reasonably be expected to develop into a more serious permanent disability.

b. Requirements for placement on the TDRL are the same as for permanent retirement. The soldier must be unfit to perform the duties of his or her office, grade, rank, or rating at the time of evaluation. The disability must be rated at a minimum of 30 percent or the soldier must have 20 years of service computed under section 1208, title 10, United States Code (10 USC 1208). In addition, the condition must be determined to be temporary or unstable.

c. A soldier who is determined to be physically fit will not be placed on the TDRL regardless of the severity of the physical defects or the fact that they might become unfitting were the soldier to remain on active duty for a period of time.

3–10. COAD by soldiers unfit because of physical disability

a. Headquarters, Department of the Army (HQDA) may defer the disposition of a soldier who, although unfit because of physical disability, can still serve effectively with proper assignment limitations. The soldier must consent to being deferred.

b. A soldier COAD according to the provisions in chapter 6 must be unfit because of physical disability. The physical disability must be a basically stable condition or one for which accepted medical principles show slow progression. The soldier must be able to maintain himself or herself in a military environment without jeopardizing individual health or the health of others. The soldier must not require an excessive amount of medical care.

c. A soldier who is unfit because of physical disability will not be COAD solely to increase benefits. He or she will not be COAD unless his or her retention is justified as being of value to the Army.

d. HQDA will reevaluate soldiers approved for COAD when—

(1) An enlisted soldier's term of service expires during the period for which continuance was approved and the soldier requests reenlistment (para 6–17*d*).

(2) Soldier requests extension of continuance on active duty (para 6–13*e*).

e. When COAD is approved, the soldier remains liable to complete any service obligation he or she has incurred unless the disqualifying condition progresses to a point wherein the soldier becomes unable to perform within established limitations.

f. At the time of final retirement or separation, the soldier will be referred to a MEBD and PEB (para 6–14).

3–11. Limitation on appearance by soldiers

A soldier or his or her representative will not be permitted to appear before the informal PEB, USAPDA (during case review), the APDAB, or the ADRRB.

3–12. Findings and recommendations of agencies reviewing disability cases

Review and appeal activities are bound by the regulations under which adjudicative activities function. A rare and unusual case may occur to which current regulations do not apply. If so, refer the case through channels to the OSA with a recommendation for disposition.

3–13. Special rules applicable to general and medical corps officers

a. General officers and medical corps officers will not be found to be unfit by reason of physical disability if they can be expected to perform satisfactorily in an assignment appropriate to their grade, qualifications, and experience.

b. General officers and medical corps officers who are processing for retirement by reason of age or length of service may not be retired for physical disability unless the initial unfitness determination of the SA is approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)).

c. General officers and medical corps officers not processing for retirement by reason of length of service at the time of their referral into the disability system, may not be retired or separated for physical disability until a recommendation therefore by the SA is approved by the ASD(HA).

d. One copy of all retirement orders issued in the case of general officers retired because of physical disability will be submitted to ASD(HA).

3–14. Factors governing time of processing

The point in time for referral of a soldier for disability separation or retirement is determined on an individual basis. Normally, soldiers who are not likely to return to duty will be processed as soon as this probability is ascertained.

a. Separation or retirement should normally occur within 20 days of the date of the final determination of unfitness by the SA. However, soldiers are entitled to use accrued leave in excess of that which cannot be sold back to the Government.

b. Soldiers having a prognosis of imminent death shall be evaluated and processed in a comparable manner and procedural sequence to that of all other soldiers. No procedures will be circumvented or omitted, to include LD determination in the interest of timely processing.

Chapter 4
Procedures

Section I
Eligibility for Disability Evaluation

4–1. Soldiers charged with an offense

a. Uniform Code of Military Justice (UCMJ) action. The case of a soldier charged with an offense under the UCMJ or who is under investigation for an offense chargeable under the UCMJ which could result in dismissal or punitive discharge, may not be referred for, or continue, disability processing unless—

(1) The investigation ends without charges.

(2) The officer exercising proper court-martial jurisdiction dismisses the charges.

(3) The officer exercising proper court-martial jurisdiction refers the charge for trial to a court-martial that cannot adjudge such a sentence.

b. Civil court action. If civil criminal court action is pending and the soldier is present for duty, disability processing continues provided any movement of the soldier is cleared with responsible military and civilian authorities.

4–2. Soldiers with suspended sentences

A soldier may not be referred for, or continue, disability processing if under sentence of dismissal or punitive discharge. If the sentence is suspended, the soldier's case may then be referred for disability processing. A copy of the order suspending the sentence must be included in the soldier's records. If action to vacate the suspension is started after the case is forwarded for disability processing, the PEB serving the area must be promptly notified to stop disability processing. Disability processing may resume if the commander decides not to vacate the suspension.

4–3. Enlisted soldiers subject to administrative separation

a. Except as provided below, an enlisted soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions.

b. If the case comes within the limitations above, the commander exercising general court-martial jurisdiction over the soldier may abate the administrative separation. This authority may not be delegated. A copy of the decision, signed by the general court-martial convening authority (GCMCA), must be forwarded with the disability case file to the PEB. A case file may be referred in this way if the GCMCA finds the following:

(1) The disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

(2) Other circumstances warrant disability processing instead of alternate administrative separation.

c. A soldier being considered for separation because of unsatisfactory performance (AR 635–200, chap 13), must be referred for disability processing upon approved recommendation of a MEBD (AR 635–200, para 1–35*a*).

4–4. Commissioned or warrant officers who may be separated under other than honorable conditions

a. A commissioned or warrant officer will not be referred for disability processing instead of elimination action (administrative separation) that could result in separation under other than honorable conditions. Officers in this category who are believed to be unfit because of physical disability will be processed simultaneously for administrative separation and physical disability evaluation.

b. Commanders exercising general court-martial authority will ensure that the foregoing actions processed together are properly identified and cross-referenced. The administrative separation will be forwarded to the Commander, PERSCOM, ATTN: TAPC–OPP–M, Alexandria, VA 22332–0418.

c. The Commander, PERSCOM, will refer the entire file, including both courses of action, to the Office of the Secretary of the Army, ATTN: SAMR–RB, Washington DC 20310–3073 for necessary review. The SA will decide the proper disposition of the case.

4–5. Soldiers absent without leave (AWOL)

A soldier may not be processed through the Army Physical Disability Evaluation System unless he or she is under military control. The soldier must be available to be notified of the findings of the PEB and to indicate concurrence or nonconcurrence with the PEB findings and recommendations. If AWOL, the soldier's case file may not be sent to a PEB. If determined AWOL after the soldier's case file has been referred, the PEB must be promptly notified in

order to suspend processing. If the soldier returns within 10 days, the PEB must be notified so that processing may resume. Any substantial change in the soldier's condition during a period of AWOL must be recorded by an addendum to the original MEBD or by a new MEBD and furnished to the PEB.

Section II
Initiation of Medical Evaluation

4–6. Referral by HQDA
The Commander, PERSCOM, upon recommendation of TSG, may refer a soldier to the responsible MTF for medical evaluation when a question arises as to the soldier's ability to perform the duties of his or her office, grade, rank, or rating because of physical disability.

4–7. Referral by commanders of MTFs
Commanders of MTFs who are treating soldiers in an assigned, attached, or outpatient status may initiate action to evaluate the soldier's physical ability to perform the duties of his or her office, grade, rank, or rating.

4–8. Referral by commanders
When a commander believes that a soldier of his or her command is unable to perform the duties of his or her office, grade, rank, or rating because of physical disability, the commander will refer the soldier to the responsible MTF for evaluation. The request for evaluation will be in writing and will state the commander's reasons for believing that the soldier is unable to perform his or her duties. DD Form 689 (Individual Sick Slip) may be used for such referral (AR 600–6). Commanders of Reserve units not on active duty will be guided by AR 40–501 and chapter 8 of this regulation.

Section III
Medical Processing Related to Disability Evaluation

4–9. Medical examination
The MTF commander having primary medical care responsibility will conduct an examination of a soldier referred for evaluation. The commander will advise the soldier's commanding officer of the results of the evaluation and the proposed disposition. If it appears the soldier is not medically qualified to perform duty, the MTF commander will refer the soldier to a MEBD.

4–10. The MEBD
MEBD's are convened to document a soldier's medical status and duty limitations insofar as duty is affected by the soldier's status. A decision is made as to the soldier's medical qualification for retention based on the criteria in AR 40–501, chapter 3. If the MEBD determines the soldier does not meet retention standards, the board will recommend referral of the soldier to a PEB. For MEBD's rules for documentation, recommendations, and disposition of the evaluated soldier, see AR 40–3, chapters 7 and 8.

4–11. Narrative summary (NARSUM)
The NARSUM to the MEBD is the heart of the disability evaluation system. Incomplete, inaccurate, misleading, or delayed NARSUMs may result in injustice to the soldier or to the Army.

a. Physicians who prepare cases for the MEBD and PEB should use the VA Physician's Guide for Disability Evaluation Examinations (published by the VA) to describe physical defects. This helps to ensure consistency in reporting similar conditions and assists the boards of the disability system in their review and evaluation process. (See AR 40–3, chapter 8.)

b. In describing a soldier's conditions, a medical diagnosis alone is not sufficient to establish that the individual is unfit for further military service. The history of the soldier's illness, objective findings on examination, results of X-ray and laboratory tests, reports of consultations, response to therapy, and subjective conclusions with rationale must be addressed.

c. A correlation must be established between the soldier's medical defects and physical capabilities. (This is important when a chronic condition is the basis for referral to a PEB and no change in severity of the condition has occurred or when referral of the case to a PEB appears controversial.)

d. The date of onset of a medical impairment may be questionable because of relatively short military service and the nature of the impairment, for example, a mental disease. If so, the NARSUM should address the results of inquiry into the pre-service background (family, relatives, medical, and community) of the soldier in sufficient detail to overcome substantive question concerning the date of onset.

e. When a soldier is diagnosed with a mental disorder, the NARSUM must include a statement indicating whether the soldier is mentally competent for pay purposes and capable of understanding the nature of, and cooperating in, PEB proceedings.

f. NARSUMs will not reflect a conclusion of unfitness. Therefore, diagnoses must not be qualified by such terms as "unfitting", "disqualifying", "ratable", "not ratable".

g. When disclosure of medical information would adversely affect the soldier's physical or mental health, the NARSUM should include a statement to that fact.

h. The NARSUM should include the date of the physical examination conducted for purposes of physical disability evaluation.

i. MEBD proceedings from other than Army MTF's must be forwarded through the designated Army facility (AR 40–3, chap 7).

4–12. Counseling soldiers who have been evaluated by a MEBD
a. The PEBLO will advise the soldier of the results of the MEBD. The soldier will be given the opportunity to read and sign the MEBD proceedings. If the soldier does not agree with any item in the medical board report or NARSUM, he or she will be advised of appeal procedures.

b. The decisions below are exclusively within the province of adjudicative bodies. Neither the PEBLO nor the attending medical personnel will tell the soldier that—

(1) The soldier is medically or physically unfit for further military service.

(2) The soldier will be discharged or retired from the Army because of physical disability.

(3) A given percentage rating appears proper.

(4) A LD decision is final (unless final approval has been obtained according to AR 600–8–1).

4–13. Referral to a PEB
a. The MEBD will recommend referral to a PEB those soldiers who do not meet medical retention standards. Those who apply for COAD under the provisions of chapter 6 will be included. Do not refer soldiers to a PEB who request discharge under the provisions of chapter 5. A soldier being processed for nondisability separation will not be referred to a PEB unless the soldier has medical impairments that raise substantial doubt as to his or her ability to continue to perform the duties of his or her office, grade, rank, or rating. Soldiers previously found unfit and retained in limited assignment duty status under chapter 6, or a previous authority, will be referred to a PEB.

b. A soldier may provide additional information to the MTF commander to forward to the PEB. The information may be from the unit commander, supervisor, or other persons who have knowledge regarding the effect the condition has on the soldier's ability to perform the duties of the office, grade, rank, or rating.

c. Personnel processing actions for soldiers referred to a PEB will be according to appendix E.

4–14. Psychiatric and spinal cord injury patients requiring continuing hospitalization
a. AR 40–3 provides for transfer of psychiatric and spinal cord injury patients to a VA medical facility.

(1) Psychiatric patients requiring continuing hospitalization may be transferred after completion of MEBD action. To ensure timely processing, the MEBD proceedings must be referred to the PEB immediately after transfer of the patient.

(2) Spinal cord injury patients requiring continuing hospitalization will be expeditiously transferred to the VA Spinal Cord Injury Center, regardless of whether the MEBD is completed. The MTF that has responsibility for patients in the particular VA Spinal Cord Injury Center will coordinate the completion and processing of the MEBD.

b. The PEBLO of the MTF that has responsibility for the completion of the MEBD will provide disability counseling to the soldier or the soldier's next-of-kin when the soldier is mentally incompetent. The PEBLO will also notify the Installation Retirement Services Officer of the soldier's transfer to the VA hospital; and in cases of mental incompetence, provide the RSO the name and address of the next of kin in order to coordinate counseling on SBP as required under section 1455, title 10, United States Code (10 USC 1455).

4–15. Action following approval of MEBD report

The MTF commander will notify the unit commander of the planned referral of a soldier to a PEB and obtain from the commander the written statement described in paragraph *e* below. If further action is not barred, the original and two copies of the MEBD proceedings and allied documents described below, as applicable, will be forwarded to the PEB.

a. DA Form 5889–R (PEB Referral Transmittal Document). This document serves as the forwarding memorandum. It identifies the documents forwarded and provides unit and home addresses and telephone numbers for the PEB to contact the soldier as required. DA Form 5889–R will be locally reproduced on 8½ by 11 inch paper. A copy of the form for reproduction purposes is located at the back of this regulation.

b. Documents submitted by soldier to accompany MEBD as evidence of physical ability to adequately perform military duties (letters, efficiency reports, or personal statements).

c. DA Form 3947 (Medical Evaluation Board Proceedings) with SF 502 (Medical Record—Narrative Summary Clinical Survey) as enclosure 1 and DA Form 3349 (Physical Profile) as enclosure 2.

d. In cases where the soldier has been determined mentally incompetent, a statement confirming the name, address, telephone number, and relationship of individual authorized to act in 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. If the next-of-kin is not known or cannot be located and no court-appointed guardian exists, include a summary of the attempts to identify or locate the next-of-kin. To establish the individual having authority to act for an incompetent soldier, in the absence of a valid and pertinent power of attorney or a court order authorizing an individual to act for an incompetent soldier, follow the guidelines below. The person authorized to act is the person highest in the line of authority listed below.

(1) Spouse, even if a minor.

(2) Adult sons or daughters in order of seniority. An individual is an adult upon reaching the age of majority under the state law of the individual's legal residence.

(3) Parent in order of seniority, unless legal custody was granted to another person by reason of court decree or statutory provision. The person to whom custody was granted remains as next of kin although the individual has reached the age of majority.

(4) Blood or adoptive relative who was granted legal custody of the person by reason of a court decree or statutory provision. The person to whom custody has been granted remains the nearest next of kin although the individual has reached age of majority.

(5) Adult brother and sisters in order of seniority.

(6) Grandparents in order of seniority.

(7) Other relatives in order of relationship to the individual and according to the laws of the soldier's domicile. A soldier's domicile is the soldier's legal residence. It is not necessarily where the soldier is actually living, the soldier's home of record, or where the soldier is stationed.

(8) Persons who stand in place of a parent. Seniority in age will control when the persons are of equal relationship.

e. Statement from soldier's commander confirming whether any adverse personnel action is being considered against the soldier and describing the soldier's current duty performance. The description of duty performance should address the following:

(1) The soldier's most recent performance of duty.

(2) Any special limitation of duty due to the soldier's physical condition.

(3) The soldier's ability to adequately perform the duties normally expected of an individual of the soldier's office, grade, rank, or rating.

(4) The soldier's current duty assignment, anticipated future assignments, branch, age, and career specialities.

f. A copy of the document reflecting the approved LD decision (AR 600–8–1) if the disability is the result of injury; the result of disease secondary to injury or due to misconduct; or the result of disease when the case is that of a soldier performing duty for 30 days or less. Provide either a DD Form 261, DA Form 2173, or similar LD reports from the Navy or Air Force. If the documents are not available, the MTF commander will send a request for LD decision, well in advance of a preparation of the MEBD report, to the soldier's unit of assignment at the time of injury or disease. Include a copy of the request in the case file sent to the PEB and send a copy to PERSCOM (TAPC–PED–S). The request will provide the following information:

(1) Name, grade, and SSN.

(2) Date and place of injury.

(3) Short summary of circumstances of injury, including the identity of MTF where the soldier was treated.

(4) Unit of assignment when the soldier was injured.

(5) Statement that the LD determination is required for disability processing.

g. Orders or training schedule under which the soldier was performing active duty, active duty for training, or inactive duty training when the soldier is subject to disability processing under chapter 8. If the soldier is retained for medical care beyond termination date of active duty for training, include a copy of the affidavit required by AR 135–381. If referral to a PEB occurs during rehospitalization for treatment of residuals of an injury, provide a copy of the authorization for rehospitalization required by AR 40–3, para 4–2*d*(2).

h. Copy of memorandum approving COAD when case is that of a soldier previously continued on duty under the COAD program. If available, include a copy of the DA Form 199 related to the previous COAD action.

i. Soldier's request for COAD under chapter 6 of this regulation.

j. Statement of COAD counseling when soldier has 18 but less than 20 years of service and declines to request COAD. (para 6–5).

k. Copy of decision by the GCMCA to waive administrative separation under AR 635–200, chapter 14 for referral of soldier to a PEB. Requirement applies even if a general discharge is directed under AR 635–200, chapter 14. Requirement is not applicable to soldiers pending separation under AR 635–200, chapter 13.

l. Statement from the custodian of the soldier's personnel records confirming whether one of the circumstances below is applicable at the time the soldier is referred to a PEB.

(1) Voluntary or mandatory retirement processing.

(2) Expiration of term of service without reenlistment.

(3) Expiration of term of service with bar to reenlistment.

(4) Involuntary release from active duty due to DA board action.

(5) Qualitative management denial for reenlistment.

(6) Adverse personnel action.

m. Document authorizing soldier's retention beyond scheduled separation or retirement date. (See AR 635–100, AR 635–120, or AR 635–200.)

n. If available, DA Form 2 (Personnel Qualification Record—Part I) and DA Form 2–1 (Personnel Qualification Record—Part 2). If the documents are not available, use alternative sources to obtain the required personnel data if the information is reliable. Examples include requesting the Military Personnel Office (MILPO) to extract a DA Form 2A (Personnel Qualification Record, Parts I and II) from SIDPERS and asking the soldier to furnish the information directly. The use of alternative sources does not relieve the PEBLO of the requirement to initially request a copy of the DA Form 2 and DA Form 2–1.

o. If available, a statement explaining the reason for reduction to the lower grade when the soldier is serving in a grade below the highest grade held. When the information is available, include a statement explaining the circumstance precluding advancement to private or private first class under the provisions of AR 600–200 (NGR 600–200 or AR 140–158 for soldiers in the Reserve Components) if—

(1) The current grade is private (pay grade E–1), and the soldier has completed more than 6 month's service.

(2) The current grade is private (pay grade E–2), and the soldier has completed more than 12 months service.

p. Copy of request for VA hospital bed designation, if applicable.

q. Copy of orders moving patient to a VA hospital for continued hospitalization, if applicable.

r. Copy of letter(s) to proper state authorities, as applicable.

s. Copy of the request for Statement of Service when soldier is a member of the Reserve Components (fig 4–1).

t. Copy of latest DA Form 3686–1 (Army Leave and Earnings Statement).

4–16. Rehospitalization of disabled soldier

A soldier who is rehospitalized while undergoing disability evaluation or awaiting final disposition must be evaluated to decide if his or her condition may change the findings or recommendations of the PEB. If the soldier's condition may change the findings and recommendations, the MTF commander will notify the PEB president. Further adjudicative and review action may be suspended pending resolution. When the soldier has received optimum hospital improvement for disposition purposes, the hospital commander will prepare an addendum to the original medical board. The addendum will be forwarded to the PEB with any other pertinent records unless some other disposition is indicated. The PEB must be notified if other disposition terminates disability processing.

Section IV
Physical Disability Evaluation

4–17. PEBs

a. Purpose. PEBs are established to evaluate all cases of physical disability equitably for the soldier and the Army. The PEB is not a statutory board. Its findings and recommendations may be revised. It is a fact-finding board for the following:

(1) Investigating the nature, cause, degree of severity, and probable permanency of the disability of soldiers whose cases are referred to the board.

(2) Evaluating the physical condition of the soldier against the physical requirements of the soldier's particular office, grade, rank, or rating.

(3) Providing a full and fair hearing for the soldier as required by section 1214, title 10 United States Code (10 USC 1214).

(4) Making findings and recommendations required by law to establish the eligibility of a soldier to be separated or retired because of physical disability (10 USC 61).

b. Composition. PEBs will consist of at least three members (president, personnel management officer, and a medical member). PEB members will be experienced officers who are thoroughly familiar with board procedures. The CG, USAPDA will appoint PEB members from assigned personnel for full-time duty. Part-time members may be appointed by the CG, USAPDA with the consent of the commander having jurisdiction over the individual to be appointed. Part-time members supplement or temporarily replace full-time members, as needed, for the prompt processing of disability cases. The president and personnel management officer will be field grade officers (other than Medical Corps) on active duty in the U.S. Army (other than active duty for training). The medical member will be either an officer of the U.S. Army Medical Corps or a Department of the Army civilian (DAC) physician with previous U.S. Army Medical Corps experience. The medical member must not have served in any capacity with the MEBD that referred the soldier to the PEB. If possible, the voting members should be senior to the person being evaluated. To ensure fair and independent decision making, the PEB president will not rate the other members of the board for purposes of evaluating job proficiency.

c. President of PEB. The appointing authority will name a senior commissioned officer as president of each PEB. The senior nonmedical member will act as president when the president is absent. The president has full responsibility for the board. He will ensure that law, regulations, and DA adjudicative principles are followed.

d. Reserve Component member. When a soldier of the Reserve Components (RC) is being evaluated, one of the PEB members must be a Reserve officer who is otherwise qualified for duty as a member of the PEB.

e. Disqualification. PEB voting members must disqualify themselves if they have had a personal or professional relationship with the soldier being evaluated.

f. Disability evaluation of PEB members. When members of the PEB are referred into the physical disability system, they will be evaluated by other than the PEB to which assigned. After PEB evaluation such cases will be forwarded to USAPDA for review.

g. Female or minority representation.

(1) When requested, the PEB will substitute a female or minority soldier of the same minority group for one of the regular members of the board, if the requested representation is reasonably available. Request for female or minority representation should be made in writing at the time of request for a formal hearing. The substitute must meet the qualifications for regular voting members. The PEB president will determine if the requested representation is reasonably available. The proceedings will include a statement of the request and whether the representation was or was not provided, that is, "Minority (or female) representation was requested and provided" or "Minority representation (or female) was requested and not reasonably available and, therefore, was not provided."

(2) When an enlisted soldier is being evaluated, the PEB will upon written request of the soldier, include enlisted representation if reasonably available. Request for enlisted representation should be in writing at the time of request for a formal hearing. The enlisted representation must be in the ranks of sergeants first class to sergeants major and senior to the soldier being evaluated. The PEB president will determine if enlisted representation is reasonably available. The proceedings will include a statement of the request and whether the representation was or was not provided as described in paragraph g(1) above. When enlisted representation is provided, the PEB will increase to five members, all of whom will have a vote. The fifth member may be enlisted or officer.

h. Counsel. An Army attorney will be appointed as counsel to represent soldiers at formal PEB hearings. The attorney will not be a voting member of the PEB or an advisor to the PEB, but will represent the soldier as required when the soldier requests a formal hearing. The attorney will counsel the soldier until formal disability proceedings are completed. The appointed counsel may also advise PEBLOs of MTFs that refer cases to the PEB.

i. Recorder. The appointing authority will assign a permanent recorder for the PEB. The recorder will be a commissioned officer, warrant officer, or civilian employee of equivalent grade of any branch or career field except those listed below.

(1) Medical Corps.
(2) Dental Corps.
(3) Army Nurse Corps.
(4) Army Medical Specialist Corps.

(5) The Judge Advocate General's Corps.

j. Reporter. The appointing authority will assign permanent qualified reporters to the PEB.

k. Support. A PEB is a tenant of the installation where located. The CG, USAPDA enters into agreements providing for administrative and logistical support with installation and MTF commanders.

4–18. Initial processing

a. Upon receipt of a case by the PEB, the case file will be reviewed to ensure it is complete. If documents are missing, action will be taken to complete the file. When the case file is complete, it may be referred to the board for evaluation.

b. The PEB may return a case to the MTF commander for additional information. However, efforts should be made to resolve all issues without returning the case. When circumstances permit resolution of the problem by discussion, a memorandum of the discussion must be included in the case file as an exhibit. When return of the case to the MTF is necessary, the reason for its return will be clearly stated in the letter of transmittal. Examples of reasons for which a case may be returned are as follows:

(1) Further physical examination, clarification, or preparation of additional records is required.

(2) Additional description and information by the medical board of the soldier's defects and their effect on the soldier's functional ability to perform duty are necessary for proper PEB evaluation of the case.

(3) Further observation, evaluation, and reconsideration by a medical board is required.

(4) Additional information from the command concerning the soldier's ability to perform the duties of his or her office, grade, rank, or rating must be provided for proper PEB evaluation of the case.

(5) The soldier has been AWOL for 10 days or more.

4–19. PEB decisions—common criteria

a. Determinations. The voting members of a PEB make findings and recommendations in each case on the basis of the instructions set forth in paragraphs *b* thru *q* below. The board decides all questions by majority vote. All findings must be based on a preponderance of the evidence. Recommendations must be supported by the findings. In summary, the board determines the following:

(1) Whether the soldier is physically fit or unfit to perform the duties of the soldier's office, grade, rank, or rating.

(2) Whether the disability is of a permanent nature.

(3) Whether the disability meets the criteria established by law for compensation. This determination considers the following questions:

(a) Was the disability incurred or aggravated while the soldier was entitled to basic pay (when the soldier is on active duty for more than 30 days)?

(b) Was the disability the result of misconduct or willful neglect or incurred during a period of unauthorized absence?

(c) Was the disability incurred in LD during a time of war or national emergency or incurred in LD after 14 September 1978?

(d) In the case of a soldier ordered to active duty for 30 days or less or ordered to duty under section 270(b), title 10, United States Code (10 USC 270(b)), was the disability the proximate result of performing active duty or inactive duty training? If the disability results from a disease, was it incurred prior to or after 15 November 1986 (chap 8).

(3) Whether the disability meets the criteria for exemption of disability retired or severance pay from gross federal income.

(4) Whether the disability meets the criteria for Civil Service preference eligible status and exemption from the Dual Compensation Act.

b. Limitations of PEB approval authority. The PEB may approve for the SA all but the following cases:

(1) General and medical corps officers found unfit.

(2) Informal proceedings when the soldier nonconcurs, waives a formal hearing, and submits within the required time frame a statement explaining his or her reasons for disagreement. The PEB will forward the proceedings to USAPDA for review when its consideration of the rebuttal does not result in a change of the PEB findings and recommendations.

(3) Formal proceedings when the soldier nonconcurs with any finding or recommendation, submits within the required time frame a statement explaining his reasons for disagreement, and the PEB does not modify its decision as requested by the soldier.

(4) All cases in which a minority report is submitted.

(5) Cases of members assigned to a PEB.

(6) Any case previously forwarded to USAPDA for review and approval, which was returned to the PEB for reconsideration or rehearing.

c. Additional documents. Any member of the PEB, the soldier, or counsel acting in the soldier's behalf may request additional documents. The PEB president will determine if the requested information is required for proper adjudication of the case. If it is determined that the additional information is required, the PEB president will suspend consideration of the case until an effort has been made to obtain the requested information. If requested documents cannot be obtained, a memorandum for record will be included in the case file reflecting all efforts made to obtain the information. The case will then be adjudicated on the basis of the available evidence.

d. Decision on fitness.

(1) The first and most important determination made by the PEB is whether the soldier is physically fit or unfit to perform the duties of the soldier's office, grade, rank, or rating. All other actions are directly or indirectly tied to this one finding.

(2) The determination of physical fitness will be made by relating the nature and degree of physical disability of the soldier to the requirements and duties that the soldier may reasonably be expected to perform in his or her primary MOS.

(3) Changes in medications or other therapy for chronic conditions do not alone establish deterioration of a chronic condition. Unless recent, significant deterioration has occurred or unexpected adverse results are evident from the new treatment, such changes are not a basis for finding a soldier unfit.

e. Conditions which existed prior to entry in service.

(1) *Unchanged physical defects.* A soldier will not be found unfit because of physical defects that—

(a) Were known to exist at the time of acceptance for military service,

(b) Have remained essentially unchanged since acceptance,

(c) Have not interfered with performance of effective military service.

(2) *Application of accepted medical principles.* After a soldier is accepted for active duty, discovery of an impairment causing physical disability is not conclusive evidence that the condition was incurred after acceptance. Consideration must also be given to accepted medical principles in deciding whether a medical impairment was the result of, or aggravated by, military service while the soldier was entitled to basic pay; or in the case of a Reservist on active duty for 30 days or less, whether the disability was the proximate result of performing active duty or inactive duty training. Accepted medical principles may not be excluded in making these decisions even when there is no other evidence indicating the impairment was present before the soldier's entry on active duty. The soldier's length of service must be considered when determining service aggravation. When a decision or recommendation of a PEB is based primarily on accepted medical principles, the principle must be cited as part of the rationale.

(3) *Service aggravation.*

(a) The PEB may decide that a soldier's physical defect existed prior to service, or inactive duty for training, or resulted from a nonservice connected condition (not in LD). If so, the board must further consider whether military service aggravated the unfitting defect.

(b) If the soldier's military service makes the condition worse or hastens the natural progression of the condition beyond the normal or anticipated rate had he or she not been exposed to such service, a finding of aggravation must be considered. AR 600–8–1, chapter 41, contains guidance on service aggravation. When the

PEB decides that a condition has been aggravated by service, the PEB will consider the degree of disability that is in excess of the degree existing at the time of entrance into service. (app B).

(4) *Conditions not aggravated by service.* Soldiers who are unfit by reason of physical disability neither incurred nor aggravated during any period of service while entitled to basic pay, or as the proximate result of performing active duty or inactive duty training, but which effects duty performance, will be separated for physical disability without entitlement to benefits.

(a) Enlisted soldiers who are eligible for discharge under chapter 5, may be processed under the provisions of that chapter upon their application.

(b) Soldiers who meet the criteria and apply for COAD as set forth in chapter 6 will be processed under the provisions of that chapter.

(c) RC soldiers may request transfer to the Retired Reserve if eligible.

f. Entitlements to benefits. The following rules apply when deciding whether a soldier is entitled to Army disability retired or severance pay.

(1) Sections 1201 through 1203, title 10, United States Code (10 USC 1201 thru 1203) establish the criteria for compensation for soldiers of the Regular Army or soldiers of the RC ordered to active duty for more than 30 days (other than for training under 10 USC 270(b)). These criteria include the following:

(a) Disability was incurred while the soldier was entitled to basic pay.

(b) The disability is not the result of the soldier's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and either the soldier has at least eight years of active federal service for retirement; the disability is the proximate result of performing active duty; the disability was incurred in the line of duty in time of war or national emergency; or the disability was incurred in line of duty after September 14, 1978.

(2) Sections 1204 through 1206, title 10, United States Code (10 USC 1204 thru 1206) establish the criteria for entitlements for soldiers of the RC ordered to active duty for 30 days or less or under 10 USC 270(b) (chap 8).

(3) Decision of the Comptroller General of the United States, B–205953, dated 18 June 1982, has ruled that a member in excess leave status is not entitled to basic pay and, therefore, is not entitled to any disability benefits under the provisions of 10 USC 61.

(4) When a finding of unfitness depends on the combined effect of two or more disabilities, each disability must meet the above eligibility requirements to qualify the soldier for disability retirement or severance pay. If one of the combined disabilities that, in combination, renders the soldier unfit does not meet the requirements for entitlement to benefits, the soldier is not eligible for disability benefits from the Army. For example, a soldier may be found unfit because of a disability determined to be EPTS. That soldier may also have a disability that alone is not unfitting but when considered with the EPTS disability would be unfitting. Such a soldier may not be found unfit because of the first disability (EPTS) and thereafter rated for the second disability (which is only unfitting in combination with the first disability).

(5) If the soldier is entitled to disability benefits, the PEB decides the rating for each compensable disability from the VASRD, as modified by appendix B.

(6) When a soldier is eligible for disability benefits, any other disability is compensable if—

(a) The criteria in (1) and (2) above are met.

(b) The disability, in itself, is unfitting or contributes to the unfitting condition.

g. Application of LD policy.

(1) Normally PEBs accept the validity of informal and formal LD investigations and reports. However, the PEB may question the validity of a favorable LD determination. If so, the PEB will conditionally adjudicate the case as if a favorable line of duty decision is correct. Unless the case is subject to review by USAPDA, the PEB will forward the case to PERSCOM (TAPC–PED–S), requesting a review of the LD determination. The following comment will be made in the remarks section of the DA Form 199. "This PEB questions the validity of the line of duty decision rendered in your case. Your case has been processed assuming the decision is valid. Should an unfavorable line of duty determination result, you will not be eligible for entitlement to benefits under the Army disability system." The soldier will be informed of the conditional processing and advised that final disposition by HQDA will be held in abeyance until the LD decision is resolved.

(2) It is not intended that PEBs act as hearing authorities for soldiers' appeal of LD determinations. AR 600–8–1 sets out LD appeal procedures. However, if during a formal hearing, the soldier or his or her counsel presents evidence of error in the LD finding, the PEB shall consider such evidence. If the PEB believes the evidence warrants reconsideration of the LD finding, a referral of the case to PERSCOM (TAPC–PED–S) for review of the LD determination by TAG is authorized. When forwarding a case for such review, the PEB will explain in the forwarding memorandum its rationale for determining that the new evidence raises a question as to the correctness of the LD determination. The soldier and his or her counsel will be advised of the referral and that the case has been conditionally adjudicated as if a favorable LD decision has been made. If the PEB determines that the evidence does not provide reason to question the LD determination, the PEB will inform the soldier and the counsel of this fact and that the case was adjudicated based upon the approved LD determination.

(3) The deputy commander, PEB president, or alternate PEB president have the authority to make a finding of "in line of duty—not due to own misconduct" in the following categories below when an LD determination has not been made at the time a case is referred to a PEB. This authority may only be used when the PEB is convinced no further investigation is required and the weight of the evidence in the case indicates that the injury was not due to misconduct or willful negligence, was not incurred during a period of unauthorized absence, and that the use of alcohol or drugs was not involved.

(a) Training accidents to include maneuvers and physical training.

(b) Unit organized sports and recreational activities.

(c) Individual jogging and sports activities.

(d) Household accidents.

(e) Slip-and-fall injuries.

(f) Injuries incurred in Vietnam, Cambodia, and in other geographical areas where U.S. Army soldiers are not longer present.

(4) If the case is lacking an LD determination and it does not fall into one of the above categories, the PEB will conditionally adjudicate the case as if a favorable decision has been made. The applicable advisory statement described in para 4–19*l*(2) will be included on the Form 199. The soldier will be informed of the conditional processing and advised that final disposition by HQDA will be held in abeyance until the LD decision is resolved.

h. Deciding permanency of disability.

(1) Based on accepted medical principles, a disability is "permanent", and a soldier who is otherwise qualified will be permanently retired, if—

(a) The defect has become stable so that, with reasonable expectation, the compensable percentage rating will remain unchanged during the following 5-year period.

(b) The compensable percentage rating is 80 percent or more and the disability will probably not improve so as to be ratable at less than 80 percent during the following 5 years.

(2) A soldier is placed on the TDRL if fully qualified for permanent retirement except that the disability "may be permanent." The soldier may not be placed on the TDRL for any other reason. Based on accepted medical principles, a disability will be considered as "may be permanent" if it has not stabilized, and one of the following occurs:

(a) The soldier may recover so as to be fit for duty.

(b) The defect is expected to change in severity within the next 5 years so as to change the compensable percentage rating.

i. Percent of disability. After establishing the fact that a soldier is unfit because of physical disability, and that the soldier is entitled to benefits, the PEB must decide the percentage rating for each unfitting compensable disability. Percentage ratings reflect the severity of the soldier's medical condition at time of rating. The VASRD, as modified by appendix B of this regulation, is used in deriving percentage ratings. The first 31 paragraphs of the VASRD, which provide general policies, do not apply and have been replaced by section I and II of appendix B of this regulation. PEBLOs, raters, and reviewers must be familiar with the VASRD, including introductory paragraphs to sections and italicized footnotes. Appendix B sets forth Army policies (including modifications) on use of the VASRD when rules or ratings provided by the VA schedule are improper for Army use or do not provide a rating basis.

j. Armed conflict—instrumentality of war. Certain advantages accrue to soldiers who are retired for physical disability and later return to work for the Federal Government when it is determined that the disability for which retired was incurred under specific circumstances. These advantages concern preference eligible status within the Civil Service system (section 3501, title 5, United States Code (USC 3501)) and exemption of retired veterans to the provisions of the Dual Compensation Act (section 5532, title 5, United States Code (5 USC 5532)). As part of its findings, the PEB will make an entry in block 10A of DA Form 199 to reflect its determination as to whether the disability was incurred within the specified parameters discussed below.

(1) The disability resulted from injury or disease received in LD as a direct result of armed conflict and which itself renders the soldier unfit. A disability may be considered a direct result of armed conflict if—

(a) The disability was incurred while the soldier was engaged in armed conflict, or in an operation or incident involving armed conflict or the likelihood of armed conflict; while the soldier was interned as a prisoner of war or detained against his will in the custody of a hostile or belligerent force; or while the soldier was escaping or attempting to escape from such prisoner of war or detained status.

(b) A direct causal relationship exists between the armed conflict or the incident or operation, and the disability.

(2) The disability is unfitting, was caused by an instrumentality of war, and was incurred in LD during a period of war as defined by law. The periods of war as defined in 38 USC 101 and 301 are shown below: (The statute does not include the action in Grenada).

(a) World War II. The period beginning 7 December 1941 and ending 31 December 1946 and any period of continuous service performed after 31 December 1946 and before 26 July 1947 if such period began before 1 January 1947.

(b) Korea. The period beginning 27 June 1950 and ending 31 January 1955.

(c) Vietnam. The period beginning 5 August 1964 and ending 7 May 1975. (The "Dominican Intervention" occurred during this period.)

k. Disability compensation excluded from gross income.

(1) *The Tax Reform Act of 1976 (TRA 76).* Prior to the enactment of TRA 76 (section 104, title 26, United States Code (26 USC 104)), military disability retired pay or disability severance pay was excluded from gross income for Federal tax purposes. (Disability retired pay is that portion of retired pay based on a person's disability percentage rating. Disability severance pay is a lump sum payment based on years of service.) With the passage of TRA 76, one of two conditions listed below must be satisfied for military disability retired or severance pay to be exempt from Federal taxation.

(a) On 24 September 1975, the individual was a member (including RC membership) of the armed forces of any country, the National Oceanic and Atmospheric Administration (NOAA and formerly the Coast and Geodetic Survey), the U.S. Public Health Service (USPHS), or was under binding written agreement to become such a member. (Soldiers retired or separated by reason of disability on or before the cited date are not affected by TRA 76.)

(b) The disability pay is awarded by reason of a combat-related injury. Within the meaning of 26 USC 104, combat-related injuries cover those disabilities attributable to the special dangers associated with armed conflict or the preparation or training for armed conflict.

1. A soldier may be performing extrahazardous service even if not directly engaged in combat. Extrahazardous service includes but is not limited to the following activities: Aerial flight duty, parachute duty, demolition duty, experimental stress duty, and diving duty.

2. Conditions simulating war include, but are not limited to, the following activities: performance of tactical exercises such as the squad or platoon in the assault; airborne operations; leadership reaction courses; grenade and live fire weapons practice; bayonet training; hand-to-hand combat training; repelling; and negotiation of combat confidence and obstacle courses.

3. Unlike the provisions for exemption from the Dual Compensation Act (5 USC 5532) and the provisions for Civil Service retention preference (5 USC 3501), the injury resulting from an instrumentality of war need not have occurred during a period of war as defined by law.

(2) *Entries on DA Form 199.* The entries made on DA Form 199, blocks 10B and 10C, concern disability compensation excludable from gross income.

(a) If the PEB can establish the fact (from available records) that the soldier was or was not a member or obligated to become a member of one of the designated organizations on 24 September 1975, the board will make the proper entry in block 10B. If such a decision cannot be made, the PEB will enter a statement after the last entry in block 8 to reflect that fact and leave block 10B blank.

(b) In block 10C, the board will record its determination of whether the injury was combat-related as defined by 26 USC 104.

(3) *VA compensation.* VA compensation is exempt from income tax. An individual may waive disability retired pay to receive VA compensation, or receive a combination of the two, or receive military retired pay and exclude from his or her gross income an amount equal to the VA entitlement. The Army does not make the determination as to the probable VA disability compensation. The individual must apply to the VA and receive a disability rating.

l. Recording of rationale and advisory statements.

(1) *Rationale.* The PEB will include the rationale for the findings and recommendations on the DA Form 199 along with a statement of the reasons for finding a soldier fit or unfit, and if unfit, the basis for the rating. The rationale will support specifically, the finding that the soldier was, or was not, capable of performing the duties of his or her office, grade, rank or rating. A significant variance may occur between the disability described in block 8 of DA Form 199 and diagnoses or degree of impairment reflected in the MEBD proceedings. If so, explain the variance completely in block 16.

(2) *Advisory statements.* The DA Form 199 will inform the soldier of legal or administrative requirements that impact on the soldier's disability benefits in the situations described below.

(a) When the recommendation of the PEB is placement or retention on the TDRL: "Failure to report for a scheduled periodic examination or to inform PERSCOM of a change in address will result in the suspension of retired pay. Address changes must be reported to: Commander, PERSCOM, ATTN: TAPC–PDB, 2461 Eisenhower Avenue, Alexandria, VA 22331–0477."

(b) When a case has been adjudicated pending completion of a LD: "Your case has been conditionally adjudicated pending the receipt of a favorable LD determination. Should an unfavorable LD determination result, you will not be eligible for benefits under the Army disability system."

(c) When a soldier has a rating of less than 30 percent and has at least 20 qualifying years for retirement for non-regular service: "You have the option of accepting discharge with disability severance pay and forfeiting retirement for non-regular service; or you may request transfer to the Retired Reserve and receive retired pay at age 60. According to sections 1209 and 1213, title 10 United States Codes (10 USC 1209 and 1213), you will forfeit all rights

to retired pay if you accept severance pay instead of transfer to the Retired Reserve."

m. Minority reports. If a voting member of the PEB disagrees with the findings and recommendation of the other members, that member may prepare a minority report explaining wherein and why he or she differs with the other members. The minority report will be included in the record of the proceedings and referenced in the remarks section of DA Form 199. A copy will be provided to the soldier and his or her counsel.

n. Continuances. A PEB may continue a hearing upon its own motion, at the request of the recorder, or at the request of the soldier or the soldier's counsel, if the board determines a continuance is needed for a full and fair hearing. Examples of proper reasons for continuance are the need for further medical evaluation and the need to obtain additional records, reports, or statements as evidenced in the case. When a continuance is granted, only one DA Form 199 will be used. Data such as the date, fact, and time of recess and reconvening, and changes in membership will be recorded. If a change of membership is involved, the record will show the reason for the change and that the new member became familiar with the case before proceeding with the hearing.

o. Recording, assembly, and transmittal of reports of proceedings.

(1) The findings and recommendations of the PEB are recorded on DA Form 199. This form is distributed on a limited issue basis from the US Army Publications Distribution Center to the PEB's. Instructions for completion of the form are at appendix D. The recorder will initial erasures and corrections involving any substantive matters in the proceedings.

(2) Records of PEB proceedings will be assembled as indicated in table 4–1.

p. Reconvened and improperly constituted boards.

(1) *Reconvened board.* Before final action on a case, the proceedings of a properly constituted PEB may be returned to the same board for further consideration of findings, correction of errors, or other reasons. When proceedings are returned, the reconvened board will include as many members of the original PEB as possible. However, proceedings may be conducted properly even though no members of the original board are available. The board must be otherwise properly constituted. The new members must have acquainted themselves with the records of the case before reconvening the board. When reconvening the board with the same members would be prejudicial to the soldier, a new board with all new members will be convened. The case may be transferred to another PEB for this purpose. Proceedings will be the same (formal or informal) as were used at the original hearing and any transcript of the prior hearing will be included with the original and USAPDA copy of the case. If a formal hearing is held, the soldier (his or her next-of-kin or legal guardian if he or she represents the soldier's interests) will be notified of the new hearing date. Should the PEB reconsider the case and change its findings or recommendations, a new DA Form 199 will be prepared and referred to the soldier for his or her election. Despite the procedures employed, the soldier (next-of-kin or legal guardian) will be notified of the results if a change is made in the disposition or benefits from those originally recommended. The soldier will be afforded the opportunity to consult with counsel and to rebut any change. When new findings are made by the PEB, they become the only findings on which later action will be taken. If the reconsideration results in no change, a new DA Form 199 will not be prepared but the fact that the case was reconsidered will be reflected in block 16.

(2) *Improperly constituted boards.* Proceedings of an improperly constituted PEB are null and void. Whenever a hearing is discovered to have been conducted by an improperly constituted PEB, the record of proceedings less the DA Form 199 will be forwarded for the new hearing by a properly constituted board.

q. Action when soldier is AWOL or dies during disability processing.

(1) If a PEB receives information that a soldier whose case is in the disability system is AWOL, case processing will be suspended. If the soldier returns to military control within 10 days, processing may be resumed. Processing will include consideration of any new or increased disability incurred during the period of AWOL. Should the soldier not return to military control within 10 days, the case file will be returned to the MTF. If information that a soldier is AWOL is received after the case file has been forwarded for disposition, the PEB will promptly notify the USAPDA.

(2) If information is received that a soldier being processed for physical disability has died, disability processing will be discontinued and the case file will be returned to the MTF.

r. Disposition. PEB's will recommend disposition of the case according to the rules stated in table 4–2.

4–20. Informal board

a. Procedure. Each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. The rapid processing intended by the use of informal boards must not override the fundamental requirement for detailed and uniform evaluation of each case. All evidence in the case file must be closely examined and additional evidence obtained if required. The PEB will consider each case using the policies of chapter 3 and the criteria provided in paragraph 4–19.

b. DA Form 199. The findings and recommendations of the informal PEB are recorded on DA Form 199 according to the procedures described in appendix D. If the soldier is on active duty, the original form, signed by the president of the PEB, the soldier's copy, and the MTF's copy will be promptly forwarded to the MTF commander concerned using the fastest means of transmission available. If the DA Form 199 is not received by the PEBLO, the PEB will prepare new copies and forward them promptly.

c. Soldier's election.

(1) DA Form 199, block 13, lists the election options available to the soldier for informal determinations. These include the following:

(a) Concurrence with the findings and recommendations and waiver of a formal hearing.

(b) Nonconcurrence with the findings and recommendations; submission of a rebuttal explaining the soldier's reasons for nonconcurrence; and waiver of a formal hearing.

(c) Demand for a formal hearing with or without personal appearance.

(d) Choice of counsel if a hearing is demanded.

(2) Soldiers indicate their elections by checkmark in block 13 and sign and date the original and MTF copies of DA Form 199.

(3) The election must be received at the PEB within 10 days from the soldier's receipt of the informal findings. See paragraph 4–20*f* below for procedures when elections and rebuttals are received after the required time.

d. PEBLO. In all informal cases, the PEBLO of the MTF having control of the soldier will be the counselor for the soldier. As such, the PEBLO is primarily concerned with the soldier's interests. The PEBLO should consult with, and obtain advice as needed from the local legal office, the legal counsel at the nearest PEB, or the Agency Judge Advocate. Upon receipt of the informal proceedings, the PEBLO will accomplish the following actions:

(1) Counsel the soldier according to appendix C. The soldier will be made fully aware of the election options available to him or her, the processing procedures, and the benefits to which he will be entitled if separated or retired for physical disability. As needed, the PEBLO should consult with the local finance officer and the installation Retirement Services Officer (RSO) when counselling on benefits. DA Form 5892–R (PEBLO Estimated Disability Compensation Worksheet) will be provided to the soldier as an estimate only of disability compensation. DA Form 5892–R will be locally reproduced on 8½ and 11 inch paper. A copy of the form for reproduction purposes is located at the back of this regulation.

(2) After the soldier completes block 13, the PEBLO will complete block 14 of the original and MTF copies of DA Form 199. If the soldier fails or declines to make an election, the PEBLO will prepare a brief statement describing the circumstances, indicating

the date the soldier was first informed of, and counselled on, the informal board's action. The PEBLO will then forward the DA Form 199 and the statement to the PEB.

(3) In deleterious-type cases or others involving mental incompetence, the PEBLO will contact the next-of-kin or legal guardian (if one has been appointed) and request that person to act in behalf of the soldier. If one cannot be located, the PEBLO will prepare a statement reflecting all actions taken to identify and contact a responsible person to act on behalf of the soldier and forward the statement for inclusion with the case. (See para 4–15*a* for guidance on establishing the next of kin.)

(4) If soldier elects formal hearing, forward soldier's medical records to the PEB if they were not submitted with MEBD proceedings for the informal PEB.

(5) Complete DA Form 5893–R (PEBLO Counseling Checklist/Statement). This form will be used to document counseling. At the time of the soldier's final election to PEB determinations, the PEBLO and soldier will sign the form. A copy will be forwarded to the PEB for inclusion in the record of proceedings. DA Form 5893–R will be locally reproduced on 8½ and 11 inch paper. A copy of the form for reproduction purpose is located at the back of this regulation.

e. Disposition by PEB. Upon receipt of the soldier's completed DA Form 199 from the PEBLO, the PEB will take the following actions as applicable.

(1) If the soldier accepts the findings and recommendations of the informal PEB, the recorder will assemble the records as required by table 4–1. The proceedings will be approved for the SA and forwarded to PERSCOM for final disposition.

(2) If the soldier nonconcurs with the findings without submitting a rebuttal, the PEB will approve the proceedings for the SA and forward the case to PERSCOM for final disposition.

(3) If the soldier fails or declines to make an election within the prescribed time and the PEB has not received from the PEBLO the statement described in 4–20*d*(2) above, the PEB will contact the PEBLO to confirm the status of the soldier's election. When the PEBLO confirms the soldier has been informed of the findings and recommendations but has not made an election, the PEB will proceed as if the soldier has accepted the findings and recommendations. The proceedings will be forwarded to PERSCOM for final disposition. The forwarding memorandum will document the circumstances resulting in the waiver of election (fig 4–2). The PEB will forward a copy of the memorandum to the soldier through the PEBLO.

(4) In deleterious-type cases or those involving mental incompetence in which the next-of-kin or guardian fails to make an election on behalf of the soldier, the PEB will appoint legal counsel to act on behalf of the soldier. The counsel will prepare a memorandum documenting the results of his or her action (fig 4–3).

(5) If the soldier nonconcurs and submits a statement or rebuttal to the recommended findings without asking for a formal hearing, the PEB president will respond in writing to the soldier, normally within 3 days. When the soldier's rebuttal does not result in a change to the PEB's findings, the response will acknowledge receipt of the rebuttal and explain the PEB's decision to adhere to the earlier findings. The soldier will be advised that the rebuttal will be included in the case file and considered in the review action by USAPDA. A copy of the PEB president's letter will be included in the case file.

(6) If the soldier nonconcurs with the findings and recommendations with a statement of rebuttal and demands a formal hearing, the PEB may reconsider their findings and recommendations in the light of the soldier's statement of rebuttal. Should the PEB agree with the soldier and modify their findings and recommendations, the PEB will initiate a new DA Form 199 informing the soldier through the MTF commander of the results. If the soldier accepts them, the case will be processed as in paragraph 4–20*e*(1), above. Otherwise, the case will be scheduled for a formal hearing. The PEB will inform the appointed legal counsel of the pending action. If the soldier (in demanding a formal hearing) has elected to be represented by individual counsel, the appointed PEB counsel in coordination with the PEB president will make arrangements for the hearing with the individual counsel. If the soldier is at some location other than that of the PEB, the commanding officer will promptly issue necessary TDY orders for travel of the soldier using locally available funds.

(7) Whenever more than one hearing (including a reconsideration) is held on a case, a copy of the DA Form 199 for each hearing will be attached to the final DA Form 199 to reflect and explain the multiple considerations. For example, a copy of an informal board's DA Form 199 attached to the copy of the formal board's DA Form 199 will record the soldier's demand for a formal hearing without further comment or explanation.

f. Rebuttals. Rebuttals received after the allotted time or after initial election of concurrence.

(1) In those instances when a rebuttal from a soldier is received after the allotted time for submission of a rebuttal, or after a soldier has initially agreed with the findings and recommendations of the PEB and the case has been approved for the SA and forwarded to PERSCOM for final disposition, the PEB will respond to the soldier as set forth below.

(a) If the rebuttal does not result in a change to the findings and recommendations, the PEB will advise the soldier in writing that no change is warranted and the rebuttal, together with the reply, has been forwarded to PERSCOM for inclusion in the case proceedings. The soldier retains the right to one formal hearing prior to final disposition by PERSCOM if the soldier is otherwise entitled and requests the hearing.

(b) When the rebuttal results in a change to the PEB's findings or recommendations, the PEB will recall the case and effect the necessary changes by preparing a new DA Form 199. The new findings will be furnished to the soldier. Normal processing procedures apply.

(2) Notwithstanding the above, when additional medical evidence or an addendum to the MEBD is received after the PEB has forwarded the case and the PEB determines that such evidence would change any finding or recommendation, the case will be recalled by the PEB and a new DA Form 199 issued. Normal procedures apply following the preparation of a new DA Form 199.

4–21. Formal board

a. Formal hearing. A soldier is entitled to a formal hearing if requested after informal consideration by a PEB. The soldier may waive this right by concurring in the findings and recommendations of the informal board. If the soldier is incompetent, the right to waive a formal hearing may be exercised by next-of-kin or legal counsel. After demanding a formal hearing, a soldier may later withdraw the demand and accept the informal board's decision, in which case, the counsel will inform the PEB. The case will be forwarded to PERSCOM. The soldier must be counseled on the right to demand a formal board. If the soldier demands a formal hearing, he or she is entitled to counsel as provided in paragraph 3–10*d* and *h* below. A formal board will be convened when—

(1) A soldier (next-of-kin or legal guardian) demands it after electing not to accept the findings and recommendations of an informal board.

(2) The case file has been forwarded to PERSCOM for issuance of retirement or separation instructions and the soldier demands a formal hearing before PERSCOM action is final.

(3) After an informal board, the president of the PEB decides that a formal hearing is in the best interest of the soldier or the Army.

b. Formal board membership. A formal hearing will normally be conducted before a board composed of the same members who considered the soldier's case informally. The purpose of a formal hearing is to afford the soldier the opportunity to present views, testimony, and new evidence. The board members must consider these matters with open minds despite their earlier decisions. For this reason the challenge of a voting member, solely because the member took part in the informal board, ordinarily should be denied. If the soldier is able to establish that a member of the formal

board is not impartial, that board member will be replaced. If a replacement for the successfully challenged member is not available, the CG, USAPDA will appoint another member to the PEB panel for the formal hearing. If an original voting member of the informal board is not available for the formal hearing, that member may be replaced with another who is qualified to sit. The new member must become thoroughly acquainted with all pertinent records before the formal hearing is convened.

c. Hearing room. Locally available space will dictate the arrangement of the hearing room. The minimum requirement gives room for three board members, the recorder, the soldier whose case is to be heard, counsel for the soldier, and the reporter. Proper decorum consistent with the purpose of the hearing is important; however, every effort should be made to maintain a relaxed and courteous environment. Avoid any implication of adversary proceedings in the case.

d. Scheduling hearing. The president of the PEB will establish the date, time, and place of the hearing subject to the following:

(1) The soldier (next-of-kin or legal guardian) will be allowed a minimum of 3 working days to prepare for the hearing.

(2) The soldier may waive the 3-day period or any portion of it.

(3) If more time is required to prepare the case, the soldier will forward a written request for an extension to the president of the PEB. The president, in turn, will endorse the request to the soldier indicating approval or disapproval and forward a copy of the response to the soldier's counsel. In deciding whether to approve the request, the president must consider whether the soldier would be unable to receive a full and fair consideration of his case if a delay were not granted. The date and time of any rescheduled hearing will be specified in the endorsement. If, in the judgment of the PEB president, the soldier or counsel are attempting to delay the hearing without valid reasons, the formal hearing will be held with or without the presence of the soldier and selected counsel.

(4) Ample travel time will be allowed if the soldier will be represented by his or her next-of-kin or legal guardian in those cases where the member is mentally incompetent or the physician determines that divulging information to the soldier would be harmful to his or her well being. Funded travel is authorized under the provisions of C6000 of the Joint Federal Travel Regulation. The MTF will issue invitational travel orders authorizing travel for one person.

(5) The PEB will—

(a) Notify the soldier (next-of-kin or legal guardian) of the scheduled hearing. Figures 4–4 and 4–5 show notification to the soldier based on soldier's selection of counsel. Figure 4–6 shows notification to the next-of-kin. DA Form 5890–R (Acknowledgment of Notification of Formal Physical Evaluation Board Hearing) will be enclosed with the letter of notification to the soldier or next-of-kin. DA Form 5890–R will be locally reproduced on 8½- and 11-inch paper. A copy of the form for reproduction purposes is located at the back of this regulation.

(b) Notify the board members, witnesses, counsel, reporter, and interpreter (if needed) of the date, time, and place of the hearing.

(c) Arrange for the attendance of all available military witnesses or, under appropriate circumstances, obtain depositions and other evidence.

(d) Ensure that the soldier's records are furnished to medical witnesses for review before hearing.

(e) Present all available evidence and witnesses to the board.

e. Soldier's rights.

(1) Certain rights accrue to a soldier whose case is under evaluation by a PEB. A counsel must be aware of these rights. When communicating with the soldier (next-of-kin or legal guardian), counsel must ensure the soldier knows and understands the rights that apply to the circumstances of the soldier's case. Although certain rights apply in all cases, some are particularly applicable during formal hearings, especially when the soldier is present at the hearing. These rights are described below:

(a) The Privacy Act of 1974 applies to information of a personal nature requested of the soldier during a formal hearing.

(b) The soldier may testify as a witness under oath in his or her own behalf, in which case the soldier may be cross-examined as any other witness.

(c) The soldier or the soldier's counsel may introduce witnesses, depositions, documents, or other evidence in his or her own behalf, and cross-examine witnesses who have been examined by the PEB including witnesses who have specific knowledge of the soldier's case and whose conversations have been summarized for the record.

(d) The soldier or soldier's counsel may make unsworn statements, orally, or in writing, or both, without being subject to cross-examination.

(e) The soldier may remain silent. The choice not to make a statement or answer questions is not to be considered adverse to the soldier's interests.

(2) Appointed counsel will use DA Form 5891–R (Acknowledgment of Counseling on Legal/Procedural Rights) to counsel the soldier on his or her procedural rights and to provide a record of such counseling. DA Form 5891–R informs the soldier of the rights described above, and requests acknowledgment by soldier's signature. A copy will be included in the record of formal proceedings and provided to the soldier. DA Form 5891–R will be locally reproduced on 8½- and 11-inch paper. A copy of the form for reproduction purposes is located at the back of this regulation.

f. Failure to appear. If a soldier who has elected to appear at a formal hearing fails to do so, the president of the PEB will take the following actions:

(1) Suspend the hearing and determine the reason for the soldier's absence. Subject to the provisions of (2) below, if no reasonable excuse is apparent for the soldier's absence, the hearing may proceed. The president will include in the record a statement of circumstances. Should the soldier later appear before the hearing has been concluded, the president may recess the hearing. He may permit the counsel to brief the soldier on proceedings up to that point. The hearing will then proceed.

(2) A formal hearing may not proceed if the soldier's individually selected counsel (if the soldier has one and who has been determined to be available to represent the soldier) is absent, unless the appointed counsel is present in open session.

g. Waiver of appearance. A soldier may waive, in writing, his or her appearance at a formal hearing. In such a case, the appointed counsel (or individually selected counsel if the soldier has one) must be present. The counsel will represent the soldier during all open sessions of the hearing, and perform the duties required of counsel during post-hearing actions.

h. Counsel. For formal hearings at which the soldier will be present, each soldier will be represented by counsel unless representation is specifically declined in writing.

(1) *Representation.* The appointed PEB counsel, other military counsel if reasonably available and released by the counsel's command for this purpose, or civilian counsel of the soldier's choice will represent the soldier. A soldier may arrange for civilian counsel of the soldier's own choice at no expense to the Government. The soldier may present his or her case without counsel, in which case the soldier must conform to all procedural rules. The soldier must sign a statement specifically excusing appointed PEB counsel. The statement will be made a part of the record. The PEB president will require appointed counsel to remain in the hearing room even if counsel is released by the soldier in writing, except when counsel of choice is present. Appointed counsel will act as co-counsel when the soldier chooses another counsel unless excused by the soldier.

(2) *Duties.* The counsel safeguards the legal rights of the soldier. He or she remains in attendance at all open sessions of the board unless excused, in writing, by the soldier. Counsel's duties are to—

(a) Confer with the soldier and advise the soldier of his or her rights.

(b) Prepare the soldier's case for presentation to the board.

(c) Request the PEB arrange for the attendance of available witnesses or obtain their depositions or other specifically desired evidence in support of the soldier's position.

(d) Examine and cross-examine witnesses and otherwise assist the soldier in presenting his or her case.

(e) Submit oral or written arguments.

(f) Counsel the soldier on the board's findings.

(g) Upon request, assist in the preparation of the rebuttal.

(3) Mentally incompetent and deleterious-type cases. The appointed legal counsel will serve as counsel when the next-of-kin (or legal guardian) acts for the soldier in a case of this type unless replaced by special counsel. Funded travel is authorized as described in paragraph *d*(4) above. In the absence of the next-of-kin, the PEB counsel must be present, even though special counsel is representing the soldier, unless excused by the next-of-kin or special counsel in writing.

i. Records review by soldier. All records assembled for use during the hearing, including those furnished by HQDA and by other official sources, will be made available to the soldier and his or her counsel for review. The assembled records will include memoranda of conversations with individuals who have specific knowledge of the soldier's case, including, but not limited to, the soldier's chain of command or treating physician. In cases involving mental incompetence or deleterious-type cases, only the counsel and, if present, the next-of-kin or legal guardian may examine the records. The soldier (next-of-kin or legal guardian) and counsel may make notes from the records to prepare the soldier's case properly. However, the PEB president may withhold from civilian counsel, next-of-kin, or legal guardian, any security information.

j. Challenges.

(1) The recorder will announce the names and grades of the members of the board present. Any member of the board or counsel who is aware of any facts that the member believes to be grounds for challenge against himself or any other member, including the president of the board, will state such facts. If it appears a member is subject to challenge for cause, and the fact is not disputed, the member will be excused and replaced. The recorder is not subject to challenge.

(2) The statutory right to a full and fair hearing includes the right to challenge for cause. Grounds for challenge may be made by a statement of any fact indicating any member should not sit as a member of the board in the interest of having the hearing and later proceedings free from substantial doubt as to legality, fairness, and impartiality. Not more than one member will be challenged at one time. Later challenges may be made against other members of the board after a ruling is made on a previous challenge.

(3) A challenge may be withdrawn at any time. If a challenge is not withdrawn, the board will give the soldier the opportunity to introduce evidence, examine the challenged member under oath, and make an argument as to why the challenge should be granted. The PEB will decide if the challenge should be granted by majority vote of the remaining members following discussion in closed deliberation. If the challenged member is the president of the board, the next senior nonmedical board member will preside in the case. A tie vote will sustain the challenge. Upon reopening the board, the president of the board will announce whether the challenge has been sustained. This announcement will be reflected in the record. If the challenge is sustained, the proceedings will be suspended until a replacement for the challenged member is provided.

k. Verifying soldier's rights. When the hearing begins, the PEB president will assure himself or herself that the soldier has been informed of his or her rights. If it appears the soldier has not been so informed, the PEB president will recess the hearing and allow the counsel time to advise the soldier.

l. Proof of facts.

(1) *General.* Facts and circumstances relevant to the matter under investigation are most often proved or disproved, either directly or through inferences, by real (tangible) evidence, documentary evidence, testimony or statements of witnesses, and matters of which official notice may be taken without proof.

(2) *Real evidence.* A tangible object (for example, brace, crutch) which is material and relevant to the subject of the inquiry is real evidence. Whenever an item of real evidence would aid in establishing the existence or nonexistence of a fact, that item, or a photograph, description, or other suitable reproduction of it, should be included in the report of proceedings, together with any statement of witnesses necessary to identify the item and verify the accuracy of the reproduction. Board members should not overlook their own observations respecting real evidence. If a board member observes an item and gains impressions not adequately portrayed by a photograph, chart, or other representation, he or she should ensure that an appropriate description of the item is made and included in the report.

(3) *Documentary evidence.* Documentary evidence consists of records, reports, letters, and other written, printed, or graphic materials which indicate the existence or nonexistence of a fact. Boards should be alert to discover all such evidence relevant to the matter under inquiry and to include the originals or copies in the record.

(4) *Testimony or statements of witnesses.* Oral or written accounts of matters within the personal knowledge of individuals usually constitute an indispensable part of the evidence considered by a board. Because, unlike real or documentary evidence, such evidence is not fixed as to form or substance, obtaining a witness' testimony or statement requires careful advance analysis of relevant matters of which the witness is expected to have knowledge and preparation of questions to elicit that knowledge without distorting its substance. A preliminary interview of the witness to clarify what information can be elicited is often appropriate, especially by the soldier's counsel and the recorder. Voting members, however, may not conduct separate interviews of witnesses.

(5) *Official notice.* Some facts are of such common knowledge that there is no need to obtain specific evidence to prove them (for example, general facts and laws of nature; general facts of history; location of major elements of the Army; organization of the Department of Defense and its components).

m. Rules of evidence.

(1) *General.* Proceedings of the PEB are administrative and not judicial in nature; therefore, a board is not bound by the rules of evidence prescribed for trials by court-martial or for court proceedings generally. Accordingly, except as limited in (3) below, anything which in the opinions of reasonable persons is relevant and material to an issue, may be accepted as evidence. All evidence will be given such weight as is warranted under the circumstances.

(2) *Best evidence.* A board is not precluded from considering any evidence merely because there may be better evidence available to prove the same fact. Generally, however, an effort should be made to obtain the best evidence reasonably available, considering factors such as time, importance, and expense as well as the availability and reliability of substitute evidence. Although hearsay evidence may always be accepted, the personal statement or recent deposition of a witness is usually better evidence than an earlier written statement by that witness or having someone else state what the witness said.

(3) *Limitations.* Administrative proceedings governed by this regulation generally are not subject to exclusionary rules precluding the use of relevant evidence. However, the following does apply with regard to evidence which may be accepted and considered in a board.

(a) Privileged communications. The rules concerning privileged communications between client-attorney, and penitent-clergyman, apply to PEBs.

(b) "Off the record" statements. Findings and recommendations of the board must be supported by evidence contained in the record. Accordingly, witnesses should not be allowed to make statements "off the record" to board members in formal proceedings.

(c) Statements regarding disease or injury. Section 1219, title 10, United States Code (10 USC 1219) provides that a soldier may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that the soldier has suffered. Before any signed, written statement against the soldiers interest may be considered, it must be determined that such a statement was made voluntarily. Any statement signed after the soldier has

been advised of the right not to make a statement is presumed to be voluntary and is valid for consideration. (This restriction does not include oral testimony.)

(d) Self-incrimination. Military witnesses will not be compelled to incriminate themselves, or to answer any question to which the answer might tend to incriminate them, or to make a statement or produce evidence if the statement or evidence is not material to the issue and might tend to degrade them (article 31, Uniform Code of Military Justice (UCMJ, Art 31)). Any witness not subject to the UCMJ, will not be required to make a statement or produce evidence which would deprive them of their rights under the Fifth Amendment of the United States Constitution.

n. Administering oaths. Voting members of a PEB, the recorder, counsel, and others who regularly take part in PEB evaluations and have no vested interest in the outcome of cases considered need not be sworn before performing their duties. Officers are required in their oath of office to "carefully and diligently discharge the duties of the office to which appointed." Civilian employees are sworn to perform their duties faithfully. A high standard of performance is to be expected, therefore, of individuals assigned to these duties.

(1) A soldier appearing in his or her own behalf is not sworn unless the soldier elects to testify under oath. If the soldier chooses to be sworn, the oath or affirmation prescribed in (2) below will be used.

(2) Witnesses will sometimes have a vested interest in a case, often adverse to the soldier's or the Army's interest. Because this partiality is not evident initially, any person who is to testify will first be sworn. In deleterious-type cases or those involving mental incompetence, the next-of-kin or guardian will be sworn. If the witness desires to affirm rather than swear, the words "so help you God" will be omitted. The recorder will administer the following oath:

> "Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be truth, the whole truth, and nothing but the truth? (So help you God)?"

o. Attendance of witnesses. The board will summon available witnesses needed for the hearing. Either the soldier or the PEB may request attendance of a witness. Whether a witness is available depends on the conditions described below.

(1) Members and employees of the armed services located at the same installation as the PEB are usually available. If available, the commander or supervisor will ensure that they appear.

(2) Members and employees of the armed services located at other installations may be available. The PEB president will decide whether the presence of such witnesses is required for a full and fair hearing. If the PEB president decides the testimony of such a witness is needed and that alternative forms of evidence cannot be substituted for the personal presence of the witness, the commander or supervisor must ensure the witness is present.

(3) The soldier is responsible for arranging for the attendance of witneses who are not members or employees of the armed forces. Such witnesses attend hearings at no expense to the Government. Additionally, the soldier is entitled to present the testimony of any other soldier or employee of the Army, or other armed services, whom the soldier obtains at no expense to the Government, and whom is given leave to attend.

(4) Witnesses summoned by the PEB who are members or employees of the armed services are entitled to travel expenses and per diem allowances authorized by Joint Federal Travel Regulations. The commander of the command to which the witness belongs is responsible for these costs. If command funds are not available, and the PEB president still considers personal testimony by the witness essential, funds available to the PEB may be used to pay the costs.

(5) The PEB president may decide that the witness need not appear in person to testify. If so, he or she may authorize the soldier's military counsel to take the deposition at the witness' location. The counsel may take the deposition either personally or by arranging with the soldier's representative to do so. If the counsel is to take the deposition in person and TDY is involved, the counsel will provide the PEB president a summary of the information he or she expects to discover and how it relates to the case. if the PEB president approves the TDY, the PEB will pay costs from travel funds available to the PEB. The deponent may be at a distance so that the military counsel is unable to take the deposition in person. If so, the soldier's counsel may request assistance from the staff Judge Advocate nearest the deponent's location. Should expenditure of per diem or travel funds be involved, the counsel will make his or her request through the PEB president who is considering the case. A summary of the information to be discovered will be included. If no expenditure of public funds is involved, the receiving PEB president will approve the request and refer it for action to the appropriate Staff Judge Advocate. If the requested action involves payment of TDY costs, expenses will be paid from funds available to the PEB president requesting the deposition. A counsel may believe that a deposition is required and it cannot be obtained as described above. If so, the counsel may make a request to the officer exercising GCMCA over the installation at which the PEB is located. If the GCMCA approves taking the deposition, he or she will refer the request to the GCMCA in the area in which the deponent is located for action. The deponent will return the deposition through the referring GCMCA. Depositions may be taken on oral or written questions. Depositions will be prepared as provided in rule 703, Military Rules of Evidence, Manual for Courts-Martial, United States, 1984.

p. Procedural objections. The soldier (the soldier's next-of-kin, legal guardian, or counsel) may object to any actions taken or proposed to be taken by the board or to the admission of evidence. When an objection is made, it will be recorded as part of the record. The president of the board will rule on objections. If any board member dissents from the president's ruling, however, the board will be closed for deliberation and the objection will be ruled upon by majority vote. Upon reopening of the board, the ruling of the board will be announced in open session and recorded as part of the record.

q. Closed deliberations. Upon completing an open hearing, the board is closed for deliberation. The voting members decide the findings and recommendations according to policies stated in chapter 3 and criteria in this chapter.

r. Findings and recommendations.

(1) The board, upon completion of deliberations, will reopen and inform the soldier of the findings and recommendations. (In cases of mental incompetence or in deleterious-type cases, the board will inform the soldier's counsel, next-of-kin, or legal guardian.) If the soldier (soldier's next-of-kin or legal guardian) is not present at the hearing, notice of the findings and recommendations will be provided to them in writing. (Figs 4–7 and 4–8 respectively show a sample notification to the soldier and the next-of-kin.)

(2) The PEB may change, modify, or correct its findings and recommendations at any time before the record of proceedings is delivered to the CG, USAPDA or Commander, PERSCOM. When such changes are made in previously announced findings or recommendations, the PEB will inform the soldier (soldier's next-of-kin, counsel, or legal guardian) in writing, of the proposed change. The PEB will afford the soldier the opportunity to accept or rebut the proposed change.

(3) When the soldier personally appears before the board, the DA Form 199 will be prepared immediately following the conclusion of the hearing and a copy provided to the soldier. The soldier will be afforded the opportunity to make an election at this time but may choose to take the full time-period permitted for reaching a decision. When the soldier does not appear at the hearing, the DA Form 199 and election form will be transmitted to the commander of the applicable MTF within 24 hours of the adjournment of the hearing. The actual date of delivery to the soldier will be documented in the case file.

s. Soldier's response. DA Form 199–1 (Election to Formal Physical Evaluation Board Proceedings) will be provided to the soldier as the election statement to formal proceedings. This form is distributed from the Army Publication Center solely to PEBs.

(1) The DA Form 199–1 and the letter of rebuttal must be received at the PEB within 10 days from the soldier's receipt of the formal findings unless the President of the PEB approves a request

for an extension of time. A request for an extension must be received within 10 days of the soldier's receipt of the DA Form 199. If the request for extension is denied, the original time frame remains applicable. A copy of the PEB's decision on the request for extension will be sent to the soldier's counsel.

(2) If the soldier's statement of election or a request for an extension of time is not received within the required time, the PEB will deem that the soldier has waived the right to an election. The proceedings will be forwarded to PERSCOM for final disposition. The forwarding memorandum will document the circumstances resulting in the waiver of election (fig 4–2). The PEB will forward a copy of the memorandum to the soldier through the PEBLO.

(3) A soldier who fails to make an election or to submit a statement of rebuttal to formal proceedings within the allotted time if he or she is in disagreement with the findings and recommendations, will forfeit the opportunity for USAPDA review of his or her case (para 4–21*t* below).

t. Rebuttals. Letters of rebuttal to the findings and recommendation of formal proceedings (to include the recommended disability percentage) must be prepared and processed according to the following guidance.

(1) A rebuttal may only be based upon one or more of the issues listed below and must provide rationale in support of the issue.

(a) The decision of the PEB was based upon fraud, collusion, or mistake of law.

(b) The soldier did not receive a full and fair hearing.

(c) Substantial new evidence exists and is submitted which, by due diligence, could not have been presented before disposition of the case by the PEB.

(2) If a letter of rebuttal is received within the required time frame, the PEB will respond to the soldier, or his representative, normally within 3 days confirming that the rebuttal has been received and considered. If consideration of the rebuttal does not affect the outcome of any portion of the PEB decision, the response will include the reasons why the rebuttal does not support a change to the findings and recommendations. The soldier will be informed that the rebuttal will be forwarded with the case file to USAPDA for review (based on the soldier's election of nonconcurrence with submission of a rebuttal). The response by the PEB president will be included in the case file and a copy will be furnished to the soldier's legal counsel or other representative.

(3) If a soldier submits a letter of rebuttal after having initially made an election of concurrence and the rebuttal is submitted within the required time frame, the procedures of paragraph 4–21*t*(2) above apply. If the case has been forwarded to PERSCOM for final disposition based upon the soldier's initial concurrence, the PEB will recall the case. If the letter of rebuttal is received after the required time frame, the procedures of paragraph 4–2*t*(4) below apply.

(4) If a letter of rebuttal is received by the PEB after the soldier's case has been forwarded to PERSCOM for final disposition (based upon the soldier's failure to make an election within the required time frame or nonconcurrence without submission of a rebuttal) the PEB will consider the rebuttal as set forth below.

(a) If consideration of the rebuttal does not result in a change to the findings and recommendations, the PEB will advise the soldier, in writing, that no change is warranted and the rebuttal, together with the reply, has been forwarded to PERSCOM for inclusion in the case proceedings. A copy of the reply will be forwarded to the soldier's legal counsel or other representative. Review of proceedings by USAPDA is not required.

(b) When the consideration of the rebuttal results in a change to the PEB's findings and recommendations, the PEB will recall the case and effect the necessary changes by preparing a new DA Form 199. The new DA Form 199 will be furnished to the soldier according to normal processing procedures.

(5) Notwithstanding the above, when additional medical evidence or an addendum to the MEBD is received after the PEB has forwarded the case to USAPDA or PERSCOM and the PEB determines that such evidence would change any finding or recommendation, the case will be recalled by the PEB and a new DA Form 199 issued. Normal procedures apply following the preparation of a new DA Form 199.

u. Mental incompetency. Formal proceedings of cases involving mental incompetency or nonappearance because of the MTF commander's decision that it would be detrimental for the soldier's well being to appear, will be processed as follows:

(1) The DA Form 199 and DA Form 199–1 with all exhibits will be forwarded by certified mail, return receipt requested, to the soldier's guardian or next-of-kin (fig 4–8). A copy of the forwarding letter will be provided to the soldier's legal counsel or representative.

(2) The transmittal letter will advise the individual of the following:

(a) The individual has the right to make an election (DA Form 199–1) and to submit a letter of rebuttal to any finding or recommendation.

(b) The election (DA Form 199–1) and rebuttal must be received at the PEB within 10 days of receipt of the DA Form 199 unless, within the 10-day period, the president of the PEB has approved a request for extension.

(c) A rebuttal submitted within the allotted time must be considered and the individual notified of the PEB's determination.

(d) Upon failure of the individual to submit an election within 10 days, the appointed military counsel will take proper action in behalf of the soldier.

(3) The PEB will not forward the case for disposition until the DA Form 199–1 has been received or counsel has acted in behalf of the soldier. Counsel's action will be documented by memorandum, a copy of which will be included in the case proceedings (fig 4–3).

Section V
Review and Confirmation of PEB Action

4–22. Review by USAPDA

a. Required review. USAPDA will review the following cases.

(1) General and Medical Corps officers found unfit.

(2) Informal proceedings when the soldier nonconcurs with the PEB findings and recommendations, waives a formal hearing, submits a statement of rebuttal within the required time frame, and consideration of the rebuttal by the PEB does not result in a change to its findings and recommendations.

(3) Formal proceedings when the soldier nonconcurs with the PEB findings and recommendations, submits a statement of rebuttal within the required time frame, and consideration of the rebuttal by the PEB does not result in a change to its findings and recommendation.

(4) Cases in which a voting member of the PEB submits a minority report.

(5) Any case previously forwarded to USAPDA for review and approval and which has been returned to the PEB for reconsideration or rehearing.

(6) Cases designated by the CG, USAPDA for review.

(7) Cases of soldiers assigned to USAPDA.

b. Purpose of review. The review will be confined to the case records and proceedings and related evidence. The review will ensure that the following criteria have been satisfied.

(1) The soldier received a full and fair hearing.

(2) The proceedings of the medical evaluation board and the PEB were conducted according to governing regulations.

(3) The findings and recommendations of the MEBD and PEB were just, equitable, consistent with the facts, and in keeping with the provisions of law and regulations.

(4) Due consideration was given the facts and requests contained in any rebuttal to the PEB findings and recommendations submitted by, or for, the soldier being evaluated.

(5) Records of the case are accurate and complete.

c. Determinations. Based upon review of the PEB proceedings, USAPDA may take the following actions:

(1) Concur with the findings and recommendations of the PEB or make minor changes or corrections that do not affect the recommended disposition of the soldier or lower the combined percentage rating.

(2) Return the case to the PEB for reconsideration, clarification, further investigation, a formal hearing, or other action when the case records show such action is in the best interests of the soldier or the Army. A detailed explanation for the reasons for return of the case will be provided to the PEB.

(3) Issue revised findings providing for a change in disposition of the soldier or change in the soldier's disability rating.

(4) Refer the case to the APDAB.

d. Revised findings. USAPDA, will take the following actions when modifying PEB findings and recommendations.

(1) Furnish the soldier (next-of-kin or legal guardian) a copy of the revision by certified mail, return receipt requested. The letter of transmittal will state the reason for the change. Information copies will be provided to the PEBLO and to the soldier's counsel.

(2) Advise the soldier (next-of-kin or legal guardian) that his or her election or rebuttal to the revision must be received by USAPDA within 10 days from the soldier's receipt of the revised findings unless a request for extension is received and approved within the same time frame.

(3) Return the case records to the PEB if the soldier is eligible for and requests a formal hearing or if one is directed under the provisions of 4–22*c*(2), above. Processing will be according to paragraph 4–21.

e. Consideration of rebuttal.

(1) After considering the soldier's rebuttal to the revised findings, USAPDA will make one of the following determinations:

(a) Accept the rebuttal; issue new findings and recommendations according to the rebuttal; and forward the case to PERSCOM for final action.

(b) Concur with the original recommendations of the PEB; forward the case to PERSCOM for final action.

(c) Adhere to the revised findings and recommendations and forward the case to APDAB.

(2) USAPDA, will inform the soldier in writing of the results of its consideration of the rebuttal.

f. Soldier's response.

(1) If the soldier concurs with the revised findings and recommendations, USAPDA will approve the case for the Secretary of the Army and forward the case to PERSCOM for final disposition.

(2) If the soldier nonconcurs and submits a statement of rebuttal explaining his or her reasons for disagreement, and the consideration of the rebuttal does not result in a change to the revised findings, USAPDA will forward the case to APDAB for review unless (3) below is appliable.

(3) If the soldier fails to submit an election within the allotted time, USAPDA will deem that the soldier has waived his or her right to file a rebuttal. The proceedings will be forwarded to PERSCOM for final action.

g. USAPDA disposition.

(1) The proceedings of general and medical corps officers found physically unfit will be forwarded to ASD(HA) for review prior to disposition by PERSCOM. This is not required if the finding is fit.

(2) If the case file is to be forwarded to APDAB for appeal action, USAPDA will prepare a cover letter explaining the reasons for referral and note that final decision is deferred to the APDAB. If the APDAB's decision is unfit, and if the soldier has requested Continuance on Active Duty (COAD) under chapter 6, APDAB will forward the file to the appropriate office for COAD review. When the case is that of a General or Medical Corps officer, APDAB will return the case to USAPDA for forwarding to ASD(HA). If the General or Medical Corps officer has requested COAD, USAPDA will forward the case for COAD review upon confirmation of unfit determination by ASD(HA).

(3) When proper authority (AR 600–8–1) has made an unfavorable LD determination on the soldier's unfitting condition, USAPDA will modify the PEB findings and recommendations. USAPDA will notify the soldier that the modification resulted from a final LD decision by HQDA and that neither USAPDA nor APDAB are the approving authority for an appeal of the LD decision. LD appeal are governed by AR 600–8–1. This does not preclude an appeal of the determination of physical unfitness. Nor does it preclude the right to a formal PEB hearing if the soldier has not had a formal hearing (para 4–19*g*(2)). If the case file is forwarded to PERSCOM (TAPC–PED–S) to await a final LD decision, USAPDA will reflect in the cover letter the result of review subject to the final LD decision.

(4) If notice is received that a soldier whose case is in the disability system is AWOL, USAPDA will suspend further action on the case. If the soldier has been AWOL for 10 days or more, USAPDA will verify the fact of AWOL and return the case file, less PEB proceedings, to the MTF to which the soldier belongs. USAPDA will cancel PEB proceedings and notify the PEB and applicable MTF. If the case file has been forwarded to PERSCOM, USAPDA will recall the case for return to the MTF.

(5) With the exception of those cases noted above, USAPDA will approve revised findings for the Secretary of the Army and forward the case to PERSCOM for disposition.

4–23. Disposition of medical records

If the medical records were included in the case proceedings, they will be disposed of as follows:

a. If further review or appeal of the case is not involved, USAPDA will withdraw the medical records from the case file and will return them to the MTF that referred the case file to a PEB.

b. If the case is to be reviewed by APDAB or ASD(HA) and if the medical records are not included in the case, they will be requested and forwarded with the case file for the required review or appeal action. The review or appeal action may result in return of the case file to the CG, USAPDA, for final action. If so, the medical records will be disposed as indicated in paragraph "*a*" above.

Section VI
Disposition Subsequent to Adjudication

4–24. Disposition by PERSCOM

PERSCOM will dispose of the case by publishing orders or issuing proper instructions to subordinate headquarters, or return any disability evaluation case to USAPDA for clarification or reconsideration when newly discovered evidence becomes available and is not reflected in the findings and recommendations.

a. Actions based upon modification by APDAB. When APDAB changes the disposition of the soldier or lowers the disability rating, PERSCOM will—

(1) Notify the soldier (or next-of-kin, counsel, or guardian) of the changes by certified mail, return receipt.

(2) Furnish a copy of the notification to USAPDA, the PEB, and the PEBLO of the MTF concerned.

(3) Advise the soldier that his or her concurrence or rebuttal to the findings by the APDAB must be received by PERSCOM within 10 days of the receipt of the notification letter (based upon date of the certified return receipt) unless PERSCOM has approved an extension of time. Failure to respond within the allotted time will result in waiver of right to file a rebuttal to the new findings.

(4) If timely rebuttal is received, forward it and the proceedings to APDAB for reconsideration.

b. Final disposition. Based upon the final decision of USAPDA or APDAB, PERSCOM will issue retirement orders or other disposition instructions as follows:

(1) Permanent retirement for physical disability (see 10 USC 1201 or 1204).

(2) Placement on the TDRL (see 10 USC 1202 or 1205).

(3) Separation for physical disability with severance pay (10 USC 1203 or 1206).

(4) Separation for physical disability without severance pay (sections 630, 1162(a), 1165, or 1169, title 10, United States Code (10 USC 630, 1162(a), 1165, or 1169)).

(5) Transfer of a soldier who has completed at least 20 qualifying years of Reserve service, and otherwise qualifies for transfer as

described in paragraph 8–9, to the Inactive Reserve on the soldier's request (section 1209, title 10, United States Code (10 USC 1209)).

(6) Separation for physical disability without severance pay when the disability was incurred as a result of intentional misconduct, willful neglect, or during a period of unauthorized absence (10 USC 1207).

(7) Release from active duty and return to retired status of retired soldiers serving on active duty who are found physically unfit.

(8) Return of the soldier to duty when he or she is determined physically fit.

(9) Provide to ASD(HA) one copy of all retirement orders issued in the case of each general officer (O–7 or higher).

c. AWOL. PERSCOM will take the following actions when notified that a soldier in the disability system is AWOL.

(1) Suspend disposition action.

(2) If the soldier has been AWOL for 10 days or more, or upon expiration of 10 days in AWOL status, verify with the unit commander the fact of AWOL.

(3) If AWOL status is confirmed, void the proposed disposition.

(4) Notify the soldier's commander, the PEBLO, and USAPDA of the revoked disposition.

(5) Return the case file to USAPDA.

d. Medical records. Upon completion of disposition processing, PERSCOM will remove medical records from the proceedings and return them to the MTF that referred the soldier to a PEB.

4–25. The APDAB

The Army Physical Disability Appeal Board is a component of the Army Council of Review Boards. It reviews cases forwarded by the CG,USAPDA as provided in paragraph 4–22*f*(2) above.

a. Determinations. The APDAB will determine if—

(1) The soldier received a full and fair hearing.

(2) The evaluation proceedings conformed to current laws and governing regulations.

(3) Findings and recommendations of the PEB, as changed or modified by the CG, USAPDA are supported by the evidence.

b. Actions. The APDAB will take one of the following actions and forward the case to PERSCOM (or to USAPDA if the case is that of a general officer or medical doctor).

(1) Concur with the decision of the CG, USAPDA.

(2) Concur with the recommendations of the PEB.

(3) Adopt the recommendations of the minority member of the PEB when PEB recommendations were not unanimous.

(4) Concur with the requests contained in the rebuttal submitted by the soldier being evaluated.

(5) Specify new findings and recommendations or other proper actions.

c. Limitations. APDAB does not have appellate review authority over modifications resulting from ASD(HA) decisions or adverse line of duty determinations by HQDA.

4–26. ADRRB

The Army Disability Rating Review Board (ADRRB) is a component of the Army Council of Review Boards (ACRB). The ADRRB reviews disability percentage ratings on request of a soldier who was retired because of physical disability.

a. Determinations. The ADRRB may notify or amend a fully executed retirement order of a soldier based upon the following criteria:

(1) The original order was based on fraud or mistake of law.

(2) The soldier was not granted a full and fair hearing when the soldier had made timely demand for such a hearing.

(3) Substantial new evidence exists which, by due diligence, could not have been presented before disposition was accomplished, and the evidence would have warranted a higher percentage of disability if presented before disposition.

b. Petition procedures.

(1) The person concerned, legal representative, or any informed DA authority may request relief on the grounds set forth above.

(2) The request for relief must be filed within 5 years from the effective date of the disposition complaint.

(3) Request for relief is addressed to the ADRRB. No special form is required. However, the petition must state the reason for requesting relief and the relief desired.

(4) If the petition is based on evidence that is not on DA records, forward the evidence as an enclosure to the petition.

(5) The filing of a petition for relief will not affect the directed disposition unless the SA or authority acting for the SA so directs. If operation of the directed disposition is suspended by proper authority, the suspension does not extend the time limit within which an application for review must be submitted to a statutory board.

c. Review procedures.

(1) The ADRRB will consider all petitions submitted according to the criteria of paragraph 4–26*b* above.

(2) If the person concerned (or his or her legal representative) did not submit the petition, the ADRRB will give the retiree (or his or her legal representative) reasonable notice of the matter presented by the petition and the opportunity to submit a statement or other evidence in rebuttal.

(3) The Director, ACRB may act for the SA on petitions submitted if the recommendation of the ADRRB is unanimous. Other cases are referred to the SA for action. (The authority herein conferred is permissive only. It will not prevent referral of a case to the SA for action.) In acting on a petition, the Director, ACRB, may—

(a) Deny relief, set aside the final disposition or placement on the TDRL directed in a case and direct further retirement proceedings.

(b) Direct such action as is needed to effect the relief requested or any other action thought proper.

Table 4–1
Assembly of records by PEB

Documents	ORIG	PDA	MBR	MTF	HR	PEB
Documents for Informal Proceedings (See note 1)						
DA Form 199 (PEB Proceedings)	X	X	X	X	X	X
PEB's waiver of soldier's election when soldier fails to respond. (Include certified mail return receipt for TDRL cases.) (See note 2)	X	X	X			X
PEBLO's statement concerning soldier's failure to make election. (See note 2)	X	X				X
PEB's response to soldier's statement of rebuttal. (See note 2)	X	X	X			X
Soldier's statement of election if made on other than DA Form 199. (See note 2)	X	X				X
Soldier's statement of rebuttal. (See note 2)	X	X				X
PEBLO/soldier statement of counseling when soldier concurs with informal findings. (See note 2)	X	X				X
Additional medical information requested by PEB from MTF.	X	X				X
PEB's memorandum requesting additional medical information or returning case to MTF.	X	X				X
PEB appointing orders with membership indicated.	X	X				X
DA Form 3947 (MEBD Proceedings) and allied documents in order listed in para 4–15.	X	X				X
Other allied documents.	X	X				X
Health and clinical records when required by PDA.	X					
Documents for Formal Proceedings (See note 1)						
DA Form 199 (PEB Proceedings) stamped "formal."	X	X	X	X	X	X
PEB's waiver of soldier's election when soldier fails to respond. (Include certified mail return receipt for TDRL cases.) (See note 2)	X	X	X			X
PEBLO's statement concerning soldier's failure to make election. (See note 2)	X	X				X
PEB's response to soldier's statement of rebuttal. (See note 2)	X	X	X			X
Soldier's statement of election. (See note 2)	X	X				X
Soldier's statement of rebuttal. (See note 2)	X	X				X
PEBLO/soldier statement of counseling. (See note 2)	X	X				X
Notification to soldier or next-of-kin of PEB formal findings.	X	X				X
Transcript of formal hearing when applicable.	X	X				X
Documents submitted and accepted as exhibits.	X	X				X
PEB appointing orders with membership indicated.	X	X				X
Informal PEB proceedings with allied documents.	X	X				X
Acknowledgement of counseling on legal and procedural rights	X	X				X
Other allied documents.	X	X				X
Health and clinical records when required by PDA.	X					

Notes:

1. Documents are to be assembled in the order listed above, availability based on type case. The assembly of documents, however, should reflect the sequence of events as they are completed. With the exception of the DA Form 199 as the topmost document, deviation from the above listing is permitted when necessary to maintain correct chronology.

2. Or individual authorized to act in soldier's behalf.

Table 4–2
Eligibility index table for regulars and members on active duty for more than 30 days

RULE	If the disability was result of intentional misconduct, willful neglect, or was incurred while AWOL	If the soldier is entitled to basic pay and the disability was incurred while entitled to basic pay	and if soldier has at least 20 years of service	and the percentage of disability is—	and based upon accepted medical principals the disability is—	and soldier has at least 8 years of service, or—	disability is proximate result of performing active duty, or—	disability was incurred in LD in time of war or National Emergency, between 15 Sep 78 & 30 Sep 79, or after Sep 78 (See note 1.)	Action—
1	Yes								Discharge under 10 USC 1207.
2	No	No							Discharge under other than chapter 61, 10 USC. (See note 2).
3	No	Yes	Yes	0–100	perm				Permanent retirement under 10 USC 1201.
4	No	Yes	Yes	0–100	May be perm				Temporary retirement 10 USC 1202.
5	No	Yes	No	30–100	perm	Yes	No	No	Permanent retirement under 10 USC 1201.
6	No	Yes	No	30–100	May be perm	Yes	No	No	Temporary retirement under 10 USC 1202.
7	No	Yes	No	30–100	perm	No	Yes	No	Permanent retirement under 10 USC 1201.
8	No	Yes	No	30–100	May be perm	No	Yes	No	Temporary retirement under 10 USC 1201.
9	No	Yes	No	30–100	perm	No	No	Yes	Permanent retirement under 10 USC 1201.
10	No	Yes	No	30–100	May be perm	No	No	Yes	Temporary retirement under 10 USC 1201.
11	No	Yes	No	30–100		No	No	No	Discharge with disability severance pay under 10 USC 1203.

Table 4–2
Eligibility index table for regulars and members on active duty for more than 30 days—Continued

RULE	If the disability was result of intentional misconduct, willful neglect, or was incurred while AWOL	If the soldier is entitled to basic pay and the disability was incurred while entitled to basic pay	and if soldier has at least 20 years of service	and the percentage of disability is—	and based upon accepted medical principals the disability is—	and soldier has at least 8 years of service, or—	disability is proximate result of performing active duty, or—	disability was incurred in LD in time of war or National Emergency, between 15 Sep 78 & 30 Sep 79, or after Sep 78 (See note 1.)	Action—
12	No	Yes	No	Under 30		Yes	No	No	Discharge with disability severance pay under 10 USC 1203. (See notes 3 and 4).
13	No	Yes	No	Under 30		No	Yes	No	Discharge with disability severance pay under 10 USC 1203. (See notes 3 and 4).
14	No	Yes	No	Under 30		No	No	Yes	Discharge with disability severance pay under 10 USC 1203. (See notes 3 and 4).

Notes:
1. Public Law 94–412, 14 Sep 76, terminated all national emergencies on 14 Sep 78. Public Law 95–377 and Executive Order 12082, both dated 19 Sep 78, continued the same disability separation and retirement practices that were dependent on existence of a national emergency for the period 15 Sep 78 and ending 30 Sep 79. Public Law 1980, P. L. 96–513, designated "in LD after 14 Sep 78".
2. See chapter 5.
3. If a Reservist is eligible under 10 USC 1209 (has 20 years qualifying years), the Reservist may elect to be transferred to the Retired Reserve instead of being separated with severance pay.
4. To receive severance pay, a soldier must have at least 6 months' service for retirement on date of separation. Less than 6 months results in a 0 multiplier in the severance pay formula.

(Letterhead)

(Office symbol) *(Date)*

MEMORANDUM FOR Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132-5200

SUBJECT: Request for Statement of Service for Physical Disability Processing

1. SSG John E. Doe, 987-65-4321, is being medically evaluated. He will probably be referred to a Physical Evaluation Board in the near future.

2. Before final disposition can be made by HQDA, an official statement of service is required. Please prepare a statement of service and forward it promptly to CDR, PERSCOM, ATTN: TAPC-PDB-A, 200 Stovall Street, Alexandria, VA 22332-0477. The statement is needed for issuing timely separation or retirement orders if the member is found unfit because of physical disability.

FOR THE COMMANDER:

SUSAN GREEN
Physical Evaluation Board
Liaison Officer

Notes:
For members of the NG, FOR ADDRESS would be the applicable State Adjutant General.

Figure 4–1. Sample request for statement of service

(Letterhead)

(Office symbol) *(Date)*

MEMORANDUM FOR Commander, Total Army Personnel Command, ATTN: TAPC-PDB, Hoffman II, 2461 Eisenhower Avenue, Alexandria, VA 22331-9476

SUBJECT: Waiver of Right to Election

1. A copy of the informal PEB proceedings in the case of SSG John E. Doe, 987-654-321, was forwarded to the soldier thru the PEBLO.

2. The soldier was properly advised of his election rights by the PEBLO but has not responded. In accordance with AR 635-40, para 4-20e the soldier is considered to have waived his right of election.

FOR THE PRESIDENT:

THOMAS H. MILLER
Board Recorder

CF:
Soldier
PEBLO

Notes:
1. MEMORANDUM FOR line will be CDR, USAPDA when case requires review.
2. Cite applicable para reference when waiving formal election.

Figure 4–2. Sample format for forwarding memorandum when active duty soldier fails to make an election

(Letterhead)

(Office symbol) *(Date)*

MEMORANDUM FOR President, U.S. Army Physical Evaluation Board, Forest Glen Section--WRAMC, Washington, D.C. 20307-5001

SUBJECT: Statement in Behalf of SSG John E. Doe, 987-654-321

1. In view of the soldier's medical condition, he is unable to make an election to the informal PEB findings dated 20 January 1990. Since Mr. John B. Doe, the established next-of-kin, has failed to make an election, this statement is submitted in behalf of SSG John E. Doe. (See note.)

2. As appointed counsel for the soldier, I have carefully studied the evidence and proceedings. I concur with the findings of the informal PEB.

STERLING T. JUSTICE
Captain, JA
Appointed Legal Counsel

Notes:
Modify memo as appropriate to the situation—formal or informal, concurrence or nonconcurrence with statement of rebuttal.

Figure 4–3. Appointed Counsel's statement in soldier's behalf when next-of-kin fails to make an election

(Letterhead)

(Date)

Board Recorder
Washington--Physical Evaluation Board

Staff Sergeant John E. Doe
12 Cross Street
Petersburg, VA 23803

Dear Sergeant Doe:

You are hereby notified of a formal Physical Evaluation Board hearing of your case with your personal appearance on Tuesday, February 20, 1990 at 9:00 a.m., in Bldg 101, Room 1106, Forest Glen Section, Walter Reed Army Medical Center, Washington, D.C. 20307-5001.

Consistent with the elections made by you on January 29, 1990, in regard to the informal findings and recommendations, the information below applies.

As you requested regularly appointed counsel to represent you, Captain Sterling T. Justice, Judge Advocate General's Corps, has been appointed to advise you in preparing your case. Captain Justice will assist you in examining and cross-examining witnesses and in conducting your case before the Board. A postponement cannot be granted solely on the grounds that you have not contacted counsel. Your failure to get in touch with appointed military counsel may result in your case being submitted to the board with little or no argument on your behalf. You must contact Captain Justice within 3 working days after receipt of this letter. Before signing the attached acknowledgment, call collect (301) 427-5214 or AUTOVON 291-5214.

You and your counsel are entitled to examine all written evidence. You may examine and cross-examine witnesses and present your case orally or in writing.

The attendance of witnesses who are members or employees of either the U.S. Army or another Armed Service who are essential to the presentation of your case may be requested. Witnesses will not be required to appear unless they are essential. You are responsible for the attendance of witnesses who are not members or employees of the Army or other Armed Services. This responsibility includes the cost of travel and lodging. There are no witnesses currently scheduled to appear in your case.

Please complete and return the attached acknowledgment within 3 days after receipt.

Sincerely,

Enclosures

Thomas J. Miller
Board Recorder

Figure 4–4. Sample format of notice to soldier of formal PEB when representation of Appointed Counsel is elected

(Letterhead)

(Date)

Board Recorder
Washington--Physical Evaluation Board

Staff Sergeant John E. Doe
12 Cross Street
Petersburg, VA 23803

Dear Sergeant Doe:

You are hereby notified of a formal Physical Evaluation Board hearing of your case with your personal appearance on Tuesday, February 20, 1990, at 9:00 a.m., in Bldg. 101, room 1106, Forest Glen Section, Walter Reed Army Medical Center, Washington, D.C. 20307-5001.

Consistent with the elections made by you on January 29, 1990, in regard to the informal findings and recommendations, the information below applies.

In your elections, you indicated that you will have counsel of your own choice. Counsel may be either civilian, military, or both. The securing of such counsel must not result in expense to the Government or in unreasonable delay of the formal board proceedings. Military counsel of your choice must be reasonably available. Captain Sterling T. Justice, the regularly appointed counsel to the Physical Evaluation Board, will act as associate counsel, unless properly excused. You, or your counsel, must communicate with Captain Justice within 3 working days after receipt of this letter. Before signing the attached acknowledgment, call collect, (301) 427-5214 or AUTOVON 291-5214.

You and your counsel are entitled to examine all written evidence. You may examine and cross-examine witnesses and present your case orally or in writing. Since you have selected counsel of your own choice, complete the attached statement authorizing counsel access to your medical records. Return this statement with the attached acknowledgment.

The attendance of witnesses who are members or employees of the U.S. Army or another Armed Service who are essential to the presentation of your case may be requested. Witnesses will not be required to appear unless they are essential. You are responsible for the attendance of witnesses who are not members or employees of the Army or other Armed Services. This responsibility includes the cost of travel and lodging. There are no witnesses currently scheduled to appear in your case.

Please complete and return the attached acknowledgment within 3 days after receipt.

Sincerely,

Enclosures

Thomas J. Miller
Board Recorder

Figure 4–5. Sample format for notice to soldier of formal PEB when representation by Counsel of Choice is elected

(Letterhead)

(Date)

Board Recorder
Washington--Physical Evaluation Board

Mr. Thomas B. Doe
2576 Webster Street
Washington, D.C. 20011

Dear Mr. Doe:

The Washington Army Physical Evaluation Board (PEB) will convene a formal hearing on Tuesday, February 20, 1990 at 9:00 a.m. in bldg 101, Room 1106, Forest Glen Section, Walter Reed Army Medical Center, Washington, D.C., to evaluate the physical condition of your son, Sergeant John E. Doe.

Captain Sterling T. Justice, Judge Advocate General's Corps has been appointed military counsel to represent Sergeant Doe. You may arrange for representation by other counsel of your choice at your expense if you wish. You and your counsel are entitled to examine all written evidence, to examine and cross-examine witnesses, and to present other evidence orally or in writing. You may communicate with the military counsel at any time. You should contact Captain Justice upon receipt of this letter for purposes of initial counseling, even if you elect other representation. Please call collect (301) 427-5214 or AUTOVON 291-5214.

You may travel to the hearing at government expense provided that invitational travel orders are issued in advance of the travel. Contact the Physical Evaluation Board Liaison Officer at Walter Reed Army Medical Center at (202) 576-1131 to arrange for orders.

The PEB Recorder will arrange to secure the attendance of requested witnesses if they are members of the Army or other Armed Service, and are determined by the PEB to be reasonably available and essential to the presentation of the case. Witnesses determined to be nonessential may attend but at no expense to the government.

Following the formal hearing you will be notified of the findings and recommendations. You will be asked to indicate whether you agree with the findings and recommendations or desire to submit a statement of rebuttal. The statement of rebuttal may be prepared by you, or you may request the counsel to prepare it.

The PEB is a board of officers appointed to determine the following facts about each soldier referred to it:

a. Whether the soldier is fit for duty, or is unfit for further military service by reason of physical disability.

b. Whether the disability is, or is not the result of intentional misconduct or willful neglect.

c. Whether the soldier meets the requirements under law for entitlement to disability compensation.

d. A percentage of disability, when applicable.

Please complete the enclosed statement. Return the original in the self-addressed envelope. If your reply is not received by the PEB within 10 days of the date of receipt of this letter, it will be presumed that you will not attend the hearing and that you are satisfied with the appointed military counsel.

Sincerely,

Enclosures

Ambrose P. Collier
Colonel, U.S. Army
President

Figure 4–6. Sample format for notification of next-of-kin (or other authorized individual) of formal PEB hearing

(Letterhead)

(Date)

Board Recorder
Washington--Physical Evaluation Board

Staff Sergeant John E. Doe
12 Cross Street
Petersburg, VA 23803

Dear Sergeant Doe:

Enclosed is the record of proceedings (DA Form 199) of the formal hearing in your case. Also enclosed is the statement of election (DA Form 199-1). Please complete the election statement and return it in the self-addressed envelope. The statement of election must be received by this board within 10 days of your receipt of this letter. If you do not respond within the required time, you will forfeit your right to an election. Your case file will be forwarded to the U.S. Total Army Personnel Command for final processing.

If you do not agree with the recommended findings, you may prepare a statement of rebuttal as an enclosure to your election. The rebuttal must be based on one or more of the following issues and must provide reasons why the issue or issues are applicable.

a. The decision of the PEB was based upon fraud, collusion, or mistake of law.

b. You did not receive a full and fair hearing.

c. Substantial new evidence exists and is submitted, which, by due diligence, could not have been presented before disposition of the case by this Physical Evaluation Board.

The rebuttal will be considered by this board. You will be notified in writing of the results. Should the previous finding and recommendations be affirmed, your case will be forwarded to USAPDA for review and action. Should you need more time to prepare the rebuttal, you may request a reasonable extension. The request must be received within the same time requirement as the statement of election and must provide compelling reasons for the requested delay.

If denied, your case will be forwarded to PERSCOM for final processing. The counsel who represented you at the hearing may assist you in the preparation of your rebuttal.

Sincerely,

Enclosures

Ambrose P. Collier
Colonel, U.S. Army
President

Figure 4–7. Sample format of notice to soldier of formal PEB findings and recommendation

(Letterhead)

(Date)

Board Recorder
Washington--Physical Evaluation Board

Mr. Thomas B. Doe
2576 Webster Street
Washington, D.C. 20011

Dear Mr. Doe:

The purpose of this letter is to inform you of the recommended findings and recommendations of the formal Physical Evaluation Board concerning your son, Sergeant John E. Doe, and to request your election in his behalf.

As recorded on the DA Form 199, your son was found unfit because of physical disability. It was recommended that he be retired from the Army for physical disability with a disability rating of 30 percent.

You are requested to complete the enclosed statement of election (DA Form 199-1) and return it in the self-addressed envelope furnished for this purpose. If you do not agree with the recommended findings you may prepare a statement of rebuttal as an enclosure to the election statement. The rebuttal must be based on one or more of the following issues and must provide reasons by the issue or issues apply in this case.

a. The decision of the PEB was based upon fraud, collusion, or mistake of law.

b. Your son did not receive a full and fair hearing.

c. Substantial new evidence exists and is submitted, which by due diligence, could not have been presented before disposition of the case by this Physical Evaluation Board.

The original statement of election and rebuttal, if any, must be received by this Physical Evaluation Board within 10 days of your receipt of the proceedings. Should you need more time to prepare a rebuttal, you may request a reasonable extension. The request for extension must be received within the same time requirement as the statement of election and must provide compelling reasons for the requested delay. The board will notify you in writing of the results of its consideration of the rebuttal.

If your statement of election, or request for extension, is not received within the required time, the appointed military counsel will take proper action in behalf of your son.

Sincerely,

Enclosures

Ambrose P. Collier
Colonel, U.S. Army
President

Figure 4–8. Notice of next-of-kin following formal board action

Chapter 5
Separation for Non-Service Aggravated, EPTS Conditions upon Soldier's Waiver of PEB Evaluation

5–1. General

a. This chapter provides for separation of an enlisted soldier for non-service aggravated EPTS conditions when soldier requests waiver of PEB evaluation.

b. This chapter is applicable to enlisted soldiers on active duty for more than 30 days.

c. Separation under the authority of this chapter is not to be confused with separation under the provisions of AR 635–200, chapter 5. The latter provides for involuntary separation within the first 6 months of entry onto active duty for failure to meet procurement fitness standards. If the time period exceeds 6 months or if the condition is disqualifying under AR 40–501, chapter 3, a soldier is entitled to evaluation by a PEB or may waive evaluation under this chapter.

5–2. Criteria

a. Case must meet the conditions, set forth below:

(1) Soldier is eligible for referral into the disability system (chap 4, sec I).

(2) The soldier does not meet medical retention standards as determined by the MEBD.

(3) The disqualifying defect or condition existed prior to entry on current period of duty and has not been aggravated by such duty.

(4) The soldier is mentally competent.

(5) Knowledge of information about his or her medical condition would not be harmful to the soldier's well being.

(6) Further hospitalization or institutional care is not required.

(7) After being advised of the right to a full and fair hearing, the soldier still desires to waive PEB action.

(8) Soldier has been advised that a PEB evaluation is required for receipt of Army disability benefits, but waiver of the PEB will not prevent applying for VA benefits.

5–3. Actions by PEBLO

a. The PEBLO will inform the soldier of the rights and conditions outlined above. If the soldier declines the opportunity to apply for discharge, the PEBLO will notify the commander in writing. Such notice will state that the soldier has been fully informed of the provisions of this chapter and that the soldier has declined to apply for discharge.

b. If the soldier requests to apply for discharge, the PEBLO will assist the soldier in preparing a Request for Discharge for Physical Disability using figure 5–1 as a guide.

c. PEBLO will forward the request and four copies of the MEBD report to the soldier's immediate commander for separation processing. The separation authority will be advised of any pending disciplinary or other action that may affect the soldier's disposition.

5–4. Authority to order discharge

Commanders with special court-martial convening authority may approve or disapprove discharge of a soldier of his or her command processed under this chapter if no adverse administrative or disciplinary action is pending against the soldier. This authority may not be further delegated. (See chap 4 if administrative or disciplinary action is pending.)

5–5. Action by commander authorized to effect discharge

a. Commanders authorized to effect the discharge of soldiers under provisions of this chapter will effect such discharge expeditiously. As part of the outprocessing procedure, commanders will ensure soldiers complete VA Form 21–526 (Veteran's Application for Compensation or Pension) or sign DA Form 664 Service Member's Statement Concerning Compensation from the Veterans Administration) prior to separation. No medical examination will be accomplished during separation processing unless there is reason to believe that material change has occurred in the soldier's physical or mental condition since his or her appearance before the MEBD.

b. Unless otherwise indicated, the soldier will be issued DD Form 256A (Honorable Discharge Certificate) or DD Form 257A (General Discharge Certificate (Under Honorable Conditions)). DD Form 214 (Certificate of Release or Discharge from Active Duty) will be prepared in each case. If the soldier is in entry level status at the time of processing, DD Form 214 may describe service as uncharacterized (see AR 635–200, chap 3).

c. The soldier will be furnished one copy of the approved report of medical board proceedings (with copy of the report of the medical examination). One copy will be filed in the Military Personnel Records Jacket (MPRJ).

d. One copy of each of the documents listed below will be sent through the commander of the MTF providing primary medical care for the headquarters discharging the soldier to the Commander, U.S. Army Recruiting Command, ATTN: USAR-CAO–M, Fort Sheridan, Illinois 60037–6000.

(1) DA Form 3947 (Medical Evaluation Board Proceedings) and SF 502 (Narrative Summary).

(2) SF 88 (Report of Medical Examination) and SF 93 (Report of Medical History) prepared for the separation action.

(3) SF 88 and SF 93 pertaining to entry (pre-induction, induction, enlistment, or call to active duty) examination.

e. A cover letter will cite this regulation as authority for the action. The letter will furnish the following information:

(1) The date on which the soldier was discharged.

(2) The date of the soldier's entry on active duty.

(3) The name and location of the medical facility that conducted the soldier's medical examination before the soldier's enlistment or induction.

(Letterhead)

(Office symbol) *(Date)*

MEMORANDUM FOR Commander, Walter Reed Army Medical Center, ATTN: HSHL-PAD-PA, Washington, D.C. 20307-5001

SUBJECT: Request for Separation and Waiver of PEB Evaluation

1. I request discharge for physical disability based upon the findings and recommendations of a medical evaluation board (MEBD). The MEBD considers me unqualified for retention in the military service because of physical disability that was found to have existed prior to my entry into active service (EPTS). The MEBD found the disability neither incident to nor aggravated by, my military service.

2. I have been fully informed and understand that I am entitled to the same consideration and processing as any other soldier of the Army separated for physical disability. I understand this includes the consideration of my case by a Physical Evaluation Board. However, I elect not to exercise this right. I also understand the Veterans Administration (VA) will determine entitlement to VA benefits.

3. If this application is approved, I understand that I will be separated by reason of EPTS physical disability. I also understand that I will receive a discharge in keeping with the character of my service, as decided by the officer designated to effect my separation.

John E. Doe
987-65-4321
SSG, Medical Holding Co.

Figure 5–1. Sample format for request for separation with waiver of PEB evaluation

Chapter 6
Continuance of Disabled Personnel on Active Duty

6–1. General

a. This chapter prescribes procedures under which certain soldiers of the Active Army (on the active duty list) who are eligible for retirement or separation because of physical disability may be COAD. COAD will be upon approval of their application for waiver. The policies of paragraph 3–10 apply to all cases processed under this chapter.

b. Soldiers in the RC (not part of Active Army end strength), to include AGR program, who request continuance in the RC will be processed according to paragraph 8–7. The criteria delineated in paragraph 6–3 are not applicable to soldiers requesting continuance in the RC.

6–2. Objective

The primary objective of this program is to conserve manpower by effective use of needed skills or experience. A soldier who is physically unqualified for further active duty has no inherent or vested right to be COAD. Disapproval of such a request has no bearing on the disposition of a case processed under other chapters of this regulation.

6–3. Qualification for continuance

To be considered for COAD under the provisions of this chapter, a soldier must be—

a. Found unfit by a PEB because of a disability that was not the result of intentional misconduct nor willful neglect, nor incurred during a period of unauthorized absence.

b. Capable of maintaining one's self in a normal military environment without adversely effecting one's health and the health of others and without undue loss of time from duty for medical treatment.

c. Physically capable of performing useful duty in an MOS for which he or she is currently qualified or potentially trainable.

d. Eligible through one of the criteria below as determined by the appropriate approving authority listed in paragraph 6–10.

(1) Has 15 years but less than 20 years of total service, or

(2) Is qualified in a critical skill or shortage MOS confirmed by PERSCOM; or

(3) Disability is the result of combat.

6–4. Processing of application

A soldier on active duty being evaluated for possible unfitness because of physical disability may submit an application through the MTF for COAD. The application must be submitted when the soldier is being evaluated by the MEBD or during counseling by the PEBLO after the informal PEB. The soldier may not submit the application directly to the PEB. (fig 6–1.)

6–5. Special counseling

a. Application. Before the soldier completes an application for COAD, the PEBLO will counsel the soldier according to appendix C. The PEBLO will specifically inform the soldier of the procedures listed below.

(1) That the PEB will process the case to completion to include the following:

(a) Convening a formal hearing, if requested.

(b) Determining a percentage rating.

(c) Recommending a disposition that will apply if application for continuance is disapproved.

(2) Of the criteria for qualification for continuance.

(3) That the appropriate approving authority in paragraph 6–10 will determine whether the criteria for qualification are met.

(4) That if continuance is approved, the soldier will again be referred into the disability system for reevaluation upon final separation or retirement.

(5) That subsequent adjudication upon final separation or retirement may determine the soldier to be physically fit or unfit according to paragraph 6–14.

(6) That if the application is disapproved, the disapproving authority will forward the case file directly to PERSCOM for separation or retirement action.

b. Soldiers with 18 years. When a soldier with 18 years but less than 20 years of active service is referred to a PEB for further processing and elects not to submit a request for COAD, such election will be in writing and attached to the MEBD proceeding. If the soldier does not indicate in writing his or her desire not to request COAD, the PEBLO will include a signed certificate stating that the soldier has been counseled and elects not to submit an election in writing.

6–6. Reclassification procedures (enlisted soldiers only)

Policies and procedures of AR 600–200 apply when reclassification into another MOS is necessary. Reclassification action is not within the authority of USAPDA.

6–7. Processing by MTF

The policies and procedures described in chapter 4 of this regulation apply. The MTF commander will ensure that—

a. Item 16 of DA Form 3947, Medical Board Proceedings, is completed indicating whether COAD is medically inadvisable.

b. Item 3 of DA Form 3349 lists assignment limitations.

c. Documents specified in paragraph 4–15 are included in the case file forwarded to the PEB. The commander's statement should include a recommendation for or against approval of continuance.

6–8. PEB processing

a. Policy. The PEB will consider the case according to chapter 4. The fact that a soldier has applied for COAD must not influence the listing of disabilities or percentage ratings. Policy requires that findings and recommendations of the PEB be as carefully decided as if the soldier had not applied for continuance. The PEB's function is to establish whether the soldier is physically unfit. Its action is one of a series of actions to confirm the soldier's unfitness and to determine whether he or she is acceptable for COAD.

b. DA Form 199.

(1) If the soldier is found physically unfit, the following statement will be added in block 8. "Soldier has applied for COAD. The recommended disposition in block 9 applies if soldier's application for continuance is denied."

(2) If the soldier submits an application for COAD after the informal PEB, all copies of DA Form 199 will be amended to reflect the above statement and copies provided to the soldier and MTF.

c. PEB recommendation. While not required, the PEB is encouraged to include in the forwarding letter to the approving authority a recommendation for or against approval of the soldier's application.

d. Suspense File. For those cases which the PEB approves for the SA, PEB will forward the case file for COAD consideration to the applicable approving authority listed in paragraph 6–10. A suspense file will be maintained.

6–9. Review at USAPDA or APDAB

a. When the review confirms the findings and recommendations of the PEB, USAPDA will forward the case file to the applicable addressee listed in paragraph 6–10 for action on COAD application. A suspense file will be maintained.

b. When review by APDAB is required, USAPDA will request APDAB to forward case to the applicable addressee if finding of unfit is confirmed.

c. When the case concerns a finding of unfit for a General or Medical Corps officer, USAPDA will obtain review by OASD(HA) prior to forwarding the case file for consideration of COAD application.

6–10. Action by Approving Authority

a. The approving authority listed in (1) through (6) below will act on the soldier's request for COAD.

(1) *Regular Army enlisted.* Commander, PERSCOM, ATTN: TAPC–PDB, Hoffman II, 2461 Eisenhower Avenue, Alexandria, VA 22331–0477.

(2) *Regular Army officers.* Commander, PERSCOM, ATTN: TAPC–OPP–M, 200 Stovall Street, Alexandria, VA 22332–0418.

(3) *USAR Officers (OBV tour, VI status, or otherwise counted in the Active Duty End Strength).* Commander, PERSCOM, ATTN: TAPC–OPP–M, 200 Stovall Street, Alexandria, VA 22332–0418.

(4) *MSC Officers (Active Component).* HQDA, ATTN: DAPC–OPH–PS, 1900 Half Street, S.W. Washington, DC 20324.

(5) *Chaplains (Active Component).* HQDA, ATTN: DACH–PZB, Pentagon, Room 1E417, Washington, DC 20310–2206.

(6) *JAGC Officers (Active Component).* HQDA, ATTN: DAJA–PT, Pentagon, Room 2E443, Washington, DC 20310–2206.

b. If the soldier's application is approved, the approving authority will—

(1) Notify the MTF commander of the action and furnish assignment orders or instructions, if appropriate.

(2) Notify soldier's Military Personnel Service Center (PSC)—

(a) Of the serial code (AR 40–501, table 7–2) to be entered on DA Forms 2 and 2–1.

(b) That the assignment limitations detailed on DA Form 3349 must be followed.

(3) Furnish an information copy of the action to the PEB from which the case originated; the CG, USAPDA; and Cdr, USAEREC, ATTN: PCRE–FS, Fort Benjamin Harrison, IN 46249–5301.

c. If the soldier's application is disapproved, the disapproving office will notify the MTF commander promptly so that the soldier may be informed. The disapproving office will furnish CG, USAPDA, and the PEB originating the case with information copies of the letter of disapproval. The disapproving office will forward the original DA Form 199 and enclosures referred by USAPDA, less medical records, without delay to Commander, PERSCOM, ATTN: TAPC–PDB, 2461 Eisenhower Avenue, Alexandria, VA 22331–0477. PERSCOM will take action required by chapter 4.

6–11. Disposition of records

a. If the soldier's application for COAD is approved—

(1) File the original of the DA Form 199, the medical board proceedings, and other enclosures to the DA Form 199 in the soldier's official military personnel file (OMPF).

(2) Include a copy of the letter of approval.

(3) Exclude medical records, Health Record, and similar supporting documents if they are included with the application.

(4) Return the records mentioned in (3) above, with the approval letter, to the MTF commander who sent the case to the PEB for disposition prescribed by other regulations.

(5) The MTF commander will provide the soldier a copy of the letter of approval.

(6) HQDA will retain the remaining copy of the DA Form 199 and attachments as working file copy, destroying them when they are no longer needed.

(7) The MTF commander will annotate copies of the PEB and medical board proceedings retained at the MTF to reflect the approval action and file them.

(8) The MTF commander will forward the letter of approval to the soldier's military personnel office (MILPO) for filing in the soldier's unit DA Form 201 (Military Personnel Records Jacket, U.S. Army).

6–12. Disposition of soldiers unable to perform their duty

Any soldier COAD under the provisions of this regulation who is later found to be unable to perform effectively the duties to which assigned because of physical disability must be referred to an MTF for re-evaluation. The MTF will process his or her case through the Physical Disability Evaluation System with a new MEBD.

6–13. Reevaluation

a. Periodic medical examination. A soldier COAD under this program must be reevaluated periodically to determine whether further continuance or, conversely, retirement or separation is in the best interest of the Army and service member. AR 40–501 establishes acceptable schedules. Exceptions to established schedule are as follows:

(1) The condition causing the soldier's physical unfitness is such that more frequent examination is indicated.

(2) The soldier has been rehospitalized because of worsening of the unfitting condition.

(3) The soldier has been rehospitalized because of some other condition impacting on the soldier's ability to perform duty.

b. Responsibilities of the managing physician. The managing physician must give special attention to the stability of the soldier's unfitting condition. The physician will—

(1) If severity increases, estimate the impact on the soldier's ability to perform duty.

(2) If degradation of the soldier's condition occurs so as to further impair performance of duty, note such findings and conclusions on the SF 88.

(3) Notify the soldier's commander.

c. Referral to PEB. If the managing physician believes it is needed, or the soldier's commander requests it, a MEBD will be prepared. The MEBD will refer the case to a PEB for processing.

d. Request for reenlistment. An enlisted soldier whose term of service expires during the period for which COAD has been approved may request reenlistment with a waiver of the physical disqualification. Requests from personnel serving on extended active duty will be submitted to the Commander, United States Army Enlistment Eligibility Activity (USAEEA), 9700 Page Boulevard, St. Louis, Missouri 63132–5260. The soldier will complete DA Form 3072 (Waiver of Disqualification for Reenlistment/Promotion in the Regular Army) in support of the DA Form 3340 (Request for Regular Army Reenlistment or Extension). The soldier must support the request for waiver by a current DA Form 3947, SF 502, and SF 88. The DA Form 3947 contains a recommendation for, or against, reenlistment. (PEB consideration is not required unless reenlistment is denied. If reenlistment is denied, the MTF Commander will forward the case to the supporting PEB as provided in chapter 4.) Request for reenlistment will be submitted between 4 and 6 months in advance of expiration of term of service (ETS). The Commander, USAEEA will approve or disapprove reenlistment.

e. Request for extension of continuance. A soldier may request extension of COAD. The soldier will forward an application to the approving authority in paragraph 6–10, 4 to 6 months before expiration of the period for which continuance was approved.

(1) An officer may apply by letter. He or she will attach DA Form 3947, SF 502, and SF 88. The DA Form 3947 contains a recommendation for, or against, extension of the officer's COAD. The officer will forward the letter of application through his or her rater. The rater will comment on the officer's physical capacity to perform assigned duties. The rater will recommend for or against extension of the officer's COAD.

(2) Enlisted soldiers will use the procedures of reenlistment described in paragraph "d" above.

f. Extension request denial. An enlisted soldier whose request for continuance is denied by the Commander, USAEEA will not be offered the opportunity to apply for continuance during further processing of his or her medical proceedings (para 6–14).

6–14. Final retirement or separation

a. A soldier COAD under the provisions of this chapter will be reevaluated by a MEBD and PEB when processing for final retirement or when the soldier's continuance is ended and reenlistment or extension of continuance is denied. The disqualifying defect will be evaluated under the physical standards in effect at the time of current evaluation. If the disability has improved so as to no longer be unfitting or has been cured, the soldier may be found fit. If the disability has remained unchanged or increased in severity, the PEB will find the soldier unfit because of physical disability. Presumption of fitness (para 3–2*b*(2)) does not apply to the subsequent disability processing of soldiers who were approved for COAD. The disability will be rated under the current VASRD.

b. The PEB may not judge a COAD soldier physically unfit or determine disability rating on the basis of how the disability may impact on the soldier's future ability to perform his or her duties.

c. Cases of medical officers and general officers and the cases of any other designated soldier will be reviewed by the ASD(HA). The review may affect the final decision on the soldier's unfitness.

(Letterhead)

(Office symbol) *(Date)*

MEMORANDUM FOR Commander, PERSCOM, ATTN: TAPC-PDB, Hoffman II, 2461 Eisenhower Avenue, Alexandria, VA 22331-00477

SUBJECT: Request for Continuance on Active Duty

1. If I am determined unfit because of physical disability, I hereby apply for continuance on active duty. I apply for assignment to duties that I am able to perform within the limitations imposed by my physical disabilities. I request continuance instead of retirement or separation disposition.

2. I meet the following criteria for application for COAD:

_____ I have 15 years of total service but less than 20.

_____ I am qualified in shortage MOS.

_____ My disability is the result of combat.

3. I also understand that--

a. I must be able to maintain myself in a normal military environment without the environment adversely affecting my health or requiring extensive medical care.

b. My disabilities will be periodically reevaluated to decide whether further continuance on active duty or retirement or separation is in the best interests of myself and the Army.

c. Should I later incur a service obligation, I remain liable to complete such obligation in spite of my condition. Only when my disabilities progress to a point that I am no longer able to perform duty with proper limitations am I no longer liable to complete such obligation.

d. At the time of my final retirement or separation from active duty, I will be evaluated under the regulations in effect at that time, and I may be found physically fit.

e. I will not be separated without proper examination and physical disability evaluation.

f. If my term of service expires during the period for which continuance on active duty has been approved, I may request reenlistment with a waiver, and such request may be disapproved.

4. I request consideration for assignment to one of the following installations. (I have listed three in order of my preference.)

a. Fort Detrick

b. Fort Lee

c. Fort Wainwright

John E. Doe
987-65-4321
SSG, 76P30
HQ, USA Quartermaster Center
244th Quartermaster Battalion
Fort Lee, VA 23801-5260

Figure 6-1. Sample format to request COAD

Chapter 7
Temporary Disability Retired List

Section I
Introduction

7-1. Overview
This chapter outlines procedures for administration and processing of soldiers whose names are on the TDRL.

7-2. Reasons for placement on the TDRL
a. A soldier's name may be placed on the TDRL when it is determined that the soldier is qualified for disability retirement under 10 USC 1201 but for the fact that his or her disability is determined not to be of a permanent nature and stable.

b. A soldier with a hereditary or congenital condition that is unfitting and known to be progressive will not be placed on the TDRL unless there is unstabilized service aggravation and the soldier is qualified as described above. If upon removal from the TDRL, there is no evidence of residual aggravation, the soldier may be found to be ineligible for disability benefits.

c. TDRL will not be used for convalescence. When a soldier's correct rating is less than 30 percent, a rating will not be increased to 30 percent solely for the purpose of making a soldier eligible for TDRL.

7–3. Information reflected on the TDRL

The TDRL will list names of all soldiers temporarily retired. The list, as a minimum, will reflect—

a. The identity of the soldier.

b. The date the soldier was placed on the TDRL.

c. The month and year in which the next medical examination is required.

d. Current address and phone number.

7–4. Requirement for periodic medical examination and PEB evaluation

A soldier on the TDRL must undergo a periodic medical examination and PEB evaluation at least once every 18 months to decide whether a change has occurred in the disability for which the soldier was temporarily retired.

a. Soldiers who have waived retired pay to receive compensation from the VA, continue to be retired Army soldiers. These soldiers must undergo examinations when ordered by Commander, PERSCOM, acting on behalf of the SA.

b. Soldiers recalled to active duty while still on the TDRL must also undergo a periodic examination when ordered by the Commander, PERSCOM.

c. Soldiers who fail to complete a physical examination when ordered will have their disability retired pay suspended.

d. Soldiers on the TDRL will notify Commander, PERSCOM, ATTN: TAPC–PDB, 2461 Eisenhower Drive, Alexandria, VA 22331–0477, of any change in their current mailing address.

7–5. Counseling

The PEBLO is responsible for counseling the soldier until the informal PEB is completed. The soldier may demand a formal hearing. If so, the regularly appointed PEB counsel is responsible for the counseling unless the soldier elects a different counsel. Counseling will be according to appendix C. Soldiers on the TDRL are more difficult to counsel because they are not as readily available to the counselor as are soldiers on active duty. Nevertheless, they must be counseled to the same extent required for active duty soldiers.

7–6. Prompt processing

To prevent the soldier suffering severe financial and other hardships, processing delays will be avoided. All portions of the medical examination will be conducted on a priority basis. All involved agencies and personnel will ensure that cases of soldiers nearing expiration of 5-year TDRL tenure are identified and given priority processing.

7–7. Prompt removal from TDRL

Medical examiners and adjudicative bodies will carefully evaluate each case. They will recommend removal of the soldier's name from the TDRL as soon as the soldier's condition permits. Placement on the TDRL confers no inherent right to remain for the entire 5-year period allowed by 10 USC 1210.

Section II
Administration

7–8. Individual TDRL file

CG, PERSCOM will maintain an active file for each soldier on the TDRL. The file will contain the following:

a. Complete identification, grade, and a statement of total active service when placed on the TDRL; orders placing the soldier on the TDRL; the soldier's current mailing address.

b. Original copy of PEB proceedings with exhibits, less medical and health records; original reports of periodic medical examinations and evaluations.

c. Record of current location of clinical, medical, and health records to make the next periodic medical examination easier.

d. Significant correspondence with the former soldier and medical treatment facility in order to support suspension of pay for failure to report for scheduled reexaminations or to show that reasonable efforts were made to notify the soldier.

7–9. PERSCOM's letter of instruction to the MTF commander on periodic medical examination

a. Procedural instructions. PERSCOM will issue a letter of instructions to the MTF commander responsible for the medical examination 4 months before the month during which the examination is to be carried out. PERSCOM will coordinate with the U.S. Army Health Services Command (HSC) in issuing the letter. The letter will include—

(1) Name and address of the soldier requiring examination.

(2) A statement that the periodic medical examination is required during the month prescribed.

(3) Location of medical records, if known (the MTF commander will obtain all medical records).

(4) Instructions on completing the enclosed travel order as to the exact place and date of the examination.

(5) Authority for the MTF commander to arrange for the examination to be conducted. Another U.S. Government MTF, a civilian medical facility, or civilian physician(s), including medical consultants, may conduct the examination. The examination will be conducted as close to the soldier's home as circumstances and requirements of the case permit.

(6) Specific guidance governing conduct of the examination needed.

b. Preparation of orders. PERSCOM will prepare travel orders to accompany the letter of instructions. The travel orders permit payment for TDY only for the period needed to complete the TDRL examination. These orders do not provide for periods of medical treatment after the examination.

c. Supporting documents. The following documents will accompany the letter of instructions:

(1) Proceedings of the PEB and supporting documents that placed the soldier on the TDRL.

(2) A copy of the letter notifying the soldier of the examination.

d. Final TDRL examination. PERSCOM will initiate processing action no later than 6 months before the fifth anniversary date of the soldier being placed on the TDRL. The MTF commander and the soldier will be advised that the final examination must be expedited to ensure removal from the TDRL before the soldier's completion of 5 years on the list.

7–10. PERSCOM's letter of instruction to the soldier

PERSCOM will notify the soldier of the forthcoming medical examination. The letter will include the information below:

a. Name, address, and telephone number of the appointed MTF closest to the soldier's home.

b. Name and telephone number of the PEBLO who will assist the soldier during and after the medical examination.

c. The soldier may telephone the MTF collect to resolve any problems.

d. The MTF will arrange for and schedule the medical examination. Every effort will be made to schedule the examination for the soldier's convenience; however, the medical examination must be carried out within the month prescribed.

e. At the discretion of PERSCOM an escort may accompany a soldier who is unable to travel alone to the place of examination. One person may travel with the soldier upon request when the record clearly shows that the soldier is not physically or mentally able to travel without help. The attendant is entitled to file a claim for expenses according to JFTR, volume I, chapter 7, part I. If a private conveyance is used for travel, only the retired soldier may be reimbursed for transportation cost. Request for attendant must be approved by PERSCOM, (TAPC–PDB) in advance of travel.

f. The MTF will forward the following:

(1) Travel orders issued by PERSCOM if needed.

(2) Facts for obtaining transportation request and collection of approved travel expense.

(3) Per diem allowance if applicable.

g. Failure to make or follow through with arrangements with the hospital for carrying out the medical examination during the required month may result in the suspension of disability retirement pay.

h. The soldier must inform the MTF of visits to civilian or military physicians or other Federal medical facilities for treatment while on the TDRL and give permission to obtain records of such visits if available.

7–11. Disposition of the TDRL soldier

a. Action following periodic PEB evaluation or on fifth anniversary. PERSCOM will remove a soldier from the TDRL as described below on the fifth anniversary of the date the soldier's name was placed on the list, or sooner on the approved recommendation of a PEB.

(1) *Permanent retirement.* If the soldier meets the criteria below, the soldier will be removed from the TDRL, permanently retired for physical disability, and entitled to receive disability retired pay:

(a) The soldier is unfit.

(b) The disability causing the soldier's name to be placed on the TDRL has become permanent.

(c) The disability is rated at 30 percent or more under the VASRD, or the soldier has at least 20 years of active Federal service.

(2) *Separation.* A soldier will be removed from the TDRL and separated with severance pay if the soldier—

(a) Has less than 20 years of service.

(b) Is unfit because of the disability for which the soldier was placed on the TDRL; and either the disability has stabilized at less than 30 percent; or the disability, although not stabilized, has improved so as to be ratable at less than 30 percent. A former RA enlisted soldier who would be separated under this authority may request a waiver to reenlist. (See AR 601–210, chap 4.)

(3) *Fit for duty.* If a soldier is determined physically fit to perform the duties of his or her office, grade, rank or rating (and is otherwise administratively qualified), the following procedures apply:

(a) Former RA officers and warrant officers, subject to their consent, will be recalled to active duty. Action will be started to effect reappointment to the active list in the regular grade held when placed on the TDRL, or the next higher grade. If the officer does not consent to be called to active duty, TDRL status and disability pay will be ended as soon as possible.

(b) Former RA enlisted soldiers, subject to their consent, will be reenlisted in their regular component in the grade held on the day before the date place on the TDRL, or in the next higher grade. If the soldier does not consent to reenlistment, TDRL status and disability pay will be ended as soon as possible.

(c) Former soldiers of the U.S. Army Reserve (USAR), subject to their consent, will be reappointed or reenlisted in the USAR in the grade held on the day before the date placed on the TDRL, or in the next higher grade or transferred to the Retired Reserve, if eligible. They may request active duty, under USAR regulations.

(d) Former soldiers of the Army National Guard of the United States (ARNGUS), subject to their consent, may be reappointed or reenlisted in the ARNGUS in the grade held on the day before the date placed on the TDRL, or in the next higher grade if the proper State authorities reappoint or reenlist them in the Army National Guard (ARNG) of the State concerned. They may request active duty. If the soldier cannot be reappointed or reenlisted in the ARNG, and subject to the soldier's consent, he or she will be reappointed or reenlisted in the USAR or transferred to the Retired Reserve, if eligible.

(e) If the soldier in (a) thru (d) above has completed 20 years of active service when placed on TDRL, and does not consent to return to active duty upon being found fit for duty, the soldier may request voluntary retirement by reason of length of service upon removal from the TDRL.

(f) If the soldier in (c) and (d) above has completed at least 20 qualifying years of service computed under section 1332, title 10, United States Code (10 USC 1332) when placed on the TDRL, the soldier may request if otherwise eligible, retirement under section 3911, title 10, United States Code (10 USC 3911) from the TDRL.

(4) *Unfit—not in LD disability.*

(a) A soldier may recover from the disability resulting in placement on the TDRL. If while on the TDRL, the soldier incurs another unfitting disability, the soldier may be separated without benefits.

(b) If the soldier mentioned in (a) above was RA and had completed 20 years or more of active service when placed on the TDRL, the soldier may request voluntary retirement.

(c) If the soldier mentioned in (a) above was USAR and had completed at least 20 qualifying years of service computed under 10 USC 1332 when placed on the TDRL, the soldier may request transfer to the Retired Reserve or retirement if qualified under 10 USC 3911.

b. Periodic examination not performed. PERSCOM will take the actions described below when a periodic examination cannot be carried out.

(1) *Soldier's failure to report or reply.* If a soldier fails to respond to correspondence concerning the medical examination or fails or refuses to complete a medical examination, PERSCOM will make an effort to discover the reason. If such action cannot be justified and the fifth anniversary of placement on the TDRL has not been reached, PERSCOM will notify the soldier and the Chief, Retired Pay Operations, U.S. Army Finance and Accounting Center (USAFAC), to suspend retired pay. PERSCOM will keep the soldier's name on the TDRL until the fifth anniversary unless it is removed sooner by other action.

(2) *Unable to locate soldier.* When reasonable efforts to locate the soldier are unsuccessful, PERSCOM will take the action prescribed in (1) above.

(3) *Soldier imprisoned by civil authorities.* A report by the responsible MTF commander may indicate that examination of a soldier is not possible because the soldier is imprisoned and civil authorities will not permit the examination. If so, PERSCOM will take the action prescribed in (1) above.

(4) *Removal on fifth anniversary.* Soldiers on the TDRL shall not be entitled to permanent retirement or separation with severance pay without a current acceptable medical examination, unless just cause is shown for failure to complete the examination. Six months before the fifth anniversary of placement on the TDRL, PERSCOM will make a final attempt to contact the soldier ((1) and (2) above) or proper civil authorities ((3) above) and arrange a final examination. If this fails and the soldier does not undergo a physical examination, PERSCOM will administratively remove him or her from the TDRL on the fifth anniversary of placement on the list without entitlement to any of the benefits provided by 10 USC 61.

7–12. Restoring eligibility

PERSCOM may restore the soldier's eligibility to receive disability retirement pay if, after failure to report for and complete the required periodic examination, the soldier later satisfactorily meets the examination requirements. PERSCOM will notify the Chief, Retired Pay Division, USAFAC, to restore disability retired pay retroactive to the date the soldier undergoes the examination provided the soldier is still qualified for retention on the TDRL. The soldier's eligibility to receive retired pay may be made retroactive, not to exceed 1 year, if the soldier can show just cause for failure to respond to official notice or orders. A soldier's name may have been removed from the list as provided in paragraph 7–11*b*(4). If so, the soldier may take application to the Army Board for Correction of Military Records (ABCMR).

Section III
Periodic Medical Examination

7–13. Responsible MTF

The commander of the MTF, notified as provided in paragraph 7–9, is responsible for reexamining the soldier. If the MTF was obviously or apparently incorrectly selected, the commander will promptly notify PERSCOM to transfer the case file to another MTF.

7–14. Selection of examining facilities

a. Other locations. Upon review of the medical records, the MTF commander or his or her designee will arrange to have the portions of the examination that cannot be accomplished at the Army MTF conducted at one of the locations below. These locations are listed in the order of preference.

(1) Another uniformed service MTF.

(2) Other Federal medical facility at, or near, the soldier's home.

(3) Civilian-operated clinic or hospital at, or near, the soldier's home.

b. Hospitalization. Examination of a soldier on an out-patient basis is preferred. When hospitalization is foreseen, however, or when extensive tests or observations require hospitalization, the soldier will be ordered to report to the MTF designated, or if more appropriate, to a Federal MTF near the soldier's home. If the soldier is hospitalized at the time the examination is scheduled, a NARSUM from the hospital facility providing his or her care may suffice to meet the needs of a report of periodic examination.

c. Costs. The cost of medical examinations carried out at Government MTFs, including consultations from civilian sources, are payable from funds available to operate MTFs. Costs of medical examinations carried out at civilian MTFs or by civilian physicians at, or near, the soldier's home will be handled according to AR 40–3, chapter 15.

7–15. Medical records

The commander of the MTF responsible for the medical examination will promptly initiate a request for the soldier's medical records from information provided by PERSCOM or by the soldier. The commander will ensure that the medical records are available to the examining physician before the periodic medical examination. The examining physician must return all records furnished with the report of medical examination to the MTF commander for forwarding to the proper PEB.

7–16. The MTF commander's duties in notifying the soldier

The MTF commander will provide to the soldier the information specified in paragraph 7–10. Confirmation of the date of examination should be made by certified mail, return receipt, restricted delivery. If the notification is returned as undelivered or soldier fails to report as directed, the MTF commander will notify PERSCOM (TAPC–PDB).

7–17. Examination of the soldier

a. Purpose of medical examination. The purpose of the TDRL periodic medical examination is to—

(1) Determine the soldier's condition at the time of the examination.

(2) Decide if a change has occurred in the disability for which the soldier was placed on the TDRL.

(3) Decide if the disability has become stable enough to permit removal from the TDRL.

(4) Identify any new disabilities while the soldier has been on the TDRL.

b. Extent of the examination. The medical examination must be objective and complete. One or more physicians will conduct the examination. Proceedings of previous PEB actions and all medical records will be made available to the examiner. Diagnostic, laboratory, and radiological procedures, including photographs, should be used to the extent needed to establish and describe the soldier's current physical condition accurately. Detailed requirements for medical examinations for disability evaluations are contained in the VA Physician's Guide for Disability Evaluation Examinations and the VASRD. (See AR 40–3, chapter 8.)

c. Consultants. Advice of professional consultants may be obtained whenever needed during periodic medical examinations.

d. Soldiers physically unable to travel or mentally incompetent. When the responsible hospital commander determines that a soldier is physically unable to travel (for example, bedridden) or is mentally incompetent, the commander will make all reasonable efforts to have the soldier examined. Bringing the soldier to the hospital by ambulance or arranging for a visit by a physician to the soldier's residence is included when the effort is in the best interests of the Government. If the soldier is under medical treatment, current medical records from the MTF, or the physician treating the soldier, may provide adequate clinical data for the report of periodic examination.

e. Soldiers imprisoned by civil authorities. When a soldier is found to be imprisoned by civil authorities, the appointed MTF commander will request the confinement facility, or other proper authority, to have the soldier medically examined and to provide a report of the soldier's current medical state. The report will be processed in the normal manner upon receipt and forwarded to the PEB for adjudication. If an examination is impossible or no report is received, the MTF commander will return the medical records to PERSCOM with a summary of efforts to obtain adequate information. PERSCOM will take action prescribed in paragraph 7–11*b*.

7–18. Report of the medical examination

a. The report of periodic medical examination may be prepared using a letter or SF 502. The guidance in paragraph 4–11 applies. In addition, the following information will be provided:

(1) An estimate of change since the previous examination.

(2) A medical appraisal of all defects incurred, or discovered, after the soldier was placed on the TDRL. The report must clearly show the etiology of defects found during the examination so a decision can be made as to whether they relate to a condition that existed or was incurred while the soldier was on active duty, or was incurred while the soldier was on the TDRL.

(3) An opinion on whether the conditions have become stable. If not stable, provide an opinion as to the progress of the disability and a suggested time frame (not to exceed 18 months) for the next examination.

b. The report requires only the signature of the medical officer or physician appointed to conduct the medical examination. Forward the report to the commander of the MTF for review and approval.

7–19. Review and forwarding the report of the examination

a. The MTF commander, or designee, will ensure the completed report clearly describes the soldier's present condition and functional impairments. MEBDs are not required for TDRL periodic physical examinations; however, the MTF commander may refer a TDRL examination to a MEBD, especially one presenting a problem or dispute.

b. The MTF commander will give the soldier the opportunity to review and comment on the report of examination before forwarding it to the PEB. The soldier will sign the report of examination acknowledging receipt. If the soldier does not agree with the report of examination, the MTF commander will review and act on any objections. The MTF commander has the right of final approval; however, any written appeal or objection prepared by or for the soldier will be attached to the medical examination report.

c. The MTF commander or his designee will approve and forward the report to the servicing PEB.

d. The soldier's correct mailing address, area code, and telephone number will be confirmed to the PEB. A copy of the transmittal document will be provided to PERSCOM (TAPC–PDB).

Section IV
Physical Disability Decision

7–20. PEB processing

a. Deficiencies in report of examination. PEB will resolve deficiencies in a report of periodic examination to the extent possible with MTF commander. A case file will not be returned to PERSCOM because of deficiencies or need for further information except through USAPDA.

b. Changes in a soldier's condition while on the TDRL. The combined percentage rating approved at the time the soldier was placed on the TDRL cannot be changed by the PEB throughout the period the soldier is on the TDRL. Adjustment will be made at the time of removal from the TDRL to reflect the degree of severity of those conditions rated at the time of placement on the TDRL and any ratable conditions identified since placement on the TDRL. An EPTS factor may be added, modified, or eliminated at this time if additional evidence is obtained that was not previously available or apparent during the initial evaluation; or placement on the TDRL was due to fraud, mistake of law, or mathematical miscalculation.

c. Retention on the TDRL. A soldier may be retained on the TDRL if disabilities causing placement on the TDRL have not become stable, and either of the following occurs:

(1) The combined rating at the time of re-evaluation is at least 30 percent.

(2) The soldier has at least 20 years of service if the combined rating is less than 30 percent.

d. Entries on DA Form 199. Entries on DA Form 199 will reflect the soldier's condition at the time of the most recent periodic examination. When the soldier is recommended for retention, the DA Form 199 will record any new conditions but will not list a disability rating. When a soldier is recommended for permanent retirement, entries must be made for all conditions present whether or not previously recorded. The DA Form 199 will include the reason for variation between the original action (findings, recommendations, or ratings) causing the soldier's placement on the TDRL and current action removing him or her from the list. Explanations need not be lengthy, but must be understandable. Procedures for administrative relief pertaining to a correction or adjustment of the percentage of physical disability while a soldier is on the TDRL are contained in paragraphs 4–25 and 4–26.

e. Notice to soldier.

(1) If the PEB recommends removal from the TDRL, the PEB will forward to the soldier DA Form 199 and letter of explanation by certified mail, restricted delivery, return receipt requested. The letter will inform the soldier of his or her rights and responsibilities. It will provide the name, location, and telephone number of the PEBLO (fig 7–1). The soldier will sign the original copy of the DA Form 199 and return it after giving his or her choice of options in block 13. The copy of the DA Form 199 is the soldier's copy.

(a) If the certified mail receipt is not returned, or if the correspondence is returned undelivered, the PEB will try to verify the soldier's address by contacting PERSCOM, the MTF, the U.S. Army Finance and Accounting Center (USAFAC), or the VA regional office. If a new address is obtained, the PEB will try to deliver the notice. If not, a memorandum waiving the soldiers right of election will be prepared (fig 7–2).

(b) If the receipt is returned but no election is received, the PEB president will prepare a memorandum waiving the soldier's right of election for failure to respond (fig 7–3). The certified mail receipt will be included in the case file as proof that the soldier was notified.

(c) The PEB president will forward the case file to PERSCOM (TAPC–PDB) for final disposition.

(2) If the PEB recommends retention on the TDRL, the PEB will forward the DA Form 199 and a letter advising that there will be no change in the soldier's status or retired pay as long as the soldier remains on the TDRL. Notification will be by ordinary mail (fig 7–4). The DA Form 199 will include a statement that failing to notify PERSCOM of the current mailing address will result in the suspension of disability retired pay if the Army is prevented from properly notifying the retiree of a scheduled examination.

(3) The PEBLO of the MTF responsible for the periodic medical examination is responsible for counseling the soldier. Therefore, the PEB will provide the PEBLO a copy of the letter and DA Form 199 (with enclosures).

7–21. Travel orders for formal hearing

a. When the soldier elects to appear in person at the hearing, the recorder of the PEB will endorse the original travel orders according to AR 310–10. If a new fiscal year starts between the time the soldier completes the TDRL medical examination and the scheduled formal hearing, the PEB will endorse the orders using the new fiscal year fund cite. The new fiscal year fund cite can be obtained from PERSCOM, (TAPC–PDB). The PEB will inform the soldier in writing of the date, time, and place of the hearing, to include building and room number. If soldier lives in an area from which travel to the PEB is "local", as defined by the JFTR chapter 3, part F, orders are not required.

b. The PEB will provide one copy of the endorsed travel order to PERSCOM (TAPC–PDB). PERSCOM will commit the funds. The endorsement of orders and the commitment of funds must occur in advance of the soldier's travel for reimbursment of travel expense to be approved.

c. An attendant may accompany a soldier who is unable to travel alone to the formal hearing. The attendant is entitled to file a claim for expenses according to JFTR, volume I, chapter 3, part I. If a private conveyance is used for travel, only the retired soldier may be reimbursed for transportation cost. The soldier must contact the PEB in advance of travel to request travel orders for the attendant. If orders were issued for an attendant in connection with travel to the periodic exam, the PEB will endorse the orders and forward one copy to PERSCOM (TAPC–PDB). If no previous orders were issued or a different individual is serving as attendant, the PEB will contact PERSCOM for approval and fund cite. The PEB will forward one copy of the orders to PERSCOM (TAPC–PDB).

7–22. Review of TDRL cases

When a PEB completes its action, the case file will be disposed of as prescribed in chapter 4.

(Letterhead)

(Date)

Board Recorder
Washington--Physical Evaluation Board

Staff Sergeant John E. Doe, Retired
12 Cross Street
Petersburg, VA 23803

Dear Sergeant Doe:

A Physical Evaluation Board (PEB) has informally reviewed the report of your recent periodic medical examination and other available records. The PEB recommends that your name be removed from the Temporary Disability Retired List (TDRL). Enclosed is the original and one copy of the DA Form 199. This form reflects the findings and recommendations of the board.

Pay special attention to blocks 8 and 9 of the form. The entries in block 8 reflect the PEB's judgment of your present disabilities and how severe they are; whether the disabilities were incurred under conditions permitting compensation; and the percentage rating for each disability. Block 9 shows the findings as to whether you are fit or unfit because of physical disability. If you are unfit, block 9 also shows the combined rating for your disabilities determined under the rating system. It also shows the recommended disposition of your case consistent with Army policies. Block 10 is blank since this decision was made when you were placed on the TDRL.

Army procedures for removing a soldier from the TDRL require you to show whether you agree with the findings and recommendations entered on the DA Form 199. Please read carefully the statements following each box in block 13 on the reverse side of the form. Check the one that shows your decision. If there is anything you do not understand, please contact the Physical Evaluation Board Liaison Officer (PEBLO) whose name appears at the end of this letter. You may telephone collect. You should contact the PEBLO promptly.

If you submit a rebuttal and waive a formal hearing, the rebuttal must be based on one of the issues listed below and must provide reasons why the issue is valid. You will be notified in writing of the PEB's decision. If the previous findings are affirmed, your case will be forwarded to the U.S. Army Physical Disability Agency for review and action.

a. The decision of the PEB was based upon fraud, collusion or mistake of law.

b. You did not receive a full and fair hearing.

c. Substantial new evidence exists and is submitted, which, by due diligence, could not have been presented before disposition of the case by this Physical Evaluation Board.

To help you in reaching a decision, you should be aware that:

a. You may not be separated or retired because of physical disability without a "full and fair hearing" if you demand it. The Army calls this a formal hearing. This hearing is to give you the chance to make the PEB aware of facts that you believe may have a bearing on the outcome of your case.

b. If you demand a formal hearing, you may choose to be present or not. If you choose to be present at the hearing and do not live near the PEB, the Army will pay your transportation costs to and from your home. The Army will pay reasonable living costs while you attend the hearing.

c. If you demand a formal hearing, the Army will provide you an Army attorney to counsel and represent you. He or she will be thoroughly familiar with the disability system. You may, if you wish, provide your own counsel at your own expense. If you do not attend the hearing and do not select your own counsel, the Army attorney will represent your interests.

Your statement of election must be received by the PEB within 10 days of your receipt of this notice. If we do not receive your reply within the required time, you will forfeit your right to election.

Your case will be forwarded to U.S. Total Army Personnel Command for final processing.

Sincerely,

Enclosures

Thomas J. Miller
Board Recorder

Copy Furnished:
Walter Reed Army Medical Center
ATTN: PEBLO (Ms. Elizabeth Morgan)
Washington, DC 20307-5001
(202) 576-1131

Figure 7–1. Notice of Removal from TDRL

(Letterhead)

(Office Symbol) *(Date)*

MEMORANDUM FOR Commander, Total Army Personnel Command,
ATTN: TAPC-PDB, Hoffman II, 2461
Eisenhower Avenue, Alexandria, VA 22331-0477

SUBJECT: Nondelivery of Soldier's Copy of DA Form 199

1. A copy of the informal PEB proceedings in the case of SSG John E. Doe, 987-65-4321, was forwarded to the soldier by certified mail. The copy was returned undelivered. Further efforts to locate the soldier and deliver the proceedings have failed. A signed receipt for certified mail has not been returned and efforts to locate the receipt have failed.

2. Every reasonable effort has been made to effect delivery and obtain the soldier's response. The soldier's counsel has not submitted a statement of election in the soldier's behalf. In accordance with AR 635-40, para 7-20, the soldier is considered to have waived his right of election.

FOR THE PRESIDENT:

THOMAS J. MILLER
Board Recorder

CF:
PEBLO

Figure 7-2. Memorandum when TDRL soldier's copy cannot be delivered

(Letterhead)

(Office Symbol) *(Date)*

MEMORANDUM FOR Commander, Total Army Personnel Command,
ATTN: TAPC-PDB, Hoffman II, 2461
Eisenhower Avenue, Alexandria, VA 22331-0477

SUBJECT: Waiver of Right to Election

1. A copy of the informal PEB proceedings in the case of SSG John E. Doe, 987-65-4321, was forwarded to the soldier by certified mail. The attached receipt shows the copy was properly delivered.

2. The soldier was properly advised of his election rights by the PEBLO but has not responded. In accordance with AR 635-40, para 4-20e, the soldier is considered to have waived his right of election.

FOR THE PRESIDENT:

THOMAS J. MILLER
Board Recorder

CF:
Soldier
PEBLO

Notes:
1. MEMORANDUM FOR line will be CDR, USAPDA when case requires Agency review.
2. Cite applicable paragraph reference when waiving formal election.

Figure 7-3. Sample format for forwarding memorandum when soldier on the TDRL fails to make an election

(Letterhead)

(Date)

Board Recorder
Washington--Physical Evaluation Board

Staff Sergeant John E. Doe, Retired
12 Cross Street
Petersburg, VA 23803

Dear Sergeant Doe:

This Physical Evaluation Board (PEB) has reevaluated your physical condition. Based on the thorough review of your most recent medical evaluation and all other available records, this PEB recommends that you be retained on the Temporary Disability Retired List (TDRL) with reexamination during July 91.

While you are retained on the TDRL, your disability rating remains unchanged. Therefore, no appeal of these proceedings is authorized. Should the U.S. Army Physical Disability Agency modify the recommendation, you will be notified and advised of your appeal rights.

Sincerely,

Enclosure

Thomas J. Miller
Board Recorder

Figure 7–4. Notice of Retention on the TDRL.

Chapter 8
Reserve Components

8–1. Overview

a. This chapter outlines—

(1) The rules for processing through the disability system soldiers of the RC who are on active duty for a period of less than 30 days or on inactive duty training.

(2) The criteria under which soldiers of the RC, whether or not on extended active duty, apply for continuance in the Active Reserve.

b. 10 USC 1204, 1205, 1206 establish the criteria for entitlement to disability benefits for soldiers of the RC performing duty for 30 days or less. These criteria are summarized at table 8–1.

8–2. Eligibility

a. Disability from injury. Soldiers of the RC eligible for processing under this paragraph are those who incur a disability from an injury determined to be the proximate result of performing—

(1) Annual Training (AT), active duty special work (ADSW), active duty for training (ADT) with or without pay, or temporary tour of active duty (TTAD) under a call or order that specifies a period of 30 days or less, to include full time training duty (FTTD) under sections 502f, 503, 504, and 505, title 32 United States Code (32 USC 502f, 503, 504, and 505).

(2) Inactive duty training (IDT) including IDT without pay under competent orders. While enroute to or from IDT, a soldier of the RC is not performing duty. Therefore, Reservists who incur injuries while in a travel status to IDT are not eligible for referral into the disability system. However, in exceptional cases, where there is evidence that the soldier may actually be performing duty while in a travel status, the case should be referred to the PEB for consideration of eligibility.

(3) ADT under 10 USC 270(b). (This is usually a 45-day tour required by law because of failure on the part of the Reserve Component soldier to perform other required training duty.)

b. Disability from disease incurred while performing duty prior to 15 November 1986. If the disabling condition is the result of a disease rather than an injury, the soldier is ineligible for disability processing unless a medical authority has decided that the disease is the result of a service-connected injury incurred as described in "*a*" above.

c. Disability from disease incurred while performing duty on or after 15 November 1986. Section 604, Public Law 99–661 (604 PL 99–661), 14 November 1986 revised the provisions of 10 USC 1204, 1205, and 1206 to provide for disability processing of soldiers who incur or aggravate an injury or disease in the line of duty while performing inactive or active duty training during any of the periods referred to in a(1), (2), and (3). Referral for processing does not mean an automatic entitlement to disability compensation. Once referred, a determination must be made whether the disease was the proximate result of performing duty (para 8–3).

8–3. Proximate result

a. In order for soldiers of the RC to be compensated for disabilities incurred while performing duty for 30 days or less, to include IDT, there must be a determination by the PEB that the unfitting condition was the proximate result of performing duty. This determination is different from a LD determination which establishes whether the soldier was in a duty status at the time the disability was incurred and whether misconduct or gross negligence was involved. Proximate result establishes a casual relationship between the disability and the required military duty.

b. An injury incurred in LD while the soldier is hospitalized may be determined to be proximate result of performing active duty. The injury must be incurred before the termination date of the soldier's initial period of active duty for 30 days or less as reflected

by official orders, unless a direct causal relationship exists between the original proximate result injury and the subsequent injury. Decisions on cases where it is not certain that a direct causal relationship exists must be submitted to USAPDA for review.

c. A myocardial infraction may be determined to be the proximate result of performing duty if precipitated by unusual physical stress occurring during the performance of extraordinary and particularly stressful military duties.

8–4. Hospitalization

AR 40–3, chapter 4, sets out the circumstances when an RC soldier who is not on extended active duty may be entitled to medical care, including hospitalization for evaluation of physical defects of conditions incurred as a result of performing authorized military duty.

8–5. Duty and Pay Status

According to AR 40–3, chapter 4, and AR 135–381, chapter 2, orders of RC soldiers who incur a disability while performing IDT or AD for 30 days or less will not be revoked, amended or extended past the date specified in the orders directing such active duty for the sole purpose of processing under this regulation. However, the soldier may be eligible to receive medical care and evaluation. The soldier may also be entitled to receive incapacitation pay until final disposition is made.

8–6. Medical processing

a. When a commander or other proper authority believes that a soldier not on extended active duty is unable to perform the duties of his or her office, grade, rank, or rating because of physical disability, the commander will refer the soldier for medical evaluation according to AR 40–501 or NGR 40–3.

b. Conduct of MEBD and referral of case to a PEB will be according to the procedures of chapter 4, section III. If the soldier is not eligible for referral to a PEB, the MTF will forward the MEBD to the soldier's unit commander for disposition under applicable regulations.

c. If eligible for referral to a PEB, the soldier may remain, with his or her consent, under control of the MTF during disability processing. If the PEB finds the soldier unfit, the soldier will remain under administrative control of the MTF pending receipt of the final decision. If determined fit, the soldier will be returned to his or her duty station unless the training period has expired. If expired, the soldier will be permitted to return home. The MTF commander where the MEBD is held will notify the RC unit of the disposition of the soldier's case (see AR 40–3).

8–7. Continuance in an Active Reserve status

a. A RC soldier may request continuance in the Active Reserve under AR 49–501 or NGR 40–501. The application will be prepared in the sample format shown at figure 8–1. Upon completion of disability processing USAPDA will forward the case file to the appropriate approving authority listed below.

(1) Commander, USARPERCEN, ATTN: DARP–ZSG–5200, 9700 Page Boulevard, St Louis, MO 63132–5200, for USAR officers and enlisted personnel to include USAR AGR.

(2) Chief, NGB, ATTN: NGB–ARP–CT, Washington, DC 20310–2500, for National Guard officers and enlisted personnel to include NG AGR.

b. The criteria listed in paragraph 6–3 for continuance in the Active Army are not applicable to soldiers of the RC. To be considered for continuance in the RC under the provisions of this chapter, a soldier must be—

(1) Found unfit by PEB because of a disability that was not the result of intentional misconduct nor willful neglect, nor incurred during a period of AWOL.

(2) Capable of maintaining oneself in a normal military environment without adversely effecting one's health and the health of others.

(3) Physically capable of performing useful duty in an MOS for which currently qualified or potentially trainable.

(4) Capable of performing useful, military service without undue loss of time from duty for medical treatment.

8–8. PEB processing

The PEB must be convinced of the following:

a. The soldier's status and entitlement to processing have been documented in the file.

b. The soldier's LD has been decided (para 3–4).

(1) If the LD decision is pending, the PEB will process the case as if a favorable decision has been made. The DA Form 199 will include a statement that the case has been processed in the absence of a favorable LD decision and that benefits are not payable until a favorable decision is made.

(2) For disabilities resulting from sudden onset of disease, such as myocardial infraction, the LD will document the circumstances surrounding the disabling event (see AR 600–8–1, chaps 39 and 40).

c. Each disability listed on DA Form 199 resulted from an injury, illness, or disease incurred as the proximate result of performing duty as specified in paragraph 8–2.

8–9. Disposition

a. A soldier not on extended active duty who is unfit because of physical disability—

(1) May be permanently retired or have his or her name placed on the TDRL, if—

(a) He or she has at least 20 years of service as defined in section 1208, title 10, United States Code (10 USC 1208). (RC soldiers not on extended AD use section 1333, title 10, United States Code (10 USC 1333) for computations).

(b) His or her disability is rated at 30 percent or more.

(c) His or her disability occured in the line of duty, and is the proximate result of performing active duty or IDT.

(2) May be separated with severance pay if—

(a) His or her disability is rated at less than 30 percent.

(b) He or she has less than 20 years of service as defined in section 1208, title 10, United States Code (10 USC 1208). (RC soldiers not on extended AD us section 1333, title 10, United States Code (10 USC 1333) for computations).

(c) His or her disability occured in the line of duty, and is the proximate result of performing active duty or IDT.

(3) May forfeit severance pay; be transferred to the Retired Reserve; and receive under the provisions of section 1331, title 10, United States Code (10 USC 1331) nondisability retired pay at age 60, if at least 20 qualifying years of service for retirement have been completed and transfer to the retired Reserve is requested. According to the provisions of 10 USC 1209 and 1213 all rights to receive retired pay at age 60 are forfeited if disability severance pay is accepted instead of transfer to the Retired Reserve. Disability severance pay (unlike readjustment and separation pay) cannot be repaid for the purposes of receiving retired pay.

(4) Will be separated without benefits in the following situations:

(a) The unfitting condition results from injury which is due to intentional misconduct or willful neglect.

(b) The disability was incurred during a period of unauthorized absence.

(c) The disability was not incurred or aggravated as the proximate result of performing duty as specified in paragraph 8–2.

b. PERSCOM (TAPC–PDB) will notify soldiers processing for disability under this regulation of their options and of the conditions contained in *a*(3) above. The letter will provide sufficient detail (verified years of active service for severance pay and Reserve years of service for retirement) to assist the soldier to reach an informed decision. An election once made is final and conclusive and may not be changed. PERSCOM will permit the soldier seven days plus mailing time to make a decision. If the soldier does not respond, PERSCOM will separate the soldier with severance pay. A statement will be placed in the soldier's case file recording that the soldier was notified and failed to respond.

Table 8–1
Eligibility index for nonregular soldiers on active duty 30 days or less to include Inactive Duty Training (IDT) or active duty for training (ADT)

RULE	If the disability was result of intentional misconduct, willful neglect, or incurred while AWOL	If the disability was due to disease incurred while performing duty prior to 15 Nov 86 (See note 1.)	If the disability was from disease incurred while performing duty on or after 15 Nov 86 (See note 1.)	And was the proximate result of performing AD or IDT	And the soldier has at least 20 years of active Federal service	And the percentage of soldier's disability is—	And based upon accepted medical principles, the disability is—	Action—
1	yes							Discharge under 10 USC 1207
2	no	yes						Discharge under other than 10 USC chapter 61
3	no		yes	no				Discharge under other than 10 USC chapter 61. (See note 2.)
4	no		yes	yes	yes	0–100	Perm	Permanent retirement under 10 USC 1204
5	no		yes	yes	yes	0–100	May be perm	Temporary retirement under 10 USC 1205
6	no		yes	yes	no	30–100	Perm	Permanent retirement under 10 USC 1204
7	no		yes	yes	no	30–100	May be perm	Temporary retirement under 10 USC 1205
8	no		yes	yes	no	Under 30		Discharge with disability severance pay under 10 USC 1206 (See note 3.)

Notes:
1. With the passage of Public Law 99–661, Reservists on active duty for 30 days or less who incur a disability from a disease while performing duty on or after 15 November 86 are eligible for disability processing. Prior to Public Law 99–661, Reservists on active duty for 30 days or less were generally not eligible for disability processing when the disability was the result of disease.
2. If the soldier is on active duty, chapter 5 is applicable.
3. If a Reservist has 20 or more years of qualifying Federal service, the soldier may elect transfer to the Retired Reserve instead of discharge with severance pay (10 USC 1209).

(Letterhead)

(Office symbol) *(Date)*

MEMORANDUM FOR Commander, ARPERCEN, ATTN: DARP-ZSG, 9700 Page Boulevard, St. Louis, MO 63132-5200

SUBJECT: Request for Continuance in Active Reserve

1. If I am determined unfit because of physical disability, I hereby apply for continuance in the Active Reserve. I apply for assignment to duties that I am able to perform within the limitations imposed by my physical disabilities.

2. I also understand that:

a. I must be able to maintain myself in a normal military environment without the environment adversely affecting my health or requiring extensive medical care.

b. My disabilities will be periodically reevaluated to decide whether further continuance is not in my or the governments best interests.

c. Should I later incur a service obligation, I remain liable to complete such obligation in spite of my condition. Only when my disabilities progress to a point that I am no longer able to perform duty with proper limitations am I no longer liable.

d. At the time of my final retirement or separation from active duty, I will be evaluated under the regulations in effect when I am finally retired or separated, and I may be found fit.

e. I will not be separated without proper examination and physical disability evaluation.

f. If my term of service expires during the period for which continuance has been approved, I may request reenlistment with a waiver, and such request may be disapproved.

John E. Doe
987-65-4321
SSG, 76P30
HQ, USA Quartermaster Center
244th Quartermaster
Ft. Lee, VA 23801-5260

Notes:
For address for NG officers and enlisted to include NG AGR, is Chief, NGB, ATTN: NGB-ARF-CT, Washington, DC 20310-2560.

Figure 8-1. Application for continuance in the Active Reserve

Appendix A
References

Section I
Required Publications

AR 40–3
Medical, Dental, and Veterinary Care. (Cited in paras 2–5, 2–7, 2–8, 3–1, 3–7, 4–10, 4–11, 4–14, 4–15, 7–14, 8–4, and 8–6.)

AR 40–501
Standards of Medical Fitness. (Cited in paras 2–5, 3–1, 4–8, 4–10, 6–10, 6–13, 8–6, and 8–7.)

AR 135–200
Active Duty for Training, Annual Training and Active Duty of Individual Members. (Cited in paras 4–15 and 8–15.)

AR 135–381
Reserve Components Incapacitation System. (Cited in paras 3–7 and 4–15.)

AR 310–10
Military Orders. (Cited in para 7–20.)

AR 600–8–1
Army Casualty and Memorial Affairs and Line of Duty Investigations. (Cited in paras 2–9, 3–4, 4–12, 4–15, 4–19, 4–21, 4–22 and 8–8.)

NGR 40–3
Medical Care for Army National Guard Members. (Cited in para 8–6.)

NGR 40–501
Medical Service Standards of Medical Fitness. (Cited in para 8–7.)

Department of Veterans Affairs Schedule for Rating Disabilities.
(Cited in paras 3–5, 4–19, 7–11, and 7–17.) PEBs and PEBLO's may obtain this publication by contacting the VA Regional Office located in each state.

VA Physicians Guide—Disability Evaluations.
(Cited in para 4–11.) PEBs and PEBLO's may obtain this publication by contacting the VA Regional Office located in each state.

Section II
Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 15–185
Army Board for Correction of Military Records.

AR 37–104–1
Payment of Retired Pay to Members and Former Members of the US Army.

AR 37–104–10
Military Pay and Allowance Procedures for Inactive Duty Training Joint Uniform Pay System-Reserve Components-(JUMPS–(RC)–Army).

AR 40–66
Medical Record and Quality Assurance Administration.

AR 40–400
Patient Administration.

AR 140–158
Enlisted, Personnel Classification, Promotion, and Reduction.

AR 600–6
Individual Sick Slip.

AR 600–8–2
Suspension of Favorable Personnel Actions (FLAGS).

AR 600–20
Army Command and Policy Decisions.

AR 600–50
Standards of Conduct for Department of the Army Personnel.

AR 600–200
Enlisted Personnel Management System.

AR 601–210
Regular Army and Army Reserve Enlistment Program.

AR 608–25
Retirement Services Program.

AR 630–10
Absence without Leave and Desertion.

AR 635–5
Separation Documents.

AR 635–10
Processing Personnel for Separation.

AR 635–100
Officer Personnel.

AR 635–120
Officer Resignations and Discharges.

AR 635–200
Enlisted Personnel.

AR 735–5
Basic Policies and Procedures for Property Accountability.

NGR 600–200
Enlisted Personnel Management System

DA PAM 360–506
Disability Separation

DA PAM 360–539
SBP Made Easy (Revised 1987)

DA PAM 600–5
Handbook on Retirement Services for Army Personnel and Their Families.

DOD Military Pay and Allowances Entitlements Manual

DOD Directive 1332.18
Separation from the Military Service by Reason of Physical Disability

Joint Federal Travel Regulations, VOL I and II

VA Pamphlet 27–892–2
A Summary of VA Benefits

VA Pamphlet, January 1988
Federal Benefits for Veterans and Dependents

Section III
Prescribed Forms

DA Form 199
Physical Evaluation Board Proceedings (Prescribed in paras 3–5, 4–15, 4–19, 4–20, 4–21, 4–22, 6–8, 6–11, 7–20, 8–8.)

DA Form 199–1
Election to Formal Physical Evaluation Board Proceedings (Prescribed in para 4–21.)

DA Form 5889–R
PEB Referral Transmittal Document (Prescribed in para 4–15.)

DA Form 5890–R
Acknowledgment of Notification of Formal Physical Evaluation Board Hearing (Prescribed in para 4–21.)

DA Form 5891–R
Acknowledgment of Counseling on Legal/Procedural Rights (Prescribed in para 4–21.)

DA Form 5892–R
PEBLO Estimated Disability Compensation Worksheet (Prescribed in para 4–20.)

DA Form 5893–R
PEBLO Counseling Checklist/Statement (Prescribed in para 4–20.)

Section IV
Referenced Forms

DA Form 2
Personnel Qualification Record—Part I

DA Form 2–1
Personnel Qualification Record—Part II

DA Form 201
Military Personnel Record Jacket

DA Form 664
Serviceman's Statement Concerning Application for Compensation from the Department of Veterans Affairs

DA Form 2173
Statement of Medical Examination and Duty Status

DA Form 3072
Request for Waiver of Disqualification for Enlistment/Reenlistment in the Regular Army for In-Service Personnel

DA Form 3340–R
Request for Regular Army Reenlistment or Extension

DA Form 3349
Physical Profile

DA Form 3686–1
Jumps Army Leave and Earnings Statement

DA Form 3947
Medical Evaluation Board Proceedings

DD Form 2 (Retired) United States Uniformed Services Identification Card (Retired)

DD Form 4/1–4/3
Enlistment/Reenlistment Document

DD Form 214
Certificate of Release or Discharge from Active Duty

DD Form 256A
Honorable Discharge Certificate

DD Form 257A
General Discharge Certificate (Under Honorable Conditions)

DD Form 261
Report of Investigation—Line of Duty and Misconduct Status

DD Form 689
Individual Sick Slip

DD Form 1173
Uniformed Services Identification and Priviledge Card

SF 88
Report of Medical Examination

SF 93
Report of Medical History

SF 502
Clinical Record, Narrative Summary

VA Form 21–526
Veterans Application for Compensation or Pension

Appendix B
Army Application of the Department of Veterans Affairs Schedule for Rating Disabilities

Section I
General Rating Policies

B–1. Purpose of the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD)

a. Congress established the VASRD as the standard under which percentage rating decisions are to be made for disabled military personnel. Such decisions are to be made according to Title IV of the Career Compensation Act of 1949 (Title IV is now mainly codified in 10 USC 61.)

b. Percentage ratings in the VASRD represent the average loss in earning capacity resulting from these diseases and injuries. The ratings also represent the residual effects of these health impairments on civil occupations.

B–2. Policy application

Not all of the general policy provisions of the VASRD apply to the Army. Section I replaces or modifies paragraph 1–31 of the VASRD, which pertain to VA determination of service-connected disabilities, internal VA procedures or practices, and other paragraphs that do not apply to the Army. Rating policies that apply to the Army but are not made clear by the VASRD are addressed.

B–3. Essentials of rating disabilities

a. Application of the VASRD. The VASRD is primarily used as a guide for evaluating disabilities resulting from all types of diseases and injuries encountered as a result of, or incident to, military service. Because of differences between Army and VA applications of rating policies, differences in ratings may result. Unlike the VA, the Army must first determine whether or not a soldier is fit to reasonably perform the duties of his office, grade, rank, or rating. Once a soldier is determined to be physically unfit for further military service, percentage ratings are applied to the unfitting conditions from the VASRD. These percentages are applied based on the severity of the condition.

b. Medical treatment at the time of voluntary or mandatory separation or retirement. Many medical and surgical procedures are performed when a soldier is nearing the end of his military career. These are intended to improve a soldier's health, not to render him unfit. The principles of paragraph 3–3*b* and *c* must be considered at the termination of service as well as for EPTS conditions. Corrective treatment and convalescence will not be considered as a valid contribution to disability unless unexpected adverse effects occur that are disabling or contribute to disability and are ratable.

c. Failure to comply with prescribed treatment.

(1) There are many conditions, such as neuropsychiatric disorders, asthma, hypertension, epilepsy, diabetes, certain injuries, which may be improved sufficiently by treatment to prevent disability, or to significantly decrease it. If a soldier unreasonably fails or refuses to submit to medical or surgical treatment or therapy, or take prescribed medications, or to observe prescribed restrictions on diet, activities, or the use of alcohol, drugs or tobacco, that portion of the disability that results from such failure or refusal will not be rated where it is clearly demonstrated that—

(a) The soldier was advised clearly and understandably of the medically proper course of treatment, therapy, medication or restriction.

(b) The soldier's failure or refusal was willful or negligent and not the result of mental disease or a physical inability to comply.

(2) Notwithstanding the above guidance, MTF's should not forward MEBD's involving refusal to submit to medical care unless a determination has been made by OTSG that the soldier's refusal was reasonable according to the procedures set forth in AR 600–20, paragraph 5–4*c*. PEB's may return cases to MTF's for compliance with AR 600–20.

d. Objective medical findings and disability ratings. Physical examination, laboratory tests, x-rays, and other findings are not, in themselves, ratable. A rating for a disability must be based on demonstrable impairment of function unless otherwise provided for in this regulation.

e. Elective surgery or treatment. Soldiers who, after being told by competent military medical authority that a treatment option is unwarranted for a given medical condition, elect to have such treatment done at their own expense, will not be eligible for compensation under the provisions of this regulation for any adverse residuals resulting from the elected treatment, unless it can be shown that such election resulted from impaired judgment or lack of insight that is part of their condition.

f. Disabilities not unfitting for military service. Conditions which do not render a soldier unfit for military service will not be considered in determining the compensable disability rating unless they contribute to the finding of unfitness.

B–4. Higher of two evaluations

In a number of atypical instances, it is not expected that all cases will show all the findings specified in the VASRD. Where there is question as to which of two percentage evaluations shall be applied, the higher evaluation will be assigned if the soldier's disability more nearly approximates the criteria for that rating. Otherwise, the lower rating will be assigned. When, after careful consideration of all reasonably procurable and assembled data, there remains a reasonable doubt as to which rating shall be applied, such doubt will be resolved in favor of the soldier.

B–5. Pyramiding

Pyramiding is the term used to describe the application of more than one rating to any area or system of the body when the total functional impairment of that area or system can be reflected under a single code. All diagnoses that contribute to total functional impairment of any area or system of the body will be merged with the principal diagnosis, for rating purposes, unless specifically exempted in section II of this appendix.

B–6. Total disability ratings

Total disability will be considered to exist when the soldier's impairment is sufficient to render it impossible for the average person to follow a substantially gainful occupation. Accordingly, in cases in which the VASRD does not provide a 100 percent rating under the appropriate (or analogous) code, a soldier may be assigned a disability rating of 100 percent if his impairment is sufficient to render it impossible for him or her to follow a substantially gainful occupation. When such an extra-schedule rating is proposed, review and approval must be obtained from USAPDA.

B–7. Convalescent ratings

Under certain diagnostic codes, the VASRD provides for convalescent ratings to be awarded for specified periods of time without regard to the actual degree of impairment of function. Such ratings do not apply to the Military Departments since the purpose of convalescent ratings is accomplished by other means under disability laws. Convalescence will ordinarily have been completed by the time optimum hospital improvement (for disposition purposes) has been attained. The ratings for observation periods, as distinguished from convalescence, such as those "for one year" following treatment for a malignant neoplasm, are not affected by this policy.

B–8. Analogous ratings

When an unlisted condition is encountered, it is rated under a closely related disease or injury in which not only the functional, but the anatomical localization and symptomatology are closely analogous. Conjectural analogies, as well as the use of analogous ratings for conditions of doubtful diagnosis, or those not fully supported by clinical and laboratory findings, are to be avoided. The ratings for organic diseases and injuries are not to be assigned by analogy to conditions of psychological origin (VASRD Codes 9000–9511).

B–9. Extra-Schedule ratings in exceptional cases

The requirement to use the VASRD in rating disabilities vests in the SA the same administrative power to assign ratings in unusual cases not covered by the VASRD as that exercised by the Central Office of the Veterans Administration. Therefore, in exceptional cases where the VASRD evaluations are found to be inadequate, extra-schedule ratings due exclusively to service-connected disability may be assigned. In such cases, the recommending PEB must fully document the basis of the conclusion that the case presents such an exceptional or unusual disability picture, with such related factors as marked interference with employment or frequent periods of hospitalization, as to render impractical the application of the regular VASRD standards.

B–10. Rating of disabilities aggravated by active service

When considering EPTS cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree existing at the time of entrance into the active service, less natural progression occurring during active service. This will apply whether the particular condition was noted at the time of entrance into active service or is determined upon the evidence of record or accepted medical principles to have existed at that time. Therefore, it is necessary to deduct from the present degree of disability, if ascertainable, the degree of disability existing at the time of entrance into active service and also the natural progression that has occurred during active service in terms of the rating schedule.

a. If the disability is total (100 percent) and service aggravation has occurred, the EPTS factor will be recorded but no deduction in compensable rating will be made.

b. If the disability at the time of entrance into the service is not ascertainable in terms of the VASRD, no deduction higher than 0 percent will be assigned. The EPTS condition will be listed as "UND" (undetermined) if there is any question.

c. Hereditary, congenital and other EPTS conditions frequently become unfitting through natural progression and should not be assigned a disability rating unless service aggravated complications are clearly documented or unless a soldier has been permitted to continue on active duty after such a condition, known to be progressive, was diagnosed or should have been diagnosed.

B–11. EPTS—not service aggravated

If the disability at the time of evaluation is not greater than the EPTS, the condition cannot be considered service aggravated and will be listed as (NR) (not ratable). Zero ratings do not apply in this instance.

B–12. Combined Ratings Table

When a soldier has more than one compensable disability, the percentages are combined rather than added (except when a "Note" in the VASRD indicates otherwise). This results from the consideration of the individual's efficiency, as affected by the most disabling condition, then by the less disabling conditions in the order of their severity. Thus, a person having a 60 percent disability is considered to have a remaining efficiency of 40 percent. if he has a second disability rated at 20 percent, then he is considered to have lost 20 percent of that remaining 40 percent, thus reducing his remaining efficiency to 32 percent. Hence, a 60 percent disability combined with a 20 percent disability results in a combined rating of 68 percent. The combined rating for any combination of disabilities can be determined by first arranging the disabilities in their exact order of severity and then referring to the combined ratings table of the VASRD according to the following instructions:

a. Combining two percentages. Enter the table by locating the highest percentage in the left-hand column and reading across to where that horizontal line intersects with the vertical column headed by the second percentage. (Example: 40 combined with 20 equals 52.)

b. Combining three or more percentages. First, combine the first two percentages as above. Second, re-enter the table by locating that combined value in the left-hand column and reading across to where that horizontal line intersects with the vertical column headed by the third percentage. (Example: 50 combined with 30 equals 65, 65 combined with 20 equals 72.) If there are additional percentages, the second step is repeated using the new combined value and the next percentage.

c. Converting combined ratings. After all percentages have been combined, the resulting combined value is converted to the nearest number divisible by 10. Combined value ending in 10 will be adjusted upward. If the combined value included a decimal fraction of 0.5 or more as a result of applying the bilateral factor, the fraction is converted to the next higher whole number; otherwise, the decimal fraction is disregarded. (Example: If the combined value is 64.5, first round off the fraction to make the combined value 65, which in turn is rounded to 70. If the combined value is 64.4, the decimal fraction is disregarded and the combined value of 64 is rounded off to 60.)

B–13. Bilateral Factor

When a partial disability results from injury or disease of both arms, or both legs, or of paired skeletal muscles, or pelvic or shoulder girdle injuries resulting in extremity impairment, the ratings for the disabilities of the right and left sides will be combined as usual, and 10 percent of this value (called the Bilateral Factor) will be added (that is, not combined) before proceeding with further combinations, or converting to degree of disability. The Bilateral Factor will be applied to such bilateral disabilities before other combinations are carried out, and the rating for such disabilities, including the Bilateral Factor as above, will be treated as one disability for the purpose of arranging in order of severity and for all further combinations.

a. The terms "arms" and "legs" are not here intended to distinguish between the arm, forearm, and hand, or the thigh, leg, and foot, but to describe to the upper extremities and lower extremities as a whole. Thus with a compensable disability of the right thigh (for example, amputation), and one of the left foot (for example, pes planus), the Bilateral Factor applies, and similarly, whenever there are compensable disabilities affecting use of paired extremities regardless of location or specified type of impairment. (Except as noted in *c* below.)

b. The correct procedures when applying the Bilateral Factor to disabilities affecting both upper extremities and both lower extremities is to combine the ratings of the disabilities affecting the four extremities in order of their individual severity and apply the Bilateral Factor by adding, not combining, 10 percent of the combined value, thus attained.

c. The Bilateral Factor is not applicable unless there is partial disability of compensable degree in each of two paired extremities or paired skeletal muscles. Special instructions regarding the applicability of the Bilateral Factor are provided in various parts of the VASRD, for example, 5003, 7114–7117, 8205–8412. The Bilateral Factor is not applicable in skin disabilities rated under Code 7806.

B–14. Use of VASRD Codes

The VASRD codes appearing opposite the listed ratable disabilities are numbers for showing the basis of the evaluation assigned and for statistical analysis. Great care must be used in the selection of the applicable code and in its citation on the rating sheet. The written diagnosis entered on the rating form should include any description considered necessary to indicate the extent of severity or etiology of the condition. In the selection of codes, injuries generally will be represented by the number assigned to the residual condition on the basis of which the rating is determined. When disease conditions exist, preference must be given to the code assigned to the disease itself. If the rating is determined on the basis of residual conditions, the code appropriate to the residual condition will be added, preceded by a hyphen. Thus, atrophic rheumatoid arthritis rated as ankylosis of the lumbar spine would be coded "5002–5287." In this way the exact source of each rating can be easily identified. In the citation of disabilities on rating sheets, the diagnostic terminology may be any combination of the medical examiner's or VASRD terminology that accurately reflects the degree of disability. Residuals of diseases or therapeutic

procedures will not be cited without reference to the basic disease. Hyphenated codes are used in the following circumstances:

a. When the VASRD provides that a listed condition is to be rated as some other code, for example, myocardial infraction rated as arteriosclerotic heart disease (7006–7005) or nephrolithiasis rated as hydronephrosis (7508–7509).

b. When the VASRD provides a minimum rating and the unfitting disability is being rated on residuals, for example, multiple sclerosis rated with very diffuse residuals, rated by analogy (8018–8105).

c. When an unlisted condition is rated by analogy, for example, spondylolisthesis rated as lumbrosacral strain (5299–5295). When an unlisted disease, injury, or residual condition is encountered, requiring rating by analogy, the diagnostic code number will be "built-up" as follows. The first two digits will be selected from the part of the schedule most closely identifying the part, or system, of the body involved. The last two digits will be "99" for all unlisted conditions. This procedure will facilitate a close check of new and unlisted conditions rated by analogy.

B–15. Zero percent ratings and minimum ratings

a. Occassionally a medical condition which causes or contributes to unfitness for military service is of such mild degree that it does not meet the criteria for even the lowest rating provided in the VASRD. Apply a 0 percent rating even though the lowest rating listed is 10 percent or more, except when "minimum ratings" are specified or unless the minimum rating is for a "by analogy rating." In all instances where a zero rating is applied to a principle cause of disability, include a rationale explaining the exact reasons for unfitness. When an otherwise fit soldier is "unfit" because of his profile and MOS, note this in the rationale. (The 0 percent rating does not preclude the award of severance pay.) The bilateral factor will be applied when a disability is present in two paired extremities, and one is rated at 0 percent.

b. In some instances the VASRD provides a "minimum rating" without qualification as to residuals or impairment. Syringomyelia, 8024, is an example. Diagnosis alone is sufficient to justify the minimum rating providing the condition is unfitting. Higher ratings may be awarded in consonance with degree of severity. No rating lower than the "minimum may be used if the diagnosis is satisfactorily established unless specifically exempted by this regulation or by higher authority.

c. The VASRD provides for minimum rating for "residuals" in certain medical conditions. The instructions may be, "rate residuals, minimum—percent," or may specify what impairment to rate and the minimum rating for that impairment. Examples are 8011, anterior poliomyelitis, and 6015, benign new growth of eyeball and adnexa, other than superficial. To justify the minimum rating for residuals, a functional impairment or other residual caused by the condition must exist. Otherwise, a 0 percent is appropriate.

Section II
Rating Principles

B–16. Overview II

The contents of section II contain principles for rating disabilities. These instructions are derived from and supplement the VASRD where additional guidance or clarification is needed for processing Army disability cases.

B–17. Application of specific parts of the VASRD Instructions and explanatory notes that follow are cited according to paragraph and VASRD codes.

Only those portions requiring special comment or those that have been the cause of misunderstanding in the past are included. Comments and rating instructions also supplement the VASRD in those instances in which recent medical advances are inadequately covered. Revisions of the VASRD, after publication of this appendix, will take precedence unless found to be inappropriate to Army requirements. EPTS, when discussed hereafter, is subject to the provisions of paragraph B–10 and B–11.

B–18. New growths, malignant

Special consideration must be given to determination of fitness or unfitness, since many soldiers are not disabled by these diseases, their treatment, or the outcome. The following are general guidelines. Exceptions will arise that require judgment based on individual circumstances.

a. Permanently retire, if unfit, at 100 percent a soldier with a diagnosed malignant tumor that has metastasized, and has not favorably responded to therapy or is known to be refractory. In such cases, metastasis may be defined as a distant spread of the tumor or as local invasion that renders treatment noncurative.

b. Do not find unfit a soldier with a diagnosed malignant tumor that has not metastasized and has responded favorably to therapy to the extent that there is no current evidence of the disease unless the soldier is functionally unfit because of residual condition due to the direct effect of the tumor or due to the treatment of the tumor. If found unfit, the soldier may be placed on the TDRL, if appropriate.

c. When chemotherapy is used as a definitive treatment or as part of such treatment, a soldier may be retained on active duty, placed on TDRL or permanently separated, as indicated by individual circumstances.

d. When chemotherapy is used as an adjunctive and no evidence of an unfitting residual malignant tumor exists, its use ordinarily will not influence the disposition of a case unless adverse effects are encountered.

B–19. Organ transplants

Joint prosethetic transplants are discussed under codes 5051–5056. Vascular system prosthetics are addressed under the 700 codes. Other organ transplants, such as heart, lung, liver, and kidney, will ordinarily be found unfit. Ratings are based on the following factors:

a. The functional status of the transplanted organ.

b. The need for and adverse effects of sustained immunosuppressions. Immunosuppressions may be rated on the basis of specific recurrent infections or by analogy to systemic disorders, such as under 6350.

B–20. Anticoagulant prophylaxis or treatment

Medical conditions or surgical procedures, such as implantation of prosthetic vascular devises or prosthetic heart valves, frequently require the use of anticoagulants. Neither the short-term treatment nor long-term prophylactic use of anticoagulants will be cause for rating a given condition at a higher level than that designated in the VASRD for the condition itself. Rate separately complications arising from the use of anticoagulants. Hypercoagulable states requiring chronic use of anticoagulants are addressed under 7799–7120. Other high risk conditions may also be considered, by analogy, to a hypocoagulable state.

B–21. Human Immunodeficiency Virus (HIV) Infection/ Acquired Immune Deficiency Syndrome (AIDS)

a. The Walter (WR) staging assessment for the progression of HIV infection is shown below.

(1) *WR–1.* Infection by the HIV demonstrated by positive antibody by Western Blot on 2 separate serum specimens.

(2) *WR–2.* Positive antibody test as described above plus chronic lymphadenopathy, defined as lymph nodes greater than one centimeter in diameter in 2 extrainguinal sites persisting for 3 months.

(3) *WR–3.* Positive antibody test plus T helper cell depletion, defined as less than 400 T helper cells/mm3 of blood for at least 6 weeks. In this and succeeding stages, chronic lymphadenopathy may or may not be present.

(4) *WR–4.* Positive antibody test, T helper cell deficiency as defined above and positive response to only one antigen on repetitive (x2) delayed hypersensitivity (DHS) skin testing (partial anergy).

(5) *WR–5.* Positive antibody test, T helper cell deficiency and either complete anergy (no positive response on repetitive DHS skin testing) or one episode of oral candidiasis (thrush).

(6) *WB–6.* Positive antibody test, T helper cell deficiency and the occurrence of a recognized opportunistic infection, for example pneumocystis carinii, disseminated cytomegalovirus infection, CNS toxoplasmosis, etc. (Kaposi's sarcoma alone does not fulfill staging criteria for WR–6.)

b. Clinical staging will not serve as the criterion for determining medical fitness or a disability rating, however, the clinical manifestations that determine the several stages of the disease are those that determine a soldier's fitness for duty. Soldiers infected with HIV who show signs of immunological deficiency must be referred to a MEB regardless of the clinical staging of the disease. This policy permits initiation of board proceedings at any Walter Reed stage determined appropriate.

c. Central Nervous System (CNS) infections may be one of the first noted clinical manifestations of HIV. Diffuse, profound and devastating damage can occur before MRI, CT scans, or psychological tests can pick it up and before T–4 cells are significantly depressed. The prognosis is grim and the soldier never becomes functional even though criteria for Stage WR–2 may not be exceeded. Consider high disability ratings.

d. Further guidance is provided under codes 6351–6353.

Section III
Special Instructions and Explanatory Notes, VASRD

B–22. 5000—Osteomyelitis

a. Minimum rating of 20 percent for active osteomyelitis does not apply when amputation of the part would be ratable at only 10 percent. In this case, the amputation rule does not apply. The following are examples:

(1) Active osteomyelitis, middle finger, rate 10 percent (amputation rule applies),

(2) Active osteomyelitis, little finger, distal to P.I.P., rate 10 percent (amputation rule does not apply).

b. Saucerization or sequestrectomy does not necessarily equate with stabilization or a cure.

c. Rate osteomyelitis extending into a major joint according to the amputation rule.

B–23. 5002—Rheumatoid arthritis

a. Active process, rate under 5002, 5004, 5009, and 5017 based on clinical and laboratory features.

b. Chronic residuals, rate under appropriate limitation of motion codes (5200 series) based on X-ray evidence plus clinical features.

c. Apply bilateral factor, if proper, for residuals when systemic illness is not the major disability.

d. Do not combine ratings for active process (5002) with ratings for residuals (5200 series).

e. Rate lung involvement separately under 6802 and enteropathies separately under 7300 series if unfitting by themselves.

B–24. 5003—Arthritis, degenerative, hypertrophic and pain conditions rated by analogy to degenerative arthritis

These are rated as follows:

a. Each major joint (or grouping of minor joints) with objective limitation of motion plus X-ray evidence—10 percent. The bilateral factor applies.

b. X-ray evidence of two or more major joints or groups of minor joints, plus occasional exacerbations of incapacitating symptoms—total 20 percent. With X-ray evidence alone—10 percent. No bilateral factor applies.

c. When the limitation of motion of the involved specific joint or joints is of sufficient degree, the rating assigned will be under one of the appropriate limitation of motion codes (5200 series or 9905). Bilateral factor applies only to 5200 series.

d. If more than two major joints or groups of minor joints are involved, rate separately and combine the ratings for those joints which would merit a rating under the 5200 series or 9905. When a rating is assigned under a limitation of motion code (5200 series), it will not be combined with a rating under code 5003 for other joint involvement on the basis of X-ray findings.

e. For rating purposes, combinations of interphalangeal, metacarpal phalangeal and metatarsal phalangeal joints are groups of minor joints equivalent to a major joint. Likewise, each segment of the spine (cervical, thoracic lumbar) and both sacroiliac joints together constitute groups of minor joints. The lumbosacral joint is a major joint.

f. Often a soldier will be found unfit for any variety of diagnosed conditions which are rated essentially for pain. Inasmuch as there are no objective medical laboratory testing procedures used to detect the existence of or measure the intensity of subjective complaints of pain, a disability retirement cannot be awarded solely on the basis of pain. However, lack of objective findings does not constitute a valid reason for finding a soldier unfit by analogy to a neuropsychiatric disability or assuming that the soldier is malingering. Rating by analogy to degenerative arthritis as an exception to analogous rating policies (para B–8) may be assigned in unusual cases with a 20 percent ceiling, either for a single diagnosed condition or for a combination of diagnosed conditions each rated essentially for a pain value. To do otherwise would be to combine pain ratings so as to achieve a percentage of disability that would result in erroneous disability retirement. (Severe eye pain is an exception, see code 6009.)

B–25. 5004–5009–5024—Arthritis, miscellaneous

Rate all of the septic infectious, or other arthritides on the basis of associated system symptoms according to VASRD code 5002. Reiters syndrome, spondylitis, transplantation antigen-related arthritis, or arthritis secondary to bowel disease are examples.

B–26. 5051–5056—Prosthetic implants

These do not necessarily render soldiers unfit. If a soldier is unfit at the time of the medical board, it may be appropriate to place the soldier on the TDRL. If unfit on reevaluation, consider permanent rating based on residual impairment. Amputation rule applies. Convalescent ratings do not apply.

B–27. 5126–5151—Multiple finger disabilities

A convenient method of computation has simplified rating multiple finger disabilities. One may calculate an "average amputation level" for fingers involved by assigning graded values for each finger according to the level at which it was amputated. Graded values may also be assigned for the severity of the finger's ankylosis. The disability may then be rated according to the notes of instruction in the VASRD. The method is as follows:

a. Step one. Determine the grade value of each of the affected fingers from figure B–1, columns A and C.

b. Step two. Find the average grade value by dividing the total values for the individual fingers by the number of fingers involved. Round off fractions to the nearest whole number.

c. Step three. From figure B–1, columns B and C, determine the correct category of the defects (favorable ankylosis, unfavorable ankylosis, amputation) for the average grade of the disabled hand. The proper code number and rating can then be determined within that category according to the number of fingers involved. (For example: A soldier has had a thumb amputated through the distal phalanx; the index and little fingers through the middle phalanges; and the entire ring finger, including more than one-half of the metacarpal. The total value of each of the effected fingers is 10 based on grade values of 2 for the thumb, 2 for the index finger, 2 for the little finger, 4 for the ring and metacarpal. The average grade value is 3 based on dividing the total value of 10 by the total number of fingers, 4, and rounding the answer to the nearest whole number. Based on figure B–1, grade 3 is rateable as amputation. The amputation or unfavorable ankylosis of four fingers—thumb, index, ring, and little—is rateable under 5129 at 70 percent for the major hand, or 60 percent for the minor hand.)

d. Thumb defects. For rating purposes, the thumb will be regarded as having no distal phalanx. Amputation of the thumb at the interphalangeal joint or distal thereto will be graded as unfavorable ankylosis (Grade 2). The VASRD is ambiguous in this regard, no such distinction being made in the notes following 5151 of the VASRD. Yet, 5152 shows 20 percent for application at the

distal joint or distal thereto, and 5224 also shows 20 percent for application to unfavorable ankylosis of the thumb.

B–28. 5171—Amputation of great toe

Must be through the proximal phalanx to warrant a 10 percent rating.

B–29. 5200–5295—Rating involving joint motion

a. In the measurement of joint motion it is incumbent upon the medical examiner to utilize the standardized descriptions portrayed in Figure B–2.

b. When the reported limited range of motion falls between two points specified in the VASRD, the higher percentage of disability will apply.

c. Ankylosis is the absence of motion of a joint. In application, it is complete fixation, or a limitation of motion so severe in degree that the amount of movement is negligible.

d. Avoid the inclination (usually encountered when an analogous rating of an extremity is necessary) to use an analogy such as "other impairment of" elbow or knee (5209 or 5257) when the actual impairment is a limitation of motion of the joint properly ratable as limitation of flexion or extension of the part distal to the joint.

e. In some cases of limitations or of other abnormal joint motion, the basic cause is injury to muscle or tendon rather than to bone or joint. A careful distinction must be made for appropriate rating. Ratings for loss of joint motion can only be awarded where a mechanical basis for limited motion is found. Muscle contractures and arthritic degeneration of bone are examples of a mechanical limitation of motion. Contrariwise, joint pain resulting in loss of motion does not constitute a mechanical basis for restricted motion.

f. The American Medical Association Guides to the Evaluation of Permanent Impairment (3rd edition) contain excellent descriptions for quantifying disability on the basis of measured loss of motion or function. The recommended ratings within the guides cannot be used in lieu of VASRD ratings. However, the described severity of the disability can often be factored into assigning a correct VASRD rating.

B–30. 5205–5208—Ankylosis or limitation of motion of elbow and forearm

a. 5205. When a rating for unfavorable ankylosis is not based upon the additional finding of complete loss of supination or pronation, the rating may be combined with 4213, subject to the amputation rule. If less than complete loss of supination or pronation occurs, 5205 may be combined with 5213, but not to exceed the rating for unfavorable ankylosis under 5205.

b. 5206–5208. These codes will combine with 5213 but not to exceed the rate for unfavorable ankylosis under 5205 or 5215. If current results are unsatisfactory, rate equivalent to amputation of humerus below insertion of deltoid or flail elbow, whichever is proper. If the soldier is placed on the TDRL, rate residuals as indicated when condition is stabilized.

B–31. 5209–5212—Other impairments of elbow, radius, and ulna

Do not combine these codes with 5213.

B–32. 5213—Impairment of pronation and supination

a. Limitation of either pronation or supination may be rated. Never rate both in the same arm, however. Full pronation is the position of the hand flat on the table. Full supination is the position of the hand palm up. In rating limitation of pronation, the "arc" is from full supination to full pronation. The "middle" of the arc is the position of hand, palm vertical to the table.

b. An inconsistency exists in the schedule for the ratings for the major arm when "hand fixed near the middle of the arc of moderate pronation" is rated 20 percent, while limitation of pronation with "motion lost beyond middle or arc" is rated 30 percent. Resolve cases in which this conflict arises in the soldier's favor.

c. "Motion lost beyond last quarter of arc" means that the forearm can be pronated from 0 degrees through 40 degrees but no further. (See VASRD, para 71, and the illustration of forearm motion (fig. B–2).)

B–33. 5251–5253—Limitation of extension and flexion of the thigh

Ratings allowable under these codes may not realistically reflect the degree of disability because of basic or related disability of the sacroiliac region, pelvis, acetabulum, or head of femur. More suitable ratings may be selected from 5250, (hip, ankylosis of), 5255 (femur, impairment of, with hip disability) or 5294 (sacroiliac injury). (See VASRD, paragraph 67 for comments on pelvic skeletal fractures.)

B–34. 5255–5262—Defects of long bones of the lower extremity

Apply these codes (malunion with adjacent joint disability) when correct to avoid multiple codes and ratings. When both a proximal and a distal major joint are affected, however, an additional rating may be indicated for the less disabled joint. These codes are often appropriate when joint surfaces are included in the fracture lines.

B–35. 5257—Knee, other impairments

Patellectomy, chondromalacia, osteochondritis dissecans should be rated under 5003. Exceptions are cases in which objective findings warrant rating under 5257 for recurrent sublaxation or lateral instability.

a. A rating of 30 percent for severe knee instability is appropriately awarded in those cases where a knee brace is prescribed for a functional (as opposed to a protective) purpose. Specifically, a functional knee brace supplements or replaces the function of a major ligament of ligaments required for stability.

b. A rating of 20 percent for moderate instability is appropriately awarded in those cases where a knee brace is required solely to serve a protective purpose.

c. A rating of 10 percent for slight knee instability is appropriately awarded in those cases where the lateral instability of the subject knee has failed to improve with the administration of physical therapy.

d. Patellar subluxation is usually not unfitting unless associated with degenerative arthritis of a degree that is unfitting for assigned duties.

B–36. 5258–5295—Spine

a. The joints of the cervical, dorsal, and lumbar segments of the spine are each regarded as a group of minor joints. The combination of sacroiliac and lumbosacral joints are regarded as a group of major joints. Each group of joints is ratable as one major joint only when separate ratings are justified by X-ray evidence of pathology in addition to—

(1) Limitation of motion or muscle spasm.

(2) Other evidence of painful motion of the individual segments involved.

b. Arthritic impingement on nerve roots produces degeneration of the nerve function or frequent, prolonged attacks of neuralgia. These attacks are distinguished from brief episodes of radiating pain. Rate the arthritic impingement as one entity under codes for neurologic conditions. The exception is a case in which the limitation of spinal motion justifies an additional rating.

B–37. 5285—Residuals of fracture of vertebra

a. The need for a soldier to wear some type of brace to restrict lumbar or dorsolumbar movement is not similar to the requirement for a jury mast type of neck brace for abnormal mobility after cervical fracture. When no cord involvement is evident, rate the disability according to the degree of limited motion with brace in place.

b. The rating of 10 percent for demonstrable deformity of a vertebral body is intended only for a substantial degree of deformity (that is, greater than 50 percent compression). Do not add in those instances of insignificant deformity, such as slight shortening of

the anterior vertical dimension of the body. When a successful spinal fusion has been performed because of the deformity, the degree of instability has usually been removed, or so far, reduced, that the addition of 10 percent of the rating is not justified; extensive fusion may result in ratable limitation of motion.

B–38. 5286–5289—Ankylosis of a spinal segment

a. A rating for ankylosis requires a condition of absent or negligible range of motion for the whole segment. Ankylosis of a part of a segment still may leave some degree of useful motion for the segment as a whole, so that the appropriate rating would be for limitation of motion.

b. Separate ratings for ankylosis of segment of the spine shall not exceed 60 percent when combined if the combined effect of such separate disabilities is complete ankylosis of the spine at a favorable angle.

c. Spinal range of motion must not include motion of the hips. Motion confined to the atlas and axis must be considered as nearly insignificant.

B–39. 5293—Intervertebral disc syndrome and 5295 lumbosacaral strain

a. A 40 or 60 percent disability rating will be predicated upon objective medical findings of neurological involvement. Deep tendon reflex asymmetry in the ankles, as manifested by an absent or diminished reflex, constitutes an important objective sign. Highly significant objective signs are loss of bladder and or bowel control which are neurogenic in origin. Neurogenic male sexual dysfunction or neurogenic muscular atrophy in any one of the four extremities, lower or upper, are also significant objective signs. Muscular atrophy, however, may be caused by disuse rather than having a neurological etiology. Lesser objective signs are those of muscular weakness and sensory loss along one aspect of an extremity as determined by pinprick testing. Detection of paravertebral muscle spasms on examination is significant. With respect to muscle weakness, it can be a subjective sign especially when break-away is noted on testing. All laboratory test results from X-rays, EMGs, nerve conduction velocities, myelograms, CT scans and MRI's are considered objective findings. Objective signs of and findings of neurological involvement are often found in combination with objective symptoms such as pain. The weight to be attached to each objective sign for rating purposes will vary according to the confirmation by laboratory test results along with the co-presence of other confirmed objective signs as well as the presence of subjective symptomatology consistent with the diagnosis.

b. Lesser ratings will begin with a 0 percent rating for chronic low back pain of unknown etiology (mechanical low back pain). Demonstrable pain on spinal motion or discovery of back pain etiology will warrant a 10% rating unless paravertebral muscle spasms are also present, in which case a 20% rating will be awarded.

B–40. 5296—The skull

a. Table B–1 may be helpful as a reference in determining proper ratings.

b. Diagnostic burr holes and other bony defects are ratable only when there is loss of both inner and outer tables of bone. Where there is more than one and defects are contiguous, add the areas of each and rate the total as one defect.

c. Considering total bone loss for multiple areas, such as in trephining, the rating should not be assigned based upon "coin measurement" but on the basis of the aggregate area loss in terms of square inches. Attention is directed to the fact that approximately 50 percent of diagnostic burr holes heal within five years.

d. Loss of part of the skull is not ratable if the defect has been successfully repaired with a prosthetic plate. Residual neurological deficit or cosmetic deformity will be rated separately if appropriate.

e. Areas of loss where bone regeneration has taken place are not ratable. If regeneration has partially closed the defect, only the remaining area of loss is to be rated.

f. The rating problem created by the disparity in the criteria for area measurement (50-cent piece = 1.140 square inches; 25-cent piece = 0.716 square inches) will be resolved in favor of the soldier.

B–41. 5297—Removal of ribs

a. For removal of ribs, the VASRD requires the complete removal from the vertebral angle to the costo-cartilaginous junction. Removals to a lesser degree are rated as rib resections.

b. The presence of certain conditions precludes the assignment, of an additional rating under 5297. Exceptions are allowed in specific situations. Notes (1) and (2) in VASRD under 5297 provide pertinent guidance.

B–42. 5299–52XX—Dupuytren's contracture

Rate by analogy on the basis of limitation of motion of fingers and limitation of use of the hand for grasping and fine movements.

B–43. 5003–5279—Analogous ratings for stress fractures

a. Since the VASRD has no rating schedule for these conditions, rating by analogy will be done as follows:

(1) If there is X-ray evidence of fracture of the femur or tibia, it should be rated as any other fracture. The bilateral factor would apply if appropriate.

(2) Fracture of the pubic rami confirmed by X-ray should be rated under 5003. This is a membraneous bone which can be expected to heal quickly. Muscle pull of the large thigh adductors is the main aggravating force, not weight bearing.

(3) Fracture of the tibial and fibular malleoli are seldom displaced, do not require surgery, and except for offering some comfort, casts are not required. The most appropriate rating would be analogous to 5262, slight.

(4) Stress fracture of the tarsals or metatarsals should be rated under 5279, metatarsalgia.

(5) Tibial plateau and femoral condyle stress fractures are stable unicortical defects which should be rated as analogous to 5259 because of some impairment of knee function. The use of the 5257 would be inappropriate because the lesion is extra-articular and produces pain, not knee instability.

(6) Stress reaction without X-ray evidence of fracture should be rated as Periostitis under 5022–5003.

b. X-ray evidence. At the time of the original MEBD, many soldiers have pain not explained by routine X-ray examination. A bone scan may confirm increased vascularity in isolated areas of the bone. In these cases, a bone scan was necessary to establish the diagnosis. However, a year later only the X-ray is necessary to confirm that now there is or is not evidence of a healed fracture. There is no need for a bone scan. If the soldier did in fact originally have a fracture, it will be evident on the X-ray. If the current X-ray is normal then a fracture did not exist at the time of the MEBD. The most likely diagnosis was stress reaction.

B–44. 5301–5326—Muscle injuries

In rating combinations of muscle injuries, do not exceed the amputation rule. Avoid pyramiding. Do not rate both an ankylosed joint and an injured muscle acting on that joint. Do not combine ratings for bone and joint impairment with muscle and or nerve impairments.

B–45. 6000–6092—Diseases of the eye

a. The adjudication of disabilities of the visual apparatus is difficult. In some cases, involving a combination of defects, it may not be possible to arrive at an equitable percentage rating through literal application of the terms of the VASRD. The complexity of these conditions does not permit the construction of a simple schedule that is adequate for the variety of defects and the resulting types and degrees of impairment which may occur. Here, the concept of "visual efficiency" may be helpful. Visual efficiency is the product of the interdependent relationship of all the functions of the ocular apparatus, of which the three principal ones are central visual acuity, field of vision, and muscle function. Since the estimation of visual efficiency, as such, is not provided by the

VASRD as a means of determining a degree of disability, it is useful only to determine the soldier's real functional handicap so that an equitable rating in terms of the schedule can be recommended.

b. The VASRD provides that the combined disabilities of the same eye are not to exceed the rating for total loss of vision of that eye, unless there is an enucleation or a serious cosmetic defect added to the total loss of vision. Accordingly, where there is a cosmetic defect, even though limited to the eye with the visual loss, representing a separate and distinct entity, namely, facial disfigurement, a separate rating of 10, 30, or 50 percent depending on the facts in the case is permitted under 7800 to be combined with the rating for the visual loss or rating for enucleation.

c. Visual field defects must be reported according to the method prescribed in the VASRD, paragraphs 76 and 76a. Report muscle function examinations in accordance with VASRD, paragraph 77. In addition, reference to the AMA Guides to the Evaluation of Permanent Impairment (2nd ed.) may assist in computing the extent of impairment.

d. Hereditary, congenital, and other EPTS defects (such as retinitis pigmentosa, keratoconus, and amblyopia) seldom if ever are aggravated by normal military service, including training exposure to toxic or irritant substances. Such conditions known to be naturally progressive will be given final disposition. Only service-related progression will be considered in computing a rating (see para B–10c).

e. It is recognized that most opthalmology centers now use a variety of computerized techniques to determine the extent of diplopia, visual fields, and scotomata. To date, no standardization of such evaluations has been achieved, and it remains necessary to equate defects to the VASRD industrial chart.

B–46. 6000–60009—Conditions involving structures of the globe

a. Computation. Rate disabilities resulting from these conditions, as follows:

(1) *Step one.*

(a) Rate impairment of visual acuity.

(b) Rate impairment of field of vision.

(c) Rate active pathology, if present, at 10 percent.

(d) Combine the rating in (a) or (b) above, which ever is higher, with (c).

(2) *Step two.* Rate pain, rest requirement and (or) episodic incapacity from 10 to 100 percent. This rating, when only one eye is involved, is not necessarily limited to the 30 percent rating for total loss of vision of one eye, since pain or rest requirements may be incapacitating in any degree, including total. Assign this rating under the code which covers the basic condition (that is 6000 through 6009). Analogy to another code number is not required. it is an estimate based as nearly as possible upon the actual impairment of social and industrial function which is imposed by the pain experienced, the time lost because of the requirement for rest, the frequency of incapacitating episodes, or any combination thereof. Do not combine an additional rating of 10 percent during continuance of active pathology with this rating.

(3) *Step three.* Award the higher of the two ratings resulting from steps one and two above.

b. Retained foreign body. Rate as active pathology under step one if in a critical area or not stabilized, or rate for residuals under step two.

B–47. 6029—Aphakia

This condition in and of itself is not unfitting. MOS and other service determinants must be considered. The condition, if corrected by successful prosthetic implants (pseudoaphakia), is not considered to be unfitting or ratable, unless implants are specified as too unstable to withstand the stress of assigned hazardous duties.

B–48. 6081—Scotoma, pathological

The rating is 10 percent whether unilateral or bilateral. Combine with other ratings with the reservation that the rating for one eye may not exceed 30 percent, unless there is enucleation or a serious cosmetic defect. Central scotoma cannot, however, be combined with central visual loss. Scotomata should be considered as part of loss of visual field when the latter is the principal cause of visual impairment and should not be rated separately.

B–49. 6090–6092—Diplopia

a. To determine rating, substitute the 6090 reading for the visual acuity of the poorer eye and read percentage in the 6071–6079 series. If vision is the same in both eyes, pick one as an arbitrary choice. Example: Soldier has 20/50 vision bilaterally with diplopia in 20 of 20 retangles; rate as 5/20 one eye and 20/50 other eye under 6073 at 40 percent.

B–50. 6100–6297—Diseases of the ear

a. The general schemata for rating diseases of the ear are based on the entities listed below. Since these entities give rise to distinct separate impairments, separate rating and combining of distinct disabilities do not constitute pyramiding.

(1) Infection.

(2) Disturbance of balance.

(3) Impairment of auditory acuity and tinnitus.

(4) Disfigurement.

b. AR 40–3 specifies the requirements on evaluation and disposition of individuals with deafness. Included is the requirement for pure tone audiometry as well as speech reception threshold and discrimination testing. VASRD ratings and codes were changed effective 22 October 1987 per Transmittal Sheet 23 to the VASRD. New standards use controlled speech discrimination on the horizontal axis and pure tone audiometry on the vertical axis of VA Table VI. The referenced VASRD change should be consulted to determine appropriate ratings. Several points need clarification:

(1) *Pure tone audiometry.* This is the average decibel loss for each ear at 1000, 2000, 3000 and 4000 Hertz.

(2) *Controlled speech discrimination.* VA standards have not been completely accepted by the Army. However, when acceptable controlled speech discrimination scores have been obtained, VA Table VI should be used and the scores entered on the vertical axis.

(3) *Rating.* When both pure tone audiometry and controlled speech discrimination are used, the intersect of audiometric average loss and speech discrimination for each ear will provide the hearing efficiency designator for the tested ear. The efficiency for each ear is then entered on Table VII to obtain the VASRD Code and rating. If speech discrimination percentages are not available, use average audiometric loss for each ear and refer to VA Table VIa to determine numeric designations. These designations will then be entered into VA Table VII to determine VASRD code and rating.

B–51. 6309—Rheumatic fever

Rate residual impairments under the applicable code. When a soldier is determined to be unfit because of recurrence of disease, and there is no residual functional impairment, consider using the zero-percent rating (see VASRD, para 31).

B–52. 6350—Lupus erythematosus, systemic

Connective-tissue diseases (vasculitis, collagen disease, immune complex disease, and so forth) and other disseminated diseases, not elsewhere covered, should be rated under this code.

B–53. 6351–6353—Human immunodeficiency virus infection (HIV) and acquired immunodeficiency syndrome (AIDS)

a. The Army uses the codes below for rating disposition.

(1) *6351.* Rating of 80 percent or higher.

(2) *6352.* Ratings of 10 percent to 60 percent. Soldiers who would otherwise be rated at 60 percent but have experienced rapid progression of disease during the preceding year may be rated under 6351.

(3) *6353.* This code will not be used by the Army as a primary code for unfitness. It will be assigned as a secondary code to identify HIV positive soldiers who are unfit for other medical reasons.

b. Cases found unfit and rated below 80 percent will be placed on the TDRL. Those rated at 80 percent or higher will be permanently returned. Cases with rapid progression that would otherwise rate 60 percent may be rated at 80 percent and permanently retired.

c. Illustrative examples of rating and disposition, where the clinical manifestations of HIV/AIDS are the primary cause of unfitness or contribute to unfitness, are depicted below.

(1) A 0 percent rating under 6353 for HIV infection manifested by positive antibody test with no evidence of impaired immunity.

(2) A 30 percent rating under 6352 for HIV infection manifested by positive antibody test, persistent T–4 cell depression below 400/mm3 (TDRL 1 year).

(3) A 60 percent rating under 6352 for HIV manifested by positive antibody test, T–4 cell below 400/mm3 with partial response in delayed hypersensitivity (TDRL 1 year).

(4) An 80 percent rating under 6351 for HIV described in (3) above with rapid fall of T–4 cells below 400/mm3, partial response in delayed hypersensitivity, weight loss and other signs of clinical deterioration (PDRL).

(5) A 100 percent rating under 6351 for HIV infection manifested by positive antibody test, T–4 cells less than 400/mm3, and oral thrush (or persistent anergy) (PDRL).

(6) A 100 percent rating under 6351 for HIV infection manifested by positive antibody test, T–4 cells less than 400/mm3, complete anergy, pneumocystis carinii pneumonia (or other opportunistic infections, malignancies, or neurological syndromes) (PDRL).

d. Illustrative examples of rating and disposition of unfitting conditions, readily identifiable as being the consequence of HIV infection but rated under another VASRD code, are depicted below.

(1) A 30 percent rating under 6352–9400 for anxiety disorder secondary to HIV infection manifested by shakiness, restlessness, palpitations, irritability, sleeping problems, difficulty concentrating, and frequent abdominal distress, rated as definite social and industrial impairment (TDRL 12–18 months).

(2) A combined rating of 100 percent under 6351–7709–6802 for acquired immunodeficiency syndrome manifested by Kaposi's sarcoma, disseminated, affecting chiefly lymph nodes, rated at 100 percent; and pneumocystis carinni pneumonia, severe, rated at 60 percent (PDRL).

(3) A rating of 100 percent under 6351–9302 for dementia (organic brain syndrome) secondary to HIV and manifested by emotional lability, personality change, memory impairment, impairment of abstract thinking, decrease in job performance; rated as complete social and industrial impairment (PDRL).

e. Those cases placed on the TDRL will be scheduled for reexamination 12 months from the date of adjudication. The DA Form 199 will include the following statement in item 8: "The soldier or treating physician may request reevaluation earlier than the scheduled reevaluation date in the event of dramatic change to the soldier's condition by contacting Commander, PERSCOM, ATTN: TAPC–PDB, 2461 Eisenhower Avenue, Alexandria, VA 22331–0477, AUTOVON 221–4558."

B–54. 6519—Aphonia, Organic

Impairment of ability to speak may be ratable under more than one code, depending upon the cause and severity of the impairment. In such instances, award the highest applicable rating. This instruction does not apply to speech impairment due to loss of whole or part of tongue. Rate the latter under 7202.

B–55. 6600–6603—Disease of the trachea and bronchi

Unless contra-indicated, pulmonary function tests must confirm the clinical diagnosis and severity under these codes. If the soldier's condition is subject to significant variation over time, a single clinical and pulmonary function evaluation may not be adequate. Consider response to therapy in all cases. The pulmonary function test values shown in Table B–2 will serve as guidelines in determining ratings.

a. The clinical severity of chronic obstructive pulmonary disease (COPD), emphysema and asthma is the most important basis for rating these conditions. Response to therapy is extremely important and may permit a finding of fit or a rating worse than originally given. COPD and emphysema can usually be correlated with pulmonary function tests directly but may be complicated by bronchospastic disease. As such, response to bronchodilators is important in interpreting pulmonary function tests, and, if they can be used for treatment, should be considered in the rating. Blood gas studies are often required and may be performed with and without exercise.

b. Rate asthma on the basis of a clinical impairment and response to treatment. Pulmonary function tests may be so variable as to be of little value. Repeated episodes of pulmonary acidosis indicate severe impairment even when a subsequent pulmonary function test is normal. Since significant improvement or deterioration may occur with geographic and occupational changes, TDRL is often necessary.

B–56. 6725–6728—Inactive pulmonary tuberculosis

a. Determining inactivity. Consider pulmonary tuberculosis inactive when—

(1) The criteria below for a period of 6 months are met:

(a) No symptoms of tuberculous origin.

(b) Serial roentgenograms show stability or very slow shrinkage of the tuberculous lesion.

(c) No evidence of cavity.

(d) Sputum or gastric washings show negative on culture or guinea pig inoculation.

(2) Inactivity is established by evaluation. This is usually, but not always, at the time the patient is declared to have received the maximum benefits of treatment.

(3) During the six months following the surgical excision of an active lesion, there is no evidence of tuberculous activity in any body system, or upon discharge from the medical treatment facility, whichever is later.

b. Chemotherapy.

(1) Treatment by medication is frequently continued beyond the date when the disease becomes inactive according to the above criteria. Do not confuse the ending date of such treatment schedule with that of a beginning of the inactive status.

(2) Treatment of a soldier because of a positive conversion may be instituted with no other evidence of active disease.

c. Rating residuals. A rating of 100 percent for one year after the date of attaining activity will not be used. After the condition becomes inactive, rate residuals (for example, impairment of pulmonary function, surgical removal or resection of a part, and so forth) under the appropriate code, subject to the limitations contained in VASRD, paragraph 96a, except for the reference to Public Law 90–493.

B–57. 6730–6732—Active tuberculosis

Rate active tuberculosis under 6730. All periods of time specified in the VASRD for the management of tuberculosis, active or inactive, apply to the VA and do not apply to the Army. Treatment and clinical response serves as the criteria for disposition. Rate residuals based on functional impairment.

B–58. 6803–6806, 6808—Mycotic pulmonary infections

Rate active disease by analogy to 6821.

B–59. 6807—Aspergillosis of lung

This code refers only to invasive aspergillosis or to aspergilloma. Rate active or recurrent allergic aspergillosis by analogy to 6602 (asthma) raised to the next higher level. Rate permanent residuals of allergic aspergillosis analogous to 6802.

B–60. 6810—Pleurisy, serofibrinous

If significant ventilatory impairment is present, rate as analogous to 6811.

B–61. 6814—Pneumothorax
Do not apply the "100 percent for 6 months" rating. Rate the underlying condition, if known, or consider rating by analogy to emphysema (6603) or pneumoconiosis (6802).

B–62. 6815—Pneumonectomy
Apply the 60 percent rating for pneumonectomy, regardless of the number of ribs removed at the time of the operation. If, at a later date, thoracoplasty becomes necessary for obliteration of space within the thorax, combine the rating for pneumonectomy with a rating for removal of ribs. Refer to note (2), following 5297 in the VASRD for guidance in a case of this type.

B–63. 6816—Lobectomy
An entire lobe other than the right middle lobe must be removed for the defect to be ratable. Excisions of the right middle lobe, segmental resection or lingulectomies are not ratable.

B–64. 6899—Sarcoidosis
This disease is difficult to rate because of its unpredictable course and the number of body systems that may be involved. It is usually rated by analogy to coccidiomycosis (6821) or pneumoconiosis (6802) when the predominant manifestations is in the lungs. With other organ or more generalized involvement and manifestations such as lymphadenopathy, transient joint pains and occasional febrile episodes, assignment of 6399 and rating under 6316 or 6350 may be appropriate.

B–65. 7000 series—Cardiovascular disease
a. Predominant entity. Avoid pyramiding. Only one rating should be given for all manifestations of cardiovascular-renal disease when, according to accepted medical principles, the conditions have the same origin or cause. For example, hypertension, arteriosclerosis, and end organ nephropathy are so closely associated that they may be regarded as one clinical entity. The disability should be rated under the code representing the predominant signs and symptoms. Sometimes the related manifestations in another body system will be so severe as to increase the soldier's overall impairment to the point that the next higher percentage under the selected code will be justified. The note in the VASRD under 7507 is pertinent in this case. Determine enlargement of heart by objective evidence using appropriate measures other than electrocardiogram.

b. Valvular heart disease. Rate valvular heart disease not of arteriosclerotic or hypertensive origin as rheumatic heart disease, 7000.

c. Mitral valve prolapse. This condition is a frequently found defect that is seldom unfitting or ratable.

d. Rheumatic heart disease.

(1) Assumption of the existence prior to service of a ratable degree of rheumatic heart disease is sometimes justified even though its presence was not previously recorded. Such an assumption depends upon its compatibility with the interpretation of medical history and findings in the light of accepted medical principles. A stenotic valvular lesion discovered early in military service is an example of such a condition.

(2) A "definitely" enlarged heart is one in which there is positive evidence of enlargement beyond the doubtful or borderline enlargement that is sometimes reported. Currently, available diagnostic tests are so accurate that "doubt and borderline enlargement" are inappropriate statements unless accompanied by substantiating clinical evidence.

(3) The 100 percent rating for active rheumatic heart disease for six months is not applicable.

B–66. 7005–7017—Disease of the coronary arteries, surgical procedures, and trauma
a. Cardiac disabilities most commonly occur when the coronary blood supply to the myocardium is insufficient to meet the demands of exertional stress. The etiology is reduced coronary supply, not increased demand. Exercise stress can seldom be considered to be a primary factor in such complications as myocardial infarction unless coronary obstructive disease is present. The classic course of events in myocardial infarction is a significantly occluded coronary artery with thrombus formation and distal coronary artery spasm. Infarction in the absence of coronary disease is extremly rare and many experts doubt that it can occur unless it is secondary to an embolus or direct trauma to the heart.

b. The role of trauma in the production of myocardial infarctions arises when there has been direct trauma to the chest preceeding evidence of myocardial injury. In order for such trauma to be a factor in the cause of an infarction, it must be significant trauma as evidenced by circumstances of injury and objective signs of chest trauma. In the absence of coronary arteriosclerosis, myocardial infarctions due to trauma or embolus, can be expected to heal with good residual cardiac function unless there has been massive damage.

c. For soldiers on active duty less than 30 days, consider a myocardial infarction secondary to chronic disease and not ratable unless there has been significant chest trauma or severe exertional stress during active duty that could reasonably be expected to produce an infarction by aggravation of underlying coronary artery disease or by direct trauma.

d. Assign ratings using the following criteria:

(1) *100 percent.* When more than sedentary employment is precluded.

(2) *60 percent.* When more than light manual labor is precluded as indicated by a N.Y. functional class III heart or by congestive heart failure as established by a left ventricle ejection fraction reading of less than 24 or when the ejection fraction falls 5 or more from a level of 35 during exercise.

(3) *30 percent.* When more than ordinary manual labor is precluded, for instance, by a N.Y. functional class II heart.

e. Criteria of function impairment for rating purposes are as follows:

(1) Sedentary employment; work that is not time dependent.

(2) Light manual labor; "bench work" equivalents.

(3) Ordinary manual labor; leg, back and arm effort, time dependent.

(4) Strenuous labor; repetitive, rapid combined arm, leg, trunk effort.

f. Rate coronary bypass surgery, valve prosthesis, other cardiac surgery, and myocardial infarction on the extent of residual function impairment if the soldier is unfit. The treating cardiologist may request a trial of duty prior to final evaluation according to AR 40–501, paragraphs 3–21 and 3–25. The PEB does not have the authority to demand a trial of duty.

B–67. 7015, 7016, 7017, 7110—Surgical procedures associated with AV block, heart valve replacement, aneurisms
Convalescent ratings and rating for specified periods of time following surgery, do not apply. Rate on the basis of functional impairment.

B–68. 7100—Arteriosclerosis, general
The 20 percent rating under this code is rarely correct. Evidences of the disease preferably should be rated for impairment of the body system involved to the greatest degree.

B–69. 7114–7117—Peripheral vascular disease
a. Consider the symptoms and signs of each of these conditions as manifestations of a systemic disease entity, wherein bilateral involvement of extremities is natural and expected. They are distinct from local mechanisms affecting peripheral circulation (for example, varicose veins or phlebitis) in which bilateral involvement is more nearly equivalent to coincidental duplication of the disease, rather than its direct extension.

b. When manifestations are limited to the extremities, base the percentage of disability upon the most severely affected extremity. Use the rating of that extremity as the total percentage, unless each of the two or more extremities separately meets the requirements for evaluation in excess of 20 percent. In the latter case, 10 percent only will be added to (not combined with) the evaluation

for the more severely affected extremity, except where the disease has resulted in amputation. When both upper and lower extremities are involved, apply the above procedures to the upper extremities, then to the lower extremities. These ratings will be combined if each group has a total rating in excess of 20 percent.

c. Claudication, intermittant, is usually caused by obstructive peripherial atherosclerosis of the involved extremity. Other organ systems may be involved in similar pathophysiological processes but any impairments that result will be considered separately under appropriate VASRD codes. The presence of atherosclerotic disease affecting one system (legs for example) will not be used as criteria that involvement of another system (coronary arteries, for example) is an extension of the disease for rating purposes. Impairments are to be rated separately if each is unfitting.

d. Apply the bilateral factor in all cases of an amputation of one extremity with any compensable degree of disability of the other extremity.

e. Do not combine a peripheral vascular disease rating of 20 percent or less with any other peripheral vascular disease rating.

f. See table B–3 for peripheral vascular disease rating chart for 7114 through 7117.

B–70. 7120 (7799–7120)—Hypercoagulable states requiring chronic anticoagulation

If there have been episodes of thrombophlebitis or emboli within the past year, rate 10 percent, minimum. If there have been no episodes during the past year, rate 0 percent.

B–71. 7301–7329—Diseases of the digestive system

Refer to the VASRD introductory remarks.

B–72. 7305—Ulcer, duodenal

Medical and surgical management have become increasingly effective but may require a trial of duty or period on TDRL to determine fitness for continued active duty.

B–73. 7307—Gastritis, hypertropic

Identification by endoscopy is required. Do not rate separately if other conditions are present and produce a common impairment. A single evaluation will be assigned under the diagnostic code which reflects the predominant disability picture with evaluation to the next higher rating where the severity of the overall disability warrants such rating.

B–74. 7308—Postgastrectomy syndrome

Differentiate between nondisabling symptoms or minor discomforts which sometimes result from overindulgence, such as that experienced from overeating by a person without a gastrectomy, and discomfort symptomatic of a true postgastrectomy syndrome. Circulatory symptoms, even though mild or intermittent, or comparable symptoms such as a need for rest regularly after meals are indicative of disability which may be a basis for rating. These impairments must be medically documented and profiled.

B–75. 7328–7329—Intestinal resections

Where portions of both intestines have been removed, rate under the code which is most representative of the clinical manifestations.

B–76. 7332–7336—Ano-rectal conditions

Pilonidal cyst or sinus is primarily a disorder of ectoderm. Rate as a skin condition, unless an active process involving deep structure is present. If so, rate by analogy to 5000.

B–77. 7338—Hernia, inguinal

If correctable, hernia is not ratable even though operation is refused, unless complicated by circumstances contra-indicating surgery, such as poor muscular or fascial structure, senility, psychosis, or serious disease which would interfere with healing or aggravated by surgery, and the presence of other disabilities so serious or advanced that herniorrhaphy would serve no useful purpose.

B–78. 7345—Hepatitis, infectious

a. Acute infectious hepatitis may be associated with "A", "B", or variant antigens. The disease will usually resolve without residual impairment, at which time liver function tests return to normal.

b. Chronic persistent hepatitis is a condition with minimally disturbed histology and liver function tests. There is no, or minimal, persistent disability or progression. However, if it is determined that the soldier is a carrier (HB), he may be found unfit and given a VASRD rating of "0" percent.

c. Chronic active hepatitis is a frequently progressive condition that may or may not readily be associated with a demonstrable antigen. Since the course of the disease is often difficult to predict, placement on the TDRL may be proper before permanent disposition is made.

B–79. 7347—Pancreatitis

If diabetes is present, the predominant disease should be rated with consideration given to the other under a single code to avoid pyramiding.

B–80. 7500–7531—The genitourinary system

Sterility and impotence are not ratable entities. Anatomical loss of procreative organs is not ratable. However, functional endocrinological loss may be rated if unfitting.

B–81. 7500–7509—Upper urinary tract

In assessing impairment of upper urinary tract, the endogenous creatinine clearance tests serve as guidelines for evaluating function. Normal creatinine clearance is 80–139 milliliters ml/minute in men and 80–125 ml/minute in women. See table B–4. Impairment may be determined mild or moderate when based on other than creatinine clearance such as proteinuria, recurrent infection, and so forth.

B–82. 7512—Total incontinence

May rate as bladder fistula, 100 percent, when use of an appliance is unsatisfactory or not feasible.

B–83. 7526—Prostate resection

Rating requires presence of symptoms and objective evidence of impairment that are unfitting or contribute to unfitness.

B–84. 7528—New growths, malignant, any specified part of genitourinary system

Many malignant tumors of the genitourinary tract are subject to radical cure, even if widespread metastases have taken place. Completion of treatment and follow-up on active duty are desirable. If circumstances of duty assignment, adverse reaction to treatment or persistent evidence of tumor activity interfere with duty, consider TDRL. If specific tumors are refractory to all treatment, make final disposition.

B–85. 7600—Gynecological conditions

Anatomical loss of procreative organs is not ratable. Functional endocrinological loss is ratable if unfitting.

B–86. 7524, 7617, 7618, 7619—Procreative Organs

Do not rate loss of procreative organs. Rate only significant disqualifying residuals such as abdominal or pelvic adhesions.

B–87. 7627—Removal of mammary glands

Simple or radical mastectomy, unilateral or bilateral, is not unfitting, in male or female. Unfitness is based on residual impairment of arm or chest wall or effects of X-ray or other treatment.

B–88. 7703—Leukemia

a. Leukemia requiring the use of chemotherapeutic agents is rated analogous to leukemia requiring irradiation or transfusion. While some prolonged remissions and "cures" are being achieved with acute leukemia, this is not the expected outcome and permanent retirement should be considered in most cases at a maximum

rating. Soldiers with chronic leukemia who require treatment are often fit for prolonged periods of time with few profile restrictions. Such cases must be individually judged on their own merits.

b. Non-Hodgkins lymphomas should be managed similar to chronic lymphatic leukemia for disability purposes.

B–89. 7706—Splenectomy

Do not rate separately. Rate the residuals, if any, of the basic condition if the soldier is rendered unfit by the residuals.

B–90. 7709—Lymphogranulomatosis (Hodgkin's disease)

a. Clinical staging serves as a general guide for treatment, rating, and disposition of Hodgkin's disease. Table B–5 can be applied for evaluation with the understanding that many advances in treatment are taking place that may permit exceptions, and many cases can be treated on active duty status.

b. Prolonged remission and cures, even with salvage treatment, are becoming more commonplace. Regardless of the pre-treatment stage of the disease, retention on active duty during treatment or return to active duty after treatment on the TDRL may be possible.

B–91. 7714—Sickle-cell anemia

The VASRD rates all the manifestations of sickle-cell disease and its variants. Individuals with the more severe hemoglobinopathies are not acceptable for entry into the military services and appropriate policies concerning line of duty and service aggravation apply. (Refer to B–10 and B–11.)

B–92. 7799–7120—Hypercoagulable states requiring chronic anticoagulation

If there have been episodes of thrombophlebitus or emboli with the past year, rate 10 percent as a minimum. If there have been no episodes during the past year, rate zero percent.

B–93. 7801–7802—Scars, burn

On calculating burn areas, the following computations, and those in figure B–3, may be of help.

a. The average 70kgm (150 lb) male body surface = 1.7 square meters = 2,636 square inches = 18.3 square feet.

b. 1 meter = 39.37 inches.

c. 1 square meter = 1,550.6 square inches.

B–94. 7801—Scars, burns, third-degree

These instructions supplement the criteria in the VASRD to permit realistic rating of actual impairment of function.

a. Rate third-degree burn scars causing limitation of function to underlying structures by analogy to other codes that reflect the functional impairment.

b. Rate unsuccessfully healed or grafted areas according to 7801. Footnotes in the VASRD apply.

c. Rate successfully grafted third-degree burn area as second-degree burns under 7802. The footnote in the VASRD applies.

B–95. 7802—Scars, burns, second-degree

The VASRD limits rating to 10 percent for second-degree burns affecting an area or areas of approximately 1 square foot. When there are widely separated areas and each area is approximately 1 square foot or more, 10 percent may be assigned for each scar.

B–96. 7804—Scars, superficial, tender and painful

The rating of 10 percent may be assigned whenever the requirements are met for the area of involvement even though the rating may exceed an amputation rating of a digit.

B–97. 7809—Lupus erythematosus

This applies to the localized (discoid) type involving only the skin. Rate systemic lupus erythematosus, and the other so-called collagen disease, under 6350.

B–98. 7913—Diabetes mellitus

a. The format published by the 1979 National Diabetes Group will serve as the basis for classifying diabetes mellitus. Individualize the severity of each case taking into consideration the expected natural course of the variants of diabetes mellitus. Insulin dosage is not a good indicator of the severity and is only one of the factors to consider in the overall evaluation of the disease. Response to specific therapy, diet, activity, compliance, and time are all important. With adequate compliance, many diabetics are fit with minimum profile restrictions. This is particularly true of type II DM (non-insulin dependent), even though insulin is prescribed for optimum control. Young adults with type I DM (insulin dependent) are high risk for retention. If unfitness derives, in part, from non-compliance with prescribed treatment, including diet and weight control, do not rate higher than the disease warrants when it is under prescribed treatment.

b. Diabetes controlled by diet and or oral medication, without a need for daily insulin, and which does not impair health or vigor, or cause significant limitation of activity, is considered to be mild, if unfitting.

c. Care must be taken that ratings reflect the severity of the diabetes, as such, and that undue importance not be given to early or questionable complications. This is particularly true in considering ratings of 60 percent or above. In most instances, a lower rating is to be given and complications such as vascular insufficiency, visual defects, pruitis, and neuropathies should be rated separately. The presence of early or questionable complications in otherwise less than severe diabetes mellitus does not automatically warrant a higher rating.

B–99. 8000–8046—Organic disease of the central nervous system

Careful correlation of the footnote under 8046 with the italicized introduction to 8000–8046 should enable boards to select the proper rating approach. In some of these conditions, the minimum rating may be awarded on the basis of the diagnosis alone, whether or not there are residuals. In others, the minimum rating may be awarded only if there are residuals. If the latter have neither residuals capable of objective verification nor subjective residuals which are credible, consistent with the disease, and are not more likely attributable to other disease, the condition should be ratable at 0 percent.

B–100. 8007–8009—Brain vessels

Do not apply the six-month convalescent rating. In many of these cases, the danger of disastrous recurrences justifies a rating of residuals sufficiently liberal to provide temporary retirement and subsequent reevaluations.

B–101. 8017, 8018, 8023–8025—Degenerative disorders of the central nervous system

Combined ratings may be assigned under these codes with the bilateral factor added.

B–102. 8105—Chorea

Rate residuals of central nervous system disease or injuries that are diffuse, with impaired motor function or loss of coordination, by analogy to this code.

B–103. 8205–8412—Diseases of the cranial nerves

Notice the provision for combined ratings under these codes when there is bilateral involvement, but without addition of a bilateral factor.

B–104. 8510–8730—Disease of the peripheral nerves

In cases when the rating is made on residuals, observe the general principle of adjudicating on the basis of impairment of function rather than on anatomical diagnosis. For example, a complete paralysis of the circumflex nerve of the major extremity carries a 50 percent rating under 8518. In many cases, however, abduction of the arm when the circumflex nerve is paralyzed occurs by the virtue of the other muscles taking over the function of the paralyzed

muscles. To warrant the 50 percent rating, the soldier's residual loss of function must actually include all the defects listed under 8518. When other muscles have taken over the function of the circumflex-innervated deltoid, the residual loss of function is properly ratable under 5201, limitation of arm motion, or 5303, muscle injury, Group III, whichever best reflects the predominant impairment. Rate cases of paralysis of the common peroneal nerve with foot drop, 8521, in terms of loss of function, rather than topographically. Amputation below the knee, 5165, is ratable at 40 percent. In order to warrant a similar rating for peroneal palsies, there must be sufficiently severe symptoms, such as trophic and circulatory changes and other concomitants to make the functional impairment reasonably equivalent to actual loss of the foot.

B–105. 8599—Scalenus anticus syndrome

Rate this syndrome by analogy with the lower radicular group (8512), or less commonly, with either erythromelalgia (7119) or Raynauds Disease (7117), depending upon predominant symptoms and overall functional impairment.

B–106. 8910–8914—Epilepsies

Attacks following omission of prescribed medication or the ingestion of alcoholic beverages are not indicative of the controllability of the disease. Do not consider these in the determination of the rating.

B–107. 9200–9511—Mental disorders

a. Functional impairment. Loss of function is the principal criterion for establishing the level of impairment resulting from mental illness. Loss of function is reflected in impaired social and industrial adaptability. Psychoses specifically include those disorders manifesting disturbances of perception, thinking, emotional control, and behavior, severe enough to hinder economic adjustment, that is, hinder the soldier's capacity to perform military duties or to earn a living.

(1) When assessing loss of function, refer to the soldier's social and industrial adjustment before his or her diagnosed psychiatric illness. Carefully review all pertinent information provided by the MEBD and TDRL examining physicians and other competent medical authorities before arriving at a final determination. When there are differences in the information, resolve the differences before making a rating decision. Show clearly in the record of proceedings the action taken to resolve these differences.

(2) To properly assess the degree of permanent impairment resulting from a psychotic process is often difficult during the weeks immediately following an acute episode. Sometimes a soldier's period of intensive in-hospital treatment has not been completed at the time of the initial MEBD. With the passage of time, the clinical picture tends to become stable. The degree of permanent impairment may then be estimated more accurately.

b. Social impairment. Information which directly relates to social impairment includes but is not limited to—

(1) Living arrangements (by oneself, with parents and siblings, with wife and children).

(2) Marital status (single, married, separated, divorced, and the type of relationship (harmony or strife)).

(3) Leisure activity (sports, hobbies, TV, reading, sleeping).

(4) Acquaintances (male, female, both sexes, many, few).

(5) Substance use or abuse (alcohol, illicit drugs).

(6) Police record.

c. Industrial impairment. Information which directly relates to industrial impairment includes, but is not limited to—

(1) Job stability (unemployed, part-time work, full-time job, quit, fired, promoted).

(2) Type of job (menial, responsible, OJT, technical, for a relative, for a private employer).

(3) Schooling (grade, technical, academic, high school, college, post-graduate).

d. Additional factors. Other factors that bear on social and industrial adaptability include, but are not limited to—

(1) *Mental competency.* The MEBD should include a statement as to whether soldier is competent to handle his or her financial affairs, and to participate in board proceedings.

(2) *Level of supervision.* There are several levels of supervision. The most disabling is constant hospitalization. Constant supervision at home or intermittent and repeated hospitalizations are disabling factors to be considered. Being placed in one's own custody suggests a lower level of supervision.

(3) *Contact with reality.* Certain soldiers have lost all contact with reality and cannot tell fact from fantasy. Dreams, imaginations, delusions, and hallucinations are just as real to certain soldiers as actual events. The quality of loss of contact with reality as well as quantity of time that soldier is preoccupied with loss of contact with reality are factors to be considered.

(4) *Potential for harm.* At times, individuals suffering from mental disorders may be dangerous to themselves or to others. They may be homicidal, suicidal, or violently destructive of property. Their judgment may be so impaired that they could jeopardize or destroy a family, business, or themselves, financially, socially, and or legally.

(5) *Signs or symptoms.* The degree of social and industrial impairment is influenced by the number and intensity of signs or symptoms of mental disorders. These signs or symptoms may be overtly apparent or they may be subtle and apparent only to skilled examiners. Their significance must be carefully evaluated. A partial list of the more common signs or symptoms includes, but is not limited to: autism, ambivalence, inappropriate affect, dissociative thinking, bizarre behavior, delusions, hallucinations, hyperactivity, depression, disorientation, emotional lability, memory defects, unfounded somatic complaints, phobias, compulsions, lack of insight, poor judgment, and so forth.

(6) *Medication or psychotherapy.* The type of medication (potent or mild) and the amount (large or small doses) of medication as well as the frequency (daily, weekly, or as needed) should be considered. The frequency of psychotherapy and by whom (psychiatrist, psychologist, social worker, nurse) administered also should be considered. The fact that a soldier is receiving medication does not automatically place him or her at a certain level of disability.

e. VASRD classification. The VASRD uses specific terms to classify the level of social and industrial impairment. These are characterized below for ratings under 9201 through 9511.

(1) *Total at 100 percent.*

(a) Usually mentally incompetent to handly financial affairs and to participate in PEB proceedings.

(b) Usually hospitalized, rarely in care of next-of-kin or guardian.

(c) Actively psychotic, totally out of contact with reality.

(d) Requires constant supervision and care.

(e) Significant potential to be harmful to self or others.

(f) Unemployable.

(g) Incapable of any social adjustment.

(2) *Severe at 70 percent.*

(a) Usually financially mentally competent and capable of cooperating in PEB proceedings but occasionally may be incompetent.

(b) Usually hospitalized, but often in care of next-of-kin or guardian.

(c) Actively psychotic, but may have intermittent contact with reality.

(d) Requires supervision approximately 50 percent or more of the time.

(e) Some potential to be harmful to self or others.

(f) Unemployable.

(g) Minimal social adjustment.

(3) *Considerable at 50 percent.*

(a) Mentally competent to handle financial affairs and to participate in PEB proceedings.

(b) Intermittent hospitalization.

(c) Overtly displays some signs or symptoms of mental illness, such as: autism, ambivalence, inappropriate affect, dissociative thinking, delusions, hallucinations, hyperactivity, depression, lack

of insight, poor judgment, bizarre behavior, disorientation, emotional lability, memory defects, unfounded somatic complaints, phobias, compulsion, decreasing IQ, personality changes, and so forth.

(d) Requires constant medications or psychotherapy.

(e) Extreme job instability.

(f) Significant social maladjustment.

(4) *Definite at 30 percent.*

(a) Does not require hospitalization.

(b) Displays some signs or symptoms of mental illness on examination.

(c) Usually requires medication and or psychotherapy.

(d) Usually there is job instability.

(e) Borderline social adjustment.

(5) *Mild at 10 percent.*

(a) Displays minimal signs or symptoms with probing.

(b) May require medication or psychotherapy, especially during times of stress.

(c) Adequate job adjustment.

(d) Adequate social adjustment.

(6) *Full remission at 0 percent.*

(a) Symptom free.

(b) No medication.

(c) No medical supervision.

(d) Work record acceptable or better.

(e) Satisfactory social adjustment.

f. Use of TDRL for Schizophrenia. When assessing impairment resulting from most schizophrenias and the major affective psychoses, an initial period of placement on TDRL (18 months) usually is warranted. A definitive determination of level of impairment usually is made at the close of that period. In a few instances, an additional period of TDRL tenure may be required (usually 12 months) because of continuing instability of the soldier's status. Every effort should be made, however, to complete adjudication of cases within a 3-year period of observation. The date of initial diagnosis reasonably may be considered as the starting time of the assessment period.

g. Schizophreniform. A schizophreniform disorder is considered to be an acute disease, whereas a schizophrenic disorder is considered to be a chronic disease. A soldier who is diagnosed as having a schizophreniform disorder and who has less than 90 days of active duty at the time his or her disorder comes to the attention of medical personnel, should be placed on TDRL for a short period of time, usually eight months. At the time of TDRL reexamination, the soldier should be either in complete remission of his schizophreniform disorder or the original diagnosis may be changed to a schizophrenic disorder, EPTS, not service aggravated.

h. Correlation of ICD–9–CM, DSM IIIR, AR 40–501, VASRD. The Army is using a nomenclature from Diagnostic and Statistical Manual of Mental Disorders (Third Edition) Revised (DSM IIIR) published by the American Psychiatric Association. DSM IIIR became effective May 1987. The Army uses the numerical coding system of International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM). ICD–9–CM became effective 1 January 1979. Older Army records have used various other editions of DSM, ICD, and Army regulations. The VASRD uses a combination of DSM II and DSM III. The PEB will use the same nomenclature as the MEBD, whenever possible. If modification of the MEBD nomenclature is necessary for clarification or for other reasons, the modification will be minimal, preserving the MEBD nomenclature as much as possible. Although the PEB will use the MEBD nomenclature, it must use the VASRD numerical code. If difficulties are encountered in matching the MEBD nomenclature to the VASRD numerical code, assistance should be sought from the psychiatric service of the MTF. To further assist in the correlation of the diagnostic code number ICD–9–CM, and the nomenclature under DSM IIIR, with the VASRD, Tables B–6 through B–8 provide an interpolation of the three references. Certain mental disorders render a soldier administratively unfit rather than unfit because of physical disability. Table B–9 correlates these disorders to the applicable retention standards cited in AR 40–501.

B–108. 9300–9326—Organic brain disorders

In determining the severity of organic brain damage for rating purposes, the impairment index score from the Halstead-Reitan battery of neuropsychological tests provides a rough but useful measurement to supplement clinical findings. As depicted in Table B–10, an index score range corresponds to a disability percentage range in the VASRD when consistent with clinical findings. In the event there is a discrepancy between the impairment index score and the clinical findings, the latter will prevail for determining a disability rating.

Table B–1
Conversion table

Diameter of circle	Area of circle	
	Square centimeters	Square inches
1 centimeter	0.7854	0.1216
2 centimeters	3.1416	0.4869
3 centimeters	7.0685	1.0956
4 centimeters	12.5664	1.94780
½ inch (See note 1)		0.19635
1 inch		0.7854
1½ inches		1.76715
2 inches		3.1416

Legend:
1 centimeter = 0.3937 inches
1 inch = 2.54 centimeters
1 square centimeter = 0.1550 square inches
2 square centimeters = 0.3100 square inches
3 square centimeters = 0.4560 square inches

Notes:
1. Size of the average diagnostic burr hole

Table B–2
Pulmonary function test values (See note 1)

Forced Expiratory Volume (FEV) 1%	Rating
Chronic Obstructive Pulmonary Disease (Before Bronchodilators)	
50 or less	Severe
55–65	Moderate, moderately severe
65–75	Mild
70 or better	Normal
Vital Capacity (VC)	**Rating**
Chronic Restrictive Pulmonary Disease	
50 or less	Severe
50–65	Moderate, moderately severe
65–80	Mild
80 or better	Normal

Notes:
1. The AMA "Guides to the Evaluation of Permanent Impairment," while differing slightly from the above values, is otherwise helpful in interpreting clinical and functional values.

Table B–3
Peripheral vascular disease rating chart

Number of extremities involved	Rating of extremities	Combined rating
One	20	20
	40	40
	60	60
Two, not paired (one arm and one leg)	20 and 20	20
	40 and 20	40
	40 and 40	60
	60 and 20	60
	60 and 40	80
	60 and 60	80
Two paired extremities (two arms or two legs)	20 and 20	20
	40 and 20	40
	40 and 40 (40 + 10) (See note 1)	50
	60 and 20	60
	60 and 40 (60 + 10) (See note 1)	70
	60 and 60 (60 + 10) (See note 1)	70
Three extremities involved (paired extremities and other)	20 and 20, and 20	20
	20 and 20, and 40	40
	20 and 20, and 60	60
	40 and 20, and 20	40
	40 and 20, and 40	60
	40 and 20, and 60	80
	40 and 40, and 20	50
	40 and 40, and 40	70
	40 and 40, and 60	80
	60 and 40, and 20	70
	60 and 40, and 40	80
	60 and 40, and 60	90
	60 and 60, and 20	70
	60 and 60, and 40	80
	60 and 60, and 60	90
All extremities involved (both paired extremities)	20 and 20, 20 and 20	20
	40 and 20, 20 and 20	40
	60 and 20, 20 and 20	60
	40 and 40, 20 and 20	50
	40 and 20, 40 and 20	60
	40 and 40, 40 and 20	70
	40 and 40, 40 and 40	80
	60 and 40, 40 and 40	90
	60 and 40, 60 and 40	90
	60 and 60, 40 and 40	90
	60 and 60, 60 and 40	90
	60 and 60, 60 and 40	90

Notes:
1. Bilateral factor. See paragraph B–69*b*.

Table B–4
Renal impairment

Creatinine clearance	Impairment
Less than 28 ml/minute	Marked (pronounced nephritis)
28–52 ml/minute	Moderate (severe nephritis)
52–80 ml/minute	Definite (moderately severe)

Table B–5
General guide for treatment, rating, and disposition of Hodgkins disease

Stage	(Stage A) Rating	(Stage B) Rating	Disposition (If Unfit) [1]
I	30	60	TDRL
II	30	60	TDRL
III	60	—	TDRL
III	—	100	PDRL
IV	100	100	PDRL [2]

Notes:
1. Fitness or unfitness is not determined, as a rule, until responses to initial treatment have been observed.
2. TDRL may be considered as an exception when there has been a prompt, complete remission during the initial treatment phase.

Table B–6
Interpolation of Source Data in the Evaluation of Mental Disorders

ICD–9–CM	DSM–III–R	VASRD
295.1	Schizophrenia, Disorganized type	9201
295.2	Schizophrenia, Catatonic type	9202
295.3	Schizophrenia, Paranoid type	9203
295.9	Schizophrenia, Undifferentiated type	9204
295.6	Schizophrenia, Residual type	9205
295.7	Schizo affective Disorder	9205
295.4	Schizophreniform Disorder	9210
296.6	Bipolar Disorder, mixed	9206
296.4	Bipolar Disorder, manic	9206
296.5	Bipolar Disorder, depressed	9206
296.2	Major Depression, single episode	9207
296.3	Major Depression, recurrent	9207
298.8	Brief Reactive Psychosis	9210
298.9	Psychotic Disorder, not otherwise specified, (Atypical Psychosis)	9210
297.1	Delusional (Paranoid) Disorder	9208
	Primary Degenerative Dementia of the Alzheimer Type, Senile Onset (after age 65) (Psychotic)/	
290.3	with delirium	9312
290.20	with delusions	9312
290.21	with depression	9312
290.0	uncomplicated	9312
	Primary Degenerative Dementia of the Alzheimer Type, Presenile Onset (age 65 or below) (Psychotic)/	
290.11	with delirium	9312
290.12	with delusions	9312
290.13	with depression	9312
290.10	uncomplicated	9312
	Multi-infarct Dementia (Psychotic)/	
290.41	with delirium	9305
290.42	with delusions	9305
290.43	with depression	9305
290.40	uncomplicated	9305
300.0	Generalized Anxiety Disorder	9400
300.0	Anxiety Disorder, Not Otherwise Specified	9400
300.0	Panic Disorder with Agoraphobia	9403
300.2	Panic Disorder with Agoraphobia	9403
300.2	Social phobia	9403
300.2	Simple phobia	9403
300.3	Obsessive Compulsive Disorder	9404
309.8	Post-traumatic Stress Disorder	9411
300.11	Conversion Disorder	9402
300.7	Hypochondriasis	9409
307.8	Somatoform Pain Disorder	9402
300.14	Multiple Personality	9401
300.15	Dissociative Disorder, Not Otherwise Specified	9401
300.6	Depersonalization Disorder	9408
300.4	Dysthmia	9405
311.0	Depressive Disorder, Not Otherwise Specified	9405
316.0	Psychological Factors Affecting Physical Condition	9500–9511

Table B–7
Interpolation of Source Data in the Evaluation of Mental Disorders

ICD–9–CM	Non Psychotic Organic Brain Syndromes not in DSM–III–R	VASRD
094.9	Syphilis (Central Nervous System)	9301
323.4	Other Central Nervous System infections such as HIV	9302
331.7	Alcoholic deterioration	9303
304.	Drugs	9303
310.2	Trauma	8045–9304
	Other circulatory (multi-infarct)	9306
992.0	Heat Stroke	9308 or 9300
239.6	Neoplasm	9309
	Unknown	9310

Table B–8
Interpolation of Source Data in the Evaluation of Mental Disorders

ICD–9–CM	Psychotic Organic Brain Syndromes not in DSM–III–R	VASRD
291	Alcohol	9303
094.1	Syphilis	9301
323.	Encephalitis	9315
323.4	Other Central Nervous System infections	9302
239.6	Neoplasm	9309
310.2	Trauma	9304
	Endocrine	9322
	Metabolic or nutritional	9322
292	Drugs	9325
	Other	9325

Table B–9
Interpolation of Source Data in the Evaluation of Mental Disorders

ICD–9–CM	DSM–III–R	AR 40–501
301.0	Paranoid Personality Disorder	3–35
301.2	Schizoid Personality Disorder	3–35
301.22	Schizotypal Personality Disorder	3–35
301.7	Antisocial Personality Disorder	3–35
301.83	Borderline Personality Disorder	3–35
301.5	Histrionic Personality Disorder	3–35
301.81	Narcissistic Personality Disorder	3–35
301.82	Avoidant Personality Disorder	3–35

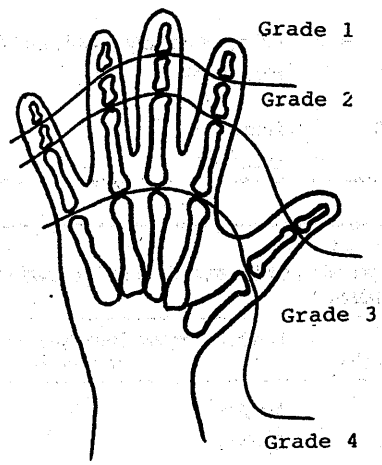
301.6	Dependent Personality Disorder	3–35
301.4	Obsessive Compulsive Personality Disorder	3–35
301.84	Passive Aggressive Personality Disorder	3–35
312.34	Intermittent Explosive Disorder	3–35
312.32	Kleptomania	3–35
312.33	Pyromania	3–35
312.39	Impulse Control Disorder, Not Otherwise Specified	3–35
309.19	Factitious Disorder	3–35
V65.2	Malingering	3–35
300–305	Alcohol and Substances use Disorders	3–35
302.+	Sexual Disorders	3–35
309 thru 309.9	Adjustment Disorders (Code the type, page 331 of DSM)	3–36
V40.0	Borderline Intellectual Functioning	3–37
317	Mild Mental Retardation	3–37
318.0	Moderate Mental Retardation	3–37
307.1	Anorexia Nervosa	3–37
307.51	Bulemia Nervosa	3–37
307.50	Eating Disorders, Not Otherwise Specified	3–37
307.23	Tourette's Disorder	3–37
307.20	Tic Disorders, Not Otherwise Specified	3–37
307.6	Functional Enuresis	3–37
307.0	Stuttering	3–37

Notes:

1. The above disorders are to be dealt with through administrative channels and not through the disability system.

Table B–10
Halstead-Reintan Impairment Index

Range	VASRD Disability Percentage
0.8 to 1.0	50–70
0.6 to 0.7	30–50
0.4 to 0.5	10–30
0.0 to 0.3	0–10



The diagram at the left illustrates grade values for each finger according to the level at which the finger was amputated. The table below provides for the calculation of an average amputation or limitation of motion for correlation to the notes in the VASRD.

A Individual Finger Defect	B Rated As	C Grade Value
Amputation thru distal phalanx or distal joint (except the thumb) other than negligible tip loss	Favorable ankylosis (See VASRD, note c following code 5151.)	1
Amputation through middle phalanx or distal phalanx of thumb.	Unfavorable ankylosis (See VASRD, note b following code 5151.)	2
Amputation through proximal phalanx or proximal inter-phalangeal joint.	Amputation (See VASRD, note a following code 5151.	3
Amputation of entire digit, with amputation or resection of more than one-half of the metacarpal.	Single finger amputation with metacarpal resection (See VASRD, codes 5152-5156.)	4

Figure B–1. Rating of multiple finger disabilities

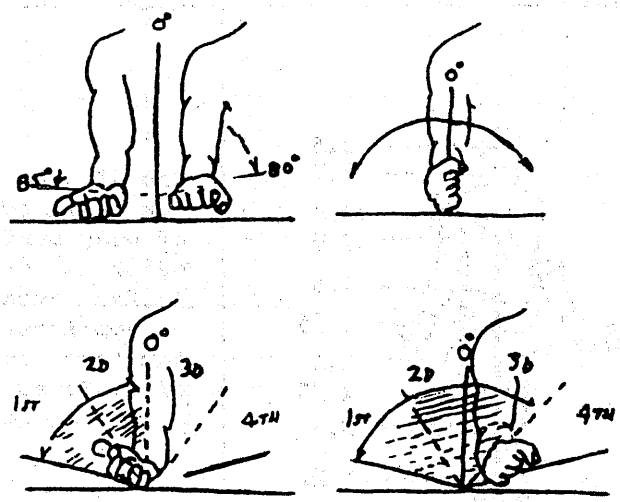
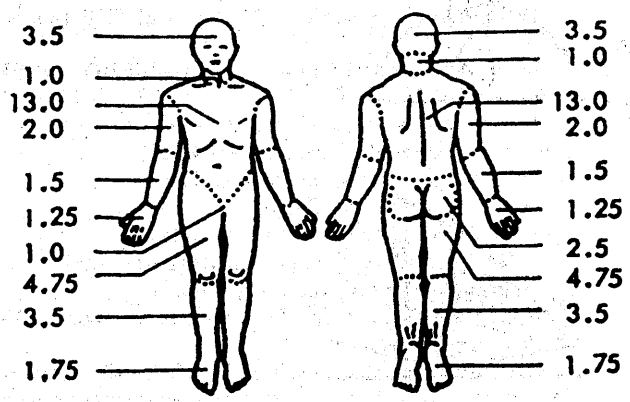


Figure B–2. Illustration of forearm motion



The diagram at the left provides the basic scheme for estimation of body surface area. The table below is for conversion to actual surface area measurement, based on application to the "average 70 kgm man" with a body surface area of 2,636 sq in (18.3 sq ft).

Body Surface	% of body surface	Area	
		sq inches	sq feet
Anterior or posterior head	3.5	92	0.64
Anterior or posterior neck	1.0	26	0.18
Anterior or posterior trunk	13.0	343	2.28
Anterior or posterior arm	2.0	53	0.37
Anterior or posterior forearm	1.5	40	0.27
Anterior or palmar hand & fingers	1.25	33	0.23
Buttock	2.5	66	0.46
Genitalia	1.0	26	0.18
Anterior or posterior thigh	4.75	125	0.87
Anterior or posterior calf	3.5	92	0.64
Dorsal foot or sole, including toes	1.75	46	0.32

Figure B–3. Rating of body surface area

Appendix C
Counseling

Section I
Introduction

C–1. Purpose
This appendix outlines the responsibilities and duties of the PEBLO and the appointed Legal Counsel who represents soldiers before the formal PEB. It provides a guide for counseling soldiers who are being processed within the Physical Disability Evaluation System.

C–2. Scope
a. The PEBLO will counsel each soldier (or the next-of-kin or legal guardian, when appropriate) throughout physical disability processing. Counseling will be based upon the individual circumstances of each case and will be designed to serve the soldier's best interest. Answers to questions about MEBD and PEB procedures will be provided in detail. The PEBLO must reassure the soldier that counseling will continue, as needed, as the case progresses within the disability system. Soldiers should be encouraged to ask questions during case processing. All soldiers should be advised of benefits and training provided by the Department of Veterans Affairs, Department of Labor, and Social Security Administration.

b. Federal law (10 USC 1214) provides that no soldier of the Armed Forces may be retired or separated without a full and fair hearing if demanded. If the soldier requests a formal hearing, an Army attorney will be appointed as counsel to represent the soldier at the formal hearing. The attorney is responsible for counseling the soldier on all matters relating to the formal hearing.

C–3. Stages of counselling
a. The PEBLO will provide counseling at the following stages of case processing.

(1) Upon referral of the soldier's case to a MEBD.

(2) When approved findings and recommendations of the MEBD are received by the soldier or next-of-kin.

(3) When the findings and recommendations of the PEB informal hearing are received by the soldier or next-of-kin.

(4) When the soldier demands a formal PEB hearing.

(5) After the PEB president announces the findings and recommendation of the formal hearing.

(6) When the USAPDA informs the soldier or next-of-kin of a proposed modification to the findings and recommendations of the PEB.

(7) When the results of an appeal to the APDAB are received by the soldier or next-of-kin.

b. Major duties of the appointed legal counsel are outlined in paragraph 4–21*h*. Counsel will ensure that each soldier who elects a formal hearing has been properly counseled. Counsel will contact the soldier within 3 days of being detailed by the PEB. The soldier will be advised of the following rights:

(1) Rights under the Privacy Act of 1974 and its application to the formal hearing.

(2) To testify or to remain silent. Remaining silent is not considered adversely by the board.

(3) To introduce witnesses, depositions, documents, or other relevant evidence in the soldier's behalf.

(4) To question all witnesses including those called by the PEB.

(5) To make unsworn statements, orally, in writing, or both, without being subject to questioning by the board.

(6) To decline to make any statement touching on the origin or aggravation of any disease or injury.

(7) That no soldier may be separated or retired for physical disability without a full and fair hearing, and that counsel is present to safeguard the legal rights of the soldier.

C–4. Overview of PEBLO counseling
a. In order to fully execute required responsibilities, PEBLOs must have a thorough knowledge of the policies, regulations, and directives applicable to the Physical Disability Evaluation System. Section II contains further guidance for counseling purposes.

b. Although specific details will vary with each case, PEBLOS will include the following topic areas when explaining PEB findings and recommendations and applicable benefits.

(1) Rights of the soldier—MEBD and PEB (paras C–6 and C–7)

(2) Findings and recommendations—MEBD and PEB (paras C–6 and C–7)

(3) Case review (paras C–8 and C–9)

(4) Pay and related benefits (para C–12)

(5) Grade determination (para C–12)

(6) VA benefits (para C–13)

(7) Social Security benefits (para C–14)

(8) TDRL regulatory requirements (para C–10)

(9) Rights of retired soldiers (para C–11)

(10) Benefits under the Department of Labor DVOP (para C–15)

c. At all stages of counseling, PEBLOs will advise soldiers of the necessity of obtaining sufficient documentation (medical and non-medical) concerning the soldier's ability to perform military duties and the severity of the soldier's disease or injury. If additional documentation to support the soldier's case is required, the PEBLO will assist in identifying the type of information needed and will assist in obtaining the required information. In unique or complex cases the PEBLO is authorized direct contact with the PEB appointed legal counsel to determine what type of additional information will be most useful to the soldier. The PEBLO will ensure that all additional information received is promptly included in the soldier's case file as supporting evidence.

d. PEBLOs will maintain close coordination with the PEB during the processing of all cases and will advise the PEB of all matters which have an impact upon the prompt and efficient processing of disability cases.

e. Counseling and assistance will be provided by the PEBLO to soldiers on the TDRL who are undergoing periodic examination or related evaluations.

f. If found unfit, each soldier will be counseled by the PEBLO about the approximate date of release from active duty. (app E.) This will be accomplished at the initial counseling session following the MEBD or PEB processing in order to facilitate an orderly transition from the service.

g. The PEBLO will coordinate with the installation RSO and the Transition Point in arranging for briefings on benefits and programs for which the soldier may be eligible. If possible, the PEBLO should arrange for interviews with VA, Social Security, and DVOP representatives. Appointments should be scheduled as far ahead of estimated separation date as is possible to allow the soldier adequate time to assimilate the information.

h. PEBLO's must ensure that the case file of a soldier being placed on TDRL contains a current mailing address for soldier's location upon departure from unit.

Section II
Counseling Guides

C–5. Publications for physical disability processing
Listed below are publications that relate to the processing and entitlements of soldiers undergoing physical disability processing. PEBLO'S should obtain these publications in order to counsel soldiers thoroughly.

a. AR 37–104 (Finance series)

b. AR 40–3, Medical, Dental, and Veterinary Care

c. AR 40–501, Standards of Medical Fitness

d. AR 600–8–1, Army Casualty and Memorial Affairs and Line of Duty Investigations

e. AR 600–20, Army Command Policies and Procedures

f. AR 600–50, Standards of Conduct for Department of the Army Personnel

g. AR 608–9, The Survivor Benefit Plan (SBP)

h. AR 608–25, Retirement Services Program

i. AR 635–40, Physical Evaluation for Retention, Retirement, or Separation

j. DA Pam 360–506, Disability Separation

k. DA Pam 360–539, SBP Made Easy (Revised 1987)

l. DA Pam 600–5, Handbook on Retirement Services for Army Personnel and Their Families

m. Veterans Administration Schedule for Rating Disabilities (VASRD).

n. Physicians Guide: Disability Evaluation Examination; Department of Medicine and Surgery, Veterans Administration.

C–6. Medical Evaluation Board (MEBD)

a. The MEBD may find that a soldier does not meet Army medical retention standards and refer the soldier to a PEB for disability processing. MEBD findings and recommendations are not binding on the PEB. At this stage soldiers often have questions requiring PEBLO assistance. PEBLOS should inform the soldier that additional documentation regarding the soldier's ability to perform military duties may be necessary. Assistance should be provided by the PEBLO to obtain this information. Such documentation may include letters, performance evaluations, efficiency reports, or additional medical information. Copies of efficiency reports may be obtained upon request from the following locations:

(1) *Officers.* Records Branch, HQDA (DAPC–POS), 200 Stoval Street, Alexandria, VA 22331–0476.

(2) *Enlisted.* U.S. Army Enlisted Records Center, Fort Benjamin Harrison, IN 46249–5301.

(3) *USAR personnel.* Commander, ARPERCEN, ATTN: DARP–PRP–P, 9700 Page Boulevard, St. Louis, Missouri 63132–5200.

b. If not already part of the MEBD proceedings, PEBLO's should request a statement from soldier's commander describing current duty performance. This statement should address the following:

(1) The soldier's most recent performance of duty.

(2) Any special limitation of duty due to the soldier's physical condition.

(3) The soldier's ability to adequately perform the duties normally expected of an individual of the soldier's office, grade, rank, or rating.

(4) The soldier's current duty assignment, anticipated future assignments, branch, age, and career specialties.

c. Upon receipt of the MEBD findings and recommendations, PEBLOs will—

(1) Review and become thoroughly familiar with the DA Form 3947. Check all entries for completeness and accuracy.

(2) Ensure that the medical terminology is explained to the soldier in terms that the soldier can understand.

(3) Confirm that the Narrative Summary accurately represents the soldier's condition.

(4) Promptly contact and arrange to counsel the soldier on the MEBD findings and recommendations.

d. During the counseling session with the soldier, PEBLOs will—

(1) Give the soldier ample time to read the MEBD report and the narrative summary and ensure that both are understood by the soldier.

(2) Ask the soldier whether all medical conditions and physical defects appear in the report, and whether they have been adequately described. If not, discuss with the soldier the possibility of submitting an appeal or contacting the physician to obtain an addendum.

(3) Inform the soldier of the requirements and procedures for requesting discharge under the provisions of chapter 5 (when applicable), and COAD (chap 6), and the probable effect of each.

(4) Explain to the soldier the following:

(a) How more evidence may be presented for consideration by the MEBD.

(b) The options of the appointing authority who will either approve the findings and recommendations or return the proceedings to the MEBD for reconsideration.

(c) How the soldier completes the medical board proceedings in order to indicate a desire to appeal.

(d) How the soldier can obtain assistance in writing an appeal, if desired, and how clerical support is provided.

(e) The meaning and effect of an adverse line of duty decision at any stage of the proceedings.

(f) The effect of being under investigation for an offense which could result in discharge under other than honorable conditions.

(5) Describe for the soldier the course of physical disability processing through the PEB and USAPDA. Inform the soldier that once the PEB makes findings and recommendations at the formal hearing the soldier should again see the PEBLO for additional counseling. Furnish the soldier with publications which answer often asked questions and encourage the soldier to call if any questions arise which have not been answered.

e. PEBLOs or physicians may not inform any soldier of the following before PEB action:

(1) That the soldier has been found physically fit or unfit for duty.

(2) That the soldier will be discharged or retired from the service.

(3) What disability percentage rating the soldier will receive for his condition.

C–7. Physical Evaluation Board

a. The PEB must make findings and recommendations based upon the MEBD proceedings, evaluations of duty performance, and any other available relevant evidence. The PEB must first decide whether the soldier is physically fit or unfit for duty. A soldier ultimately found fit is returned to duty. If the soldier is found unfit, the PEB will—

(1) Decide whether the disability was incurred while the soldier was entitled to basic pay and in line of duty when the case is that of a soldier on orders for more than 30 days of active duty. Decide whether the disability was the proximate result of performing duty and incurred in line of duty when the case is that of a Reservist performing duty for 30 days or less. (See para 3–1 and 4–19*g* concerning line of duty and 8–2 concerning eligibility of Reservists performing duty for 30 days or less.)

(2) Assign a percentage rating to the disability if the soldier otherwise qualifies. (See appendix B for the method of computing combined ratings for multiple disabilities, and for an explanation of both the amputation rule and the rule prohibiting pyramiding.)

(3) In reference to the Dual Compensation Act and Civil Service employment, determine whether the disability resulted from an injury or disease received in the line of duty as a direct result of armed conflict, or was caused by an instrumentality of war and incurred in the line of duty during a period of war. (See paras 4–19*j* and C–12.)

(4) In reference to tax exemption, determine:

(a) Whether the soldier was a member or obligated to become a member of an armed force or Reserve thereof, or the National Oceanic and Atmospheric Administration (NOAA) or the U.S. Public Health Service on 24 September 1975. (See paras 4–19*k* and C–12.)

(b) Whether the disability resulted from a combat related injury. (See paras 4–19*k* and C–12.)

b. The soldier does not personally appear at or take part in, the PEB informal hearing. The board bases its findings and recommendations solely on the available evidence of record. Upon receipt of the PEB informal findings and recommendations, PEBLOs will—

(1) Review and become thoroughly familiar with the PEB findings and recommendations.

(a) Compare the PEB findings with the soldier's MEBD, the VASRD, and appendix B. (If the soldier has been found fit, consult AR 40–501, chap 3 and chaps 2 and 4 of this regulation.) Verify that PEB has not overlooked any condition that may substantially alter the soldier's benefits.

(b) Various means of rating a disability exist. For example, a joint injury may involve nerve or muscle damage and limitation of motion. Check each to assure the member has been rated the most

advantageous way. However, give attention to the amputation rule (para B–18) and the prohibition of pyramiding (para B–5).

(2) Compute and prepare an estimate of retirement or severance pay, tax benefits, and VA compensation.

(3) Contact the soldier and make an appointment to counsel the soldier about the findings and recommendations of the PEB.

c. During the scheduled counseling session with the soldier PEBLOs will—

(1) Inform the soldier of the PEB informal findings and recommendations, the benefits which apply, (using the prepared estimates), and the possible courses of action available to the soldier.

(2) Advise the soldier that an election to either concur or nonconcur with the results of the PEB informal hearing must be received at the PEB within 10 days from receipt of the DA Form 199, and that if no election is made within the authorized time the soldier will be considered to have agreed with the informal PEB decision.

(3) Fully explain the soldier's possible elections. Election choices include—

(a) Concurrence and waiver of the formal hearing.

(b) Nonconcurrence and waiver of the formal hearing with a statement of rebuttal.

(c) Nonconcurrence and a demand for the formal hearing. The soldier may personally appear or choose not to appear.

(4) Fully explain the guidelines for submission of a statement of rebuttal and the process of review of USAPDA.

(5) Fully explain the soldiers representational options for the hearing. Possible representatives include the following:

(a) Regularly appointed PEB Legal Counsel (Judge Advocate General's Corps attorney).

(b) Other military counsel if reasonably available.

(c) Civilian counsel of the soldier's choice at no expense to the Government.

(d) A counselor of an accredited veteran's service organization.

(e) A DA attorney specifically assigned PEB legal counsel duties and made available to represent soldiers.

(6) If the soldier chooses to nonconcur, determine whether the nonconcurrence is due to a misunderstanding of benefits. Recheck the MEBD (or contact the physician) to insure that all diagnosed conditions are recorded and properly described. Seek an addendum if necessary. Compare the symptomology related by the soldier and contained in the MEBD with the requirements of the VASRD, and appendix B. Advise the soldier of the merits of the nonconcurrence.

(7) If the soldier still nonconcurs, notify the PEB so a formal hearing can be scheduled and arrangements can be made for the soldier to consult with the PEB Legal Counsel.

(8) Prepare a summary of the soldier's reasons for nonconcurring and forward the summary with the soldier's election.

d. When a soldier demands a formal hearing, PEBLO's will advise the soldier—

(1) That the soldier may personally appear at the hearing.

(2) Of all the representational options.

(3) That the soldier or counsel may question any witnesses called to testify at the hearing.

(4) That the soldier may request the PEB to summon witnesses who are members or employees of the Army or another Armed Service who are reasonably available, and who are essential to the presentation of the soldier's case. The PEB president (according to AR 635–40, para 4–21) decides whether the presence of such witnesses is essential. The soldier is responsible for the attendance of witnesses who are not members or employees of the Armed Forces at no expense to the Government. Additionally, the soldier is entitled to present the testimony of any soldier or employee of the Army or other armed service obtained at own expense, and who is given leave to attend.

(5) That any statement required to be signed by the soldier against the soldier's interest concerning the origin, incurrence, or aggravation of a disease or injury will be excluded from consideration. Any such statement against the soldier's interest, signed by the soldier, before he or she is advised that he or she need not make a statement, or any written statement obtained under circumstances indicating that it was involuntary, is invalid.

(6) That the soldier may submit a written rebuttal or appeal of the PEB formal findings and recommendations according to guidelines in paragraph 4–21*t*.

(7) That if the soldier elects not to concur with the PEB formal findings and recommendations, the case will be reviewed by the agency providing the election and a statement of rebuttal is received within the prescribed time.

e. PEBLO's will also advise soldiers that—

(1) Pay computations are merely estimates.

(2) PEB findings and recommendations are not final until approved for the SA. If a modification is made by USAPDA, the soldier should again contact the PEBLO. (Proceedings of general officers and medical corps officers found physically unfit must be approved by ASD(HA)).

(3) Soldiers to be retired should read DA Pam 600–5, DA Pam 360–506, and DA Pam 360–539.

(4) Contact should be made with appropriate representatives from the VA, Social Security Administration, DVOP, and RSO. Claims should be filed at the time of separation where applicable.

(5) VA compensation is payable as an alternative to Army payments while social security is payable in addition to Army or VA compensation for qualified veterans.

(6) The soldier should determine if other disability insurance exists on any outstanding indebtedness which might relieve the soldier of further payments.

(7) Disabled veterans receive a 10-point job performance in Federal Employment (under some circumstances the preference may be claimed by a spouse). Veterans preference provides a waiver of age and physical requirements and it gives retention preference except to those soldiers retired with 20 or more years of service.

(8) If a soldier of the RC, at least one voting member of the PEB will be a Reserve Officer.

f. PEBLOs will explain that the soldier has a duty to keep his home and work telephone numbers current so that the PEBLO can contact him promptly regarding his case.

g. If a soldier is recommended for the TDRL, explain the TDRL rights listed in paragraph C–10.

C–8. U.S. Army Physical Disability Agency

a. USAPDA reviews those cases designated in paragraph 4–22. When as a result of review, USAPDA modifies the findings and recommendations of the PEB, certain rights accrue to the soldier. In order to properly counsel soldiers, the PEBLO must—

(1) Review and become thoroughly familiar with the USAPDA modification and the rationale for the action.

(2) Compare the modification with the findings and recommendations of the PEB, the soldier's medical board proceedings, the VASRD, and appendix B.

b. The PEBLO will notify the soldier of the USAPDA modification by telephone or certified mail. Counseling will cover the following:

(1) The effect of the modification on disposition, compensation, and the benefits applicable to DA Form 199, Block 10.

(2) The election options pertaining to USAPDA modification. These include—

(a) Concurrence.

(b) Demand for a formal hearing (if not already held).

(c) Submission of a rebuttal

(3) The rationale for the modification.

(4) The fact that the PEBLO is available to assist in making an election and pursuing the course of action the soldier elects.

(5) The fact that the election and rebuttal must be received by USAPDA within 10 days of the soldier's notification of the modification unless an extension has been granted by USAPDA.

c. If the soldier elects to demand a formal hearing, the PEBLO will—

(1) Notify the PEB who will detail counsel. PEB counsel will contact soldier within 3 days of being detailed.

(2) Advise the soldier that the PEB Recorder will provide notification of the date and time of the hearing.

d. If the soldier nonconcurs and plans to submit a rebuttal, the PEBLO will advise the soldier that—

(1) The PEBLO is available to assist the soldier in the preparation of the rebuttal. If the soldier has been ordered home on a permanent change of station (PCSH), it may be more convenient for the soldier to work with a PEBLO or PEB Legal Counsel near the PCS location.

(2) The rebuttal must meet the same guidelines as a rebuttal to formal proceedings.

(3) Rebuttals are directed to the Commander, USAPDA, Forest Glen Section—WRAMC, Washington DC, 20307–5001.

e. After counseling the soldier on the modification, complete the counseling statement on the DA Form 199.

C–9. Army Physical Disability Appeal Board (APDAB)

The APDAB reviews cases when the soldier has elected to rebut a proposed modification and the CG, USAPDA did not agree with the rebuttal. If the APDAB arrives at findings and recommendations different from those of the PEB or USAPDA, the soldier has the right to be informed of the revision by the APDAB and to submit a rebuttal. In those cases, the PEBLO will—

a. Advise the soldier of the meaning and effect of the new findings and recommendations.

b. Assist the soldier in preparing a rebuttal statement if the soldier so elects. (Send rebuttals to the APDAB for reconsideration.)

C–10. Temporary Disability Retired List

Soldiers recommended for placement on the TDRL will be advised by PEBLOs that—

a. TDRL status is authorized for a maximum of 5 years, but permanent disposition may be made at an earlier date.

b. Payment while on the TDRL is computed according to section 1401 and 1407, title 10, United States Code (10 USC 1401 and 1407).

(1) For those soldiers who entered active duty prior to 8 September 1980, the minimum payment is 50 percent of base pay.

(2) For those soldiers who first entered active duty after 7 September 1980, the minimum payment is 50 percent of the monthly retired pay base (para C–12).

c. No changes will be made in the disability percentage rating while the soldier is retained on the TDRL even if the disability becomes materially better or worse (para 7–20*b*).

d. TDRL retired pay will be suspended when the soldier fails to report for a periodic examination even though the fifth anniversary of placement on the TDRL has not been reached.

e. A soldier will not be removed from the TDRL without processing through the PEB unless the fifth anniversary of placement on the TDRL has occurred and the soldier has failed to obtain the required periodic evaluation.

f. Periodic medical examinations are required at least every 18 months. The soldier will receive instructions detailing where and when to report. If the soldier fails to respond, Army retired pay will be stopped. If the soldier is unable to make the appointment for cogent reasons, the PEBLO must be notified so that a new appointment may be made. Prior to examination PEBLOs will ascertain whether the soldier has been treated by a VA hospital, other military hospital, civilian hospital or a private physician since the last medical evaluation. If the soldier was recently seen for a service connected disability, the PEBLO will make every effort to obtain copies of any records of the treatment and evaluation.

g. Each periodic examination report is referred to a PEB for a determination as to whether the soldier is to be retained on, or removed from, the TDRL.

h. Final disposition may result in permanent retirement with the same, greater, or lessor disability percentage rating; separation with severance pay (if less than 20 years service); or a finding of physical fitness.

i. A finding of fit for duty by the PEB results in one or more of the following actions:

(1) A soldier of the Regular Army upon the soldier's consent, will be reappointed, reenlisted, or discharged. A soldier in the RC may, upon the soldier's consent, reenter the RC without active duty or be discharged.

(2) If the soldier elects to return to active duty, time spent on the TDRL counts for pay purposes.

(3) If the soldier elects to be discharged, the finding of fit does not necessarily effect the soldier's standing with the VA or the entitlement to VA compensation.

j. The soldier must notify Commander, PERSCOM, ATTN: TAPC–PDB, 2461 Eisenhower Avenue, Alexandria VA 22331–04772 of every change of address. Failure to do so or to report for a scheduled examination will result in the suspension of retired pay beginning with the month following the missed examination.

C–11. Rights of retired soldiers

Soldiers retired for physical disability have the same rights as those retired for years of service. Possession of DD Form 2 (United States Uniformed Services Identification Card (Retired)) is all that is required for most. Dependents require DD Form 1173 (Uniformed Services Identification and Privilege Card). In summary benefits include—

a. Commissary, Post Exchange, and other installation privileges for retiree, spouse and dependent children. (Dependency is determined under applicable regulations.)

b. Medical care for the retiree, spouse and dependent children, if reasonably available, at any service installation.

c. Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). Refer the soldier to the MTF CHAMPUS advisor (or the installation Retirement Services Officer). Briefing should include the issue of CHAMPUS supplemental insurance.

d. VA hospital treatment and other VA benefits.

C–12. Compensation and Related Benefits

Computation of disability compensation pay can be complicated by the numerous laws governing it, the various types of creditable service, and other factors. Care should be taken to advise soldiers that computations provided by the PEBLO are estimates only, and that the U.S. Army Finance and Accounting Center (USAFAC) will make the official computation of compensation. Normally a soldier's retired pay will be computed using the method of computation most favorable to the soldier. One method is based on multiplying percentage of disability by the retired pay base and the other is based on multiplying the years of creditable service by the retired pay base. (See para *c* below.) Estimates of compensation will be provided to the soldier using DA Form 5892–R (PEBLO Estimated Disability Compensation Worksheet.)

a. Severance pay. In computing pay for those with less than 20 years' active service and a disability percentage of less than 30 percent, figure 2 months' basic pay for every year of active duty with a maximum of 12 years service. Consider 6 months or more as a whole year for computing years of service as a multiplier. A soldier with less than 6 months' service cannot receive severance pay. The soldier may apply to the VA for disability compensation. (Years of service for members of the RC is computed in accordance with 10 USC 1332)

b. Retired pay base. The DOD Authorization Act of 1981, now codified in section 1407, title 10, United States Code (10 USC 1407) changed the method of computing the retired pay base.

(1) Retired pay for soldiers who entered active duty on or prior to 7 September 1980 is computed on the highest grade "satisfactorily" held or current grade. DA makes the final grade decision.

(2) For soldiers who first became members of the Armed Forces after 7 September 1980, retired pay is computed on 1/36 of the total amount of monthly basic pay received for the high-36 months of active duty. When the period of active duty is less than 36 months, the amount equal to the total amount of basic pay received divided by the number of months (including any fraction thereof) equals the retired pay base.

c. Retired pay. A soldier is eligible for disability retired pay if he has a rating of less than 30 percent and has 20 years of active

service for retirement (19 years and 6 months of active service is not 20 years for retirement) or a disability rating of 30 percent or more. The percentage multiplier is either the total disability percent rating or 2½ percent of the total years of service (including any fraction thereof, that is, 7 months equals 7/12 and disregard any fraction of a month). Use the higher percentage of the two, but not more than 75 percent, as a multiplier of the retired pay base to arrive at the retired pay entitlement. (Years of service for soldiers of the RC is computed according to section 1333, title 10, United States Code (10 USC 1333).

(1) *Example 1.* A soldier with 23 years and 7 months of service is entitled to (23 7/12 × 2.5) 58.9 percent of his retired pay base as retired pay. If he is rated as 90 percent disabled, he is entitled to 75 percent as a multiplier. All of the retired pay may be tax free (see *d* below).

(2) *Example 2.* A soldier with 19 years and 6 months of service and 30 percent or more disability is retired because of disability. His retired pay entitlement (19 6/12 × 2.5 percent) is 48.7 percent of his retired pay base. If his disability rating is less than 48.7 percent, only that portion (retired pay base times the disability rating of his retired pay) may be tax free (see *d* below).

d. Tax exemption. A soldier separated or retired because of a physical disability may be entitled to certain Federal income tax benefits. The Internal Revenue Service will make the final decision on Federal tax entitlements. (Federal tax entitlements may not be applicable to state income tax exemptions). Federal tax entitlements include—

(1) Severance pay and that portion of military retired pay based upon the disability rating is not taxable under Federal tax laws if—

(a) Payable to a soldier who, on 24 September 1975, was serving in an armed force of any country or Reserve thereof, the National Oceanic and Atmospheric Administration ((NOAA) formerly the Coast and Geodetic Survey), the U.S. Public Health Service (USPHS), or was under binding written agreement to become such a member.

(b) The disability was incurred as the result of a combat-related injury (para 4–19*k*).

(2) On application to the VA, the soldier is entitled to receive VA compensation.

e. Survivor Benefit Plan (SBP).

(1) Retired soldiers are automatically covered under the SBP unless a specific election is made by both soldier and spouse either not to participate or to participate at less than maximum level.

(2) Under section 1455 10 U.S.C. the soldier and the spouse are required to be informed of the election options under SBP and the effects of such elections. The PEBLO will refer the soldier or next-of-kin when the soldier is mentally incompetent, to the installation RSO for SBP counseling and the completion of the required documents. In order to accomplish the administrative requirements to comply with the law, referral to the RSO must be made concurrent with the PEBLO's notification to the soldier of the PEB's finding.

f. Dual compensation. Retired soldiers may fall within the limitations of two "dual compensation" laws if they go to work for the Federal Government.

(1) The Dual Compensation Act of 1964 applies only to retired Regular Army (RA) officers and warrant officers. This Act limits retired pay according to the following formula—(retired pay minus the exempt amount) divided by two equals the amount by which retired pay is reduced.

(2) The Civil Service Reform Act applies to all soldiers regardless of component or rank who retired on or after 11 January 1979. The exceptions are Reservists who were employed by the Federal Government on or before 13 October 1978 with no subsequent break in service of three days or more, and were eligible for retired pay on that date except for the fact they were not yet age 60). This Act reduces retired pay by the amount (if any) that the combined annual rates of civilian salary and retired pay exceed level V of the Executive Schedule.

(3) The above reductions do not apply if retired pay is computed, in whole or in part, based on disability resulting from injury or disease received in line of duty as a direct result of armed conflict or caused by an instrumentality of war (see para 4–19*j*).

g. Civil Service employment. Special advantages are provided to individuals who are veterans and disabled veterans, in qualifying for civil service employment. These may include preference eligible status, non-competitive appointment, and retention rights. The Office of Personnel Management (OPM) administers the special advantages and rights.

h. Servicemen's Group Life Insurance (SGLI). Soldiers are covered under SGLI for 120 days following separation or retirement with no additional premium during the 120-day period. Those soldiers who are totally disabled at separation retain SGLI coverage up to one year or until the disability ceases to be total in degree, whichever occurs first, with no additional premium cost during this period. This extension is not automatic but must be applied for by contacting Office of Servicemen's Group Life Insurance, 212 Washington Street, Neward, N.J. 07102.

i. Veterans Group Life Insurance (VGLI). SGLI may be converted to a 5-year term coverage. This program is administered by the Office of Servicemen's Group Life Insurance and is supervised by the Veterans Administration. Coverage may be in amounts from $10,000 to 50,000 but not more than the amount of SGLI that the member had in force at the time of separation. At the end of the 5 year period, VGLI may be converted to a permanent plan commercial life insurance policy without a physical examination or other proof of health or physical condition. Application should be made before the end of the 120-day period following the date of separation or retirement. Unless totally disabled, if application and premium is not submitted within 120 days, VGLI may be granted provided initial premium and evidence of insurability are submitted within 1 year after SGLI coverage is determined. Soldiers with full-time SGLI coverage who are totally disabled and whose service makes them eligible for VGLI may purchase this insurance while remaining totally disabled up to 1 year following separation.

j. Assistance to PEBLOs. PEBLOs should seek the assistance of the local finance officer and Legal Assistance Officer concerning pay and tax issues as needed.

C–13. Department of Veterans Affairs (VA)

The VA program for disability benefits is separate and distinct from the Army disability system. The PEBLO will counsel soldiers on VA benefits, stressing that none are automatic, that the soldier must start the action by filing a claim with the VA. The PEBLO will attempt to arrange for the soldier an interview with the VA representative servicing the MTF or installation. Specifically the PEBLO will advise the soldier of the facts below.

a. Soldiers have the right to file a claim with the VA at the time of separation or retirement outprocessing, after separation or retirement, or not at all. It is to the soldier's advantage to file the claim at the time of outprocessing so that the required medical records will accompany the claim to the applicable VA Regional Office. When a claim is filed after separation or retirement, processing by the VA is delayed awaiting for receipt of medical records from the official records custodian.

b. The VA makes its own decisions concerning entitlement to disability compensation and ratings based on the statutes and regulations which govern its operations. The VA is not bound by decisions of the Army; and likewise, the Army is not bound by VA decisions. The Army disability system must first determine whether a soldier is physically unfit before the provisions of the VASRD are applied and is restricted to rating only those conditions which are unfitting or contribute to unfitness. The VA may rate any service-connected disability. Army ratings are permanent; VA ratings may fluctuate depending upon the future severity of the disability. The amount of military disability compensation is based on set rates by percentage. In addition, for ratings of 30 percent of higher, compensation is increased for each eligible dependent.

c. Because of the differences in the two systems, greater benefits may be available from the VA, especially for lower ranking soldiers who are higher rated by the VA. Although there is no assurance that VA benefits will be greater, the soldier is not bound

in any case to accept them. For this reason, a claim should be submitted whether or not the soldier will ultimately use any VA benefits.

d. Compensation may be received from either the Army, the VA, or both. However, the law provides that the whole amount of service retirement pay and VA disability compensation may not be collected at the same time. In otherwords, the amount received from the VA and military retired pay may not exceed the total of whichever payment is larger.

e. VA compensation is exempt from income tax. In those instances where the military disability retired pay is not tax exempt, the soldier may waive that amount of service disability pay equal to the amount of VA compensation. Election of choice of compensation may be changed at any time.

f. When a soldier receives disability severance pay and is subsequently rated by the VA, the VA will deduct the entire amount of severance pay from any VA compensation received. At the discretion of the VA, the soldier may repay the entire amount in one lump sum, or the VA may withhold the monthly compensation (or a portion thereof if the VA rates higher) until the total amount withheld equals the amount of disability severance pay received.

g. Service-Disabled Veterans Insurance (RH). Soldiers who are granted a service-connected disability but are otherwise in good health may apply to the VA for Service-Disabled Veterans Insurance (RH) for up to $10,000 coverage at standard insurance rates within 1 year from date the VA notifies the veteran that the disability has been rated as service connected.

h. Other potential VA benefits include the following:

(1) A rehabilitation program which may include tuition, fees, books, and monthly subsistence for qualified soldiers.

(2) Employment assistance.

(3) Home loans.

(4) Extensive medical care benefits for veterans and, in some cases, dependents.

C–14. Social Security

a. Soldiers who become disabled may be entitled to social security benefits. Every soldier should file a claim if any possibility exists that the soldier will receive benefits.

b. In order to fully advise soldiers about social security benefits, PEBLOs will—

(1) Set up and maintain close liaison with managers and officers of social security district offices.

(2) Supply information concerning the social security disability program.

(3) Assist soldiers in setting up appointments or contact with the social security administration.

(4) Advise soldiers that social security compensation is generally tax free and is payable in addition to, and without deduction from, Army or VA disability compensation.

C–15. Disabled Veterans' Outreach Program (DVOP)

a. The program is administered and funded by the Office of the Assistant Secretary of Labor for Veterans' Employment and Training. DVOP staff are located in most State Employment Service Agencies (JOB SERVICE) and are available to assist and help the employment needs of veterans, especially disabled veterans, veterans of the Vietnam era, and veterans who are economically or educationally disadvantaged. DVOP staff are also located in many Veterans Administration facilities, Veterans Readjustment Counseling Centers, and other approved facilities such as major veterans organizations.

b. PEBLO's will contact the local DVOP liaison or the state Employment Service Agency (JOB SERVICE) to arrange an interview for soldier's being separated or retired for physical disability.

C–16. PEBLO Counseling checklist

The PEBLO will use DA Form 5893–R (PEBLO Counseling Checklist/Statement) to counsel soldiers. This document will be signed by the PEBLO and the soldier at the time of the soldiers final election and forwarded to the PEB for inclusion in the record of proceedings.

Appendix D
Instructions for DA Form 199 (Physical Evaluation Board (PEB) Proceedings)

Section I
Informal PEB Proceedings

D–1. Block 1
Insert the soldier's last name, first name, and middle initial.

D–2. Block 2
Insert the soldier's pay grade, that is, E–1, 0–1, W–3.

D–3. Block 3
Insert both Pay Entry Base Date (PEBD) and Basic Active Service Date (BASD) even though in many cases they will be the same. If one of the dates is unknown, type "Unknown". Use the following documents to find the PEBD and BASD:

a. DA Form 2, section III, items 46 and 47.
b. DA Form 2–1, section VII, item 35.
c. Letter Order (LO), Ordered to Active Duty.
d. DD 214 (Certificate of Release or Separation from Active Duty). Refer to the following documents in enlisted cases, if necessary:
(1) DA Form 2–1, Section III, item 20.
(2) DD Form 4/1–4/3 (Enlistment/Reenlistment Document).

D–4. Block 4
Enter the soldier's social security number.

D–5. Block 5
Enter the soldier's primary military occupational speciality.

D–6. Block 6
Enter the soldier's component, that is, RA (Regular Army), NG (National Guard) or USAR (United States Army Reserve). If the soldier is on the Temporary Disability Retired List, enter TDRL.

D–7. Block 7
Enter the date informal PEB considered the soldier's case. If the DA Form 199 is being prepared as a result of reconsideration or for an administrative correction, indicate by typing (Reconsideration) or (Corrected Copy) after the date.

D–8. Block 8
Decide entries for each column by the recommended disposition. If the soldier is found physically fit, do not make entries in columns a, c, d, e, f, and g.

a. Column a. Use the VASRD code numbers. When a soldier's condition is rated analogously, the analogous identifier will be written first followed by a hyphen. The selected code used to determine the rating will be written under the analogous identifier (For example: 6399-6350).

b. Column b. Choose terms to describe each disability from the VASRD, this regulation, the MEBD diagnoses, narrative summary, or a combination of these. Choose terms that help to provide a succinct and complete disability picture. Include limitations, controls, and severity. Do not arbitrarily select a description of the limitation and qualifying phrases from VASRD merely to justify a particular rating. Cross-reference each disability to the source in the medical records; for example, the MEBD diagnosis, narrative summary, addenda, photographs. If the soldier is found physically fit, enter only the rationale for finding of fit.

(1) In LD–NO or EPTS diagnoses, state the reason or indicate the source (MEBD, LD investigation). In EPTS conditions involving service aggravation, except when the rating is 100 percent, indicate the computation of a net rating after the disability entry. Include reasons for the deduction, for example:

(a) Anatomical loss, right eye, left eye; 20/70; (Medical board diagnoses 1,2); Present rating 60%. EPTS right eye 20/50; left eye 20/40; (Induction Physical, SF 88), 10%. Net rating 50%. Enter the net rating in column g also.

(b) Asthma, bronchial, moderate; intermittent attacks with moderate dyspnea on exertion. Present rating 30%. EPTS, asthma by history (NARSUM; induction physical), UND. Net rating 30%.

(c) Bronchitis, chronic, mild, no dyspnea. Present rating 0%. EPTS, bronchitis by history (NARSUM; induction physical), UND. Net rating 0%.

(2) When paired extremities or paired skeletal muscles are involved, resulting in the application of bilateral factors, list those disabilities consecutively. Follow the disability by the computation of the bilateral factor. Example:

1. Foot, right; loss of use of (MEBD diagnosis 1).
2. Ankle, left, limited motion; marked (MEBD diagnosis 3). Rating for No. 1 = 40%, No. 2 = 20%; Combined rating 52%. Bilateral factor: 52% + 5.2 = 57.2 = 57%
3. Scars, disfiguring, face; severe (MEBD diagnosis 4, photographs).
Enter the combined net rating for the bilateral elements in column g. The net rating will determine the order of significance as indicated above.

(3) Include a statement of the reasons for finding a soldier fit or unfit; if unfit, specify reasons why the soldier is unable to reasonably perform in his office, grade, rank, or rating.

(4) If the DA Form 199 is the result of a "reconsideration," the lead paragraph of the rationale will so note, citing the basis for the reconsideration and date the request was made. For example, "The PEB reconsidered this case based on an addendum to the MEBD dated 22 Jan 90."

(5) Enter rational for finding made in block 9. (Also see item 6.) Upon removal from the TDRL, explain any variation among the findings, recommendations, and ratings of the original action placing the soldier on the TDRL. Explain the present action removing him from the TDRL. Explain the variations in a summary understandable to the soldier.

(6) If the soldier is on the TDRL, the following will apply:

(a) Retention on the TDRL. Update the disability description, as required above, following each periodic examination. The description will describe the severity of the soldier's current physical condition. Enter additional ratable disabilities when etiologic relationship to an active service condition exists. List a disability incurred while the soldier was on the TDRL only if it is unfitting. Enter "No" in column d. Make proper remarks in block 16 to explain the new entries.

(b) Removal from the TDRL. At the time of final adjudication, reflect the current status of all physical disabilities.

c. Column c. Enter "YES" or "NO." Use an unfavorable entry (YES) only when an approved DD Form 261 (Report of Investigation–Line of Duty and Misconduct Status) contains an entry in item 9d that the soldier was absent without authority or the entry in item 10 is "Not in Line of Duty–Not Due to Own Misconduct." Make no entry if the soldier is on the TDRL. If entry is "YES," make no entry under column d, e, f, or g.

d. Column d, e, and f. Enter "YES" or "NO," whichever is correct, for each disability. Include disabilities incurred while on active duty, or active duty for training, and discovered while the soldier is on the TDRL. Also include any unfitting disability incurred after the soldier was placed on the TDRL, as provided in (3)*(a)* above. If a soldier is retained on the TDRL without a change, make no entries.

e. Column g. Enter the proper rating from the VASRD, appendix B, the result of computation of bilateral factors, or adjustments for EPTS conditions for each disability. Enter only the net rating after computations for bilateral factors are applied or when EPTS values are deducted. Make no entry if the soldier is retained on the TDRL. For soldiers being removed from TDRL, make an entry for each compensable disability. The following limitations apply even though entry on a percentage rating appears proper:

(1) A zero percent rating may not be used to indicate no aggravation of an EPTS condition. A zero percent rating is a compensable rating. Thus, the rating would improperly permit payment of severance pay. If the disability at the time of evaluation is not

greater than EPTS, the condition cannot be considered service aggravated and will be listed as "NR" (not ratable).

(2) A rating may not be assigned for disability because of disease in the case of an RC soldier who incurred such disease prior to 15 November 1986, except as provided in chapter 8.

D–9. Block 9

a. Select recommendations for disposition of the soldier from the following statements:

(1) "Permanently retired from the service."

(2) "Placed on the TDRL with reexamination during (month and year)."

(3) "Separated from the military service without entitlement to disability benefits from the service."

(4) "Separate from the service with severance pay if otherwise qualified."

(5) "Retained on the TDRL with reexamination during (month and year).

(6) "Revert to retired status."

(7) Other (specify).

b. A soldier who has completed less than 20 years of service may have applied for retirement contingent on completion of 20 years' active service. PEB processing may result in a recommendation for placement on the TDRL or separation with severance pay. If so, the PEB will make the proper entry from 4–9, above, and add "See block 16." Place a statement in block 16 to reflect that permanent retirement or placement on the TDRL would be recommended if the soldier had completed 20 years of active military service.

D–10. Block 10a

Make the entry according to the provisions of paragraph 4–19*j*. Make the entry in all cases other than those on the TDRL although the entry pertains only to soldiers who will be retired. For a soldier on the TDRL, make an entry only if the DA Form 199 placing the soldier on the TDRL did not indicate a finding.

D–11. Block 10b

Make the entry in all cases even though block 10b addresses only soldiers who will be retired. Check "was" if, on 24 September 1975, the individual was a member of—

a. The armed force of any country or Reserve Component (RC) of the armed force.

b. The National Oceanic and Atmospheric Administration (NOAA) (formerly the Coast and Geodetic Survey).

c. The United States Public Health Service (USPHS).

d. Under a binding written commitment to become such a member. For a soldier on the TDRL, make the proper entry only if the DA Form 199 placing him on the TDRL after 24 September 1975 does not indicate a finding.

D–12. Block 10c

Make the entry in all cases even though block 10c addresses only soldiers who will be retired. Refer to paragraph 4–19*k* and the Glossary to decide which block to check.

D–13. Block 11

Arrange exhibits to follow the order of table 4–1. DA Form 3947 should be examined to decide whether the soldier has indicated a desire to remain on active duty under the provisions of chapter 6. Indicate application for COAD under block 11 as an exhibit.

D–14. Block 12

Enter the name, grade, and branch of the president of the informal PEB.

D–15. Block 13

The soldier will complete this block by placing a checkmark in the appropriate block indicating his or her elections after the informal findings and recommendations.

D–16. Block 14

The legal counsel or PEBLO who informs the soldier of the PEB's findings and recommendations and his available options will sign this item.

Section II
Formal PEB Proceedings

D–17. Blocks 1 through 7

Complete as required for informal PEB proceedings as specified in paragraphs D–1 through D–7.

D–18. Block 8

In addition to the requirements of paragraph D–8, above, the word "FORMAL" will be stamped to clearly identify the DA Form 199 as having been prepared as the result of a formal PEB.

D–19. Blocks 9 through 11

Complete as required for informal PEB proceedings as specified in paragraphs D–9 through D–13, above.

D–20. Block 12

When a formal PEB hearing is held, this block is left blank.

D–21. Block 13

This section is completed only when the soldier is responding to informal or reconsidered PEB findings and recommendations and the soldier has not had a formal hearing before the PEB.

D–22. Block 14

When a formal PEB hearing is held, this block is left blank.

D–23. Block 15a

Place an "X" in the appropriate block to indicate whether the soldier elected to appear and whether the soldier appeared.

D–24. Block 15b

Indicate whether the soldier was represented by the regularly appointed counsel or by counsel of choice and the name of that counsel.

D–25. Block 15c

If the soldier's case was referred from another station, indicate the PEBLO's name.

D–26. Block 15

If the soldier is represented by next-of-kin, indicate the name of the next-of-kin and whether the next-of-kin was present to represent the interests of the soldier.

D–27. Recorder, Reporter and Interpreter blocks

Enter the name and grade of the individual who served in each position respectively.

D–28. Date

The date the board was adjourned will be indicated in military format, for example, day, month, year. The name, grade, and branch of the counsel and president of the formal hearing will be entered in the respective blocks. The signatures of the president and counsel will confirm that the record is accurate and complete. Explain the failure of either to sign on a separate sheet. Treat this sheet as an exhibit.

Section III
Previously Retired other than for Physical Disability

D–29. Block 8

Complete the section by listing all current disabilities. Recomputation of retired pay for a soldier previously retired other than for disability depends on the soldier's incurring physical disability, while on active duty after retirement, of at least 30 percent, for

which the soldier would otherwise be eligible for disability retirement. More than one disability may exist. If so, a footnote after the last disability will identify those disabilities that were incurred while the soldier was on post retirement active duty and the combined rating for those alone. The footnote will credit only the percent representing aggravation of a disability present before retirement. Decide the aggravation by subtracting the preretirement rating from the current rating. The remainder will be the rating incurred while on post retirement active duty. The combined rating for such post retirement active duty disabilities, if 30 percent or more, will justify recomputation of retired pay. However, enter the rating for each disability incurred in line of duty while entitled to receive basic pay in block 8g. Enter the rating regardless of when the disability was incurred. Enter the combined rating resulting from 8g in block 9.

D–30. Block 9
Complete all entries; however, disposition will be "Revert to retired status."

D–31. Combat related or instrumentality of war
Make proper entries in 10B and 10C only.

D–32. Block 16
Enter a brief statement explaining—

a. That the soldier was recalled to active duty while in a retired status.

b. The reason for retirement.

c. The date of recall and period for which the soldier was recalled.

Section IV
Previously Permanently Retired because of Physical Disability and TDRL Recall

D–33. Block 8
Describe the current disability. Enter the rating in column g.

D–34. Block 9
Make no entry as to fitness. The disposition will be "Revert to retired status." Block 9 may reflect recommendation to remove the soldier from TDRL if his condition has stabilized or improved so as to support the recommendation.

D–35. Block 10
Make no entry.

D–36. Block 16
Enter a brief statement explaining—

a. That the soldier was recalled to active duty from permanent disability retirement.

b. The date recalled.

c. Whether the evaluation is the result of a new disability or aggravation of a previous disability or a combination of both.

D–37. TDRL recall
Complete all items as provided in instructions for paragraphs D–8*b*(6) and D–8*e*, above. Block 16 should relate to the soldier's status, the date of recall, and the period for which recalled.

Appendix E
Personnel Processing Actions

E–1. General
This appendix prescribes personnel processing actions for soldiers undergoing physical evaluation under the provisions of this regulation.

E–2. Physical evaluation
a. When an MTF commander determines that a soldier will be processed for physical evaluation, the commander will—

(1) Decide whether the soldier will be assigned to the medical holding unit of the medical treatment facility (MTF). The decision will be based on whether the individual may render productive service to the parent unit while undergoing disability processing.

(2) Decide whether the soldier will be attached to the medical holding company of the MTF to make evaluation processing easier.

(3) Process soldiers on an outpatient basis from the parent organization whenever possible.

(4) In the case of medical officers assigned to his or her command, determine if medical evaluation by another MTF is required, as directed by AR 40–3, para 7–4.

b. The MTF commander is responsible for initiating proper actions relating to disability processing promptly. Such actions include—

(1) Moving the patient to another hospital if required.

(2) Moving the patient to the PEB if a soldier is to make a personal appearance at the board.

E–3. Individual records and property
The commander of the organization to which the soldier is assigned will—

a. Retain in their organization personnel records of soldiers attached to a medical holding unit.

b. Upon request, furnish the MTF commander, on a loan basis, records required in conjunction with the study and evaluation of the soldier.

c. Upon receipt of an order reassigning a soldier of the organization to a medical holding unit, forward the soldier's personnel and pay records to the MTF commander within 48 hours.

d. Forward individual clothing of the soldier according to AR 735–5.

E–4. Administrative control of soldiers before final PEB action
a. Soldiers processed as outpatients will remain available to the MTF commander or president of the PEB until the PEB completes action in his or her case.

b. Soldiers processed by MTFs in attached status will normally be retained at the MTF until PEB processing is completed. The soldier may, however, be authorized to reside elsewhere pending completion of PEB action.

c. Soldiers processed by MTFs in assigned status normally will remain at the MTF until PEB action is completed. The soldier may, however, be authorized to reside elsewhere pending completion of PEB action.

E–5. Administrative control of soldiers after PEB action
After PEB proceedings have been completed, the soldier's disposition will be according to the recommended findings of the board as indicated in *a* and *b* below. Do not separate the soldier from the service before notice is received of the final decision from HQDA.

a. Physically fit. The MTF commander will process the soldier according to AR 40–3 if the soldier concurs in the finding. If the soldier does not concur with the PEB's finding of fit, or is being processed in connection with mandatory or voluntary retirement, the MTF commander will retain the soldier under control, pending final action on the case at HQDA. If an inpatient, the MTF commander may place the soldier on duty within the MTF or with a nearby organization pending final action on the case. If the soldier is an outpatient, he or she will remain assigned to his or her parent organization pending final action on the case.

b. Physically unfit. The MTF commander will retain a soldier under his or her control pending final review and approval of his or her case.

c. Inpatient processing. A soldier who is an inpatient when his or her case is referred to a PEB may be—

(1) Retained as an impatient at the option of the MTF commander.

(2) Placed on duty within the MTF, if assigned to the medical holding unit, to perform such duties as his or her condition permits. DA Form 3349 will be furnished to the soldier and duty supervisor.

(3) Authorized to reside elsewhere pending completion of PEB action.

(4) Ordered on a permanent change of station home (PCSH). MTF commander may authorize a soldier to "PCS in awaiting orders status" to await final disposition of the disability case under certain conditions. The soldier must apply in writing through the PEBLO to the MTF commander using the memorandum at figure E–1. All the requirements listed below must be met.

(a) The soldier cannot be a Medical Corps officer whose case requires review by ASD(HA).

(b) A determination of in line of duty has been made.

(c) PCSH from continental United States (CONUS) to CONUS and outside continental United States (OCONUS) does not exceed normal separation or retirement entitlements specified by the JFTR.

(d) Soldier must be assigned to medical hold unit within CONUS.

(e) Soldier must be on extended active duty.

(f) Case must have been evaluated by the PEB with a finding that the soldier is unfit, and the recommended disposition must be disability retirement or discharge with or without severance pay.

(g) Soldier must have agreed with the informal PEB findings.

(h) Soldier must not have requested COAD or submitted a rebuttal requesting retention on active duty.

(i) Soldier must be competent.

(j) Soldier must not need further medical care at a military or VA facility.

(k) Soldier must not have a nondisability retirement or separation action pending.

(l) Soldier must be counseled on movement of dependents and households goods.

(m) Soldier must be advised that while in a PCSH status, he or she must return to unit of assignment, referring medical facility, or the PEB if directed to do so. A soldier will not have to return if the PEB recommendations are approved.

(n) Soldier must give the MTF commander a nonmilitary address and phone number where he or she can be reached and must advise the MTF commander of changes to that address or phone number.

(o) Soldier must acknowledge understanding that the number of days in PCS awaiting orders status must be deducted from the number of days leave accrued as of the date of retirement or discharge.

(5) Ordered to a VA hospital on a permanent change of station (PCS) as set forth in AR 40–3.

d. Change in status.

(1) If the soldier is rehospitalized before final disposition, amend orders to show the place and date of rehospitalization and authorization for travel between soldier's home and the MTF. Also show whether soldier is entitled to basic allowance for quarters (BAQ) and subsistence during hospitalization. Do not charge the soldier leave during hospitalization and connected travel. If rehospitalization is completed before final disposition of case, the soldier may again be placed on a PCSH status if requested.

(2) Furnish the PEB a copy of the soldier's request and orders directing PCSH to attach to the case records. If the records have already been sent to the CG, USAPDA, the PEB will send the request and orders to PERSCOM (TAPC–PDB). If the orders are

later amended as described in (1) above, furnish the CG, PERSCOM, without delay, a copy of each amendment at the same address.

E–6. Soldiers located in overseas command

A soldier assigned in an overseas command, or who is on the TDRL and residing (not visiting) in the command, will be processed as follows:

a. Active duty. When the responsible overseas MTF completes the medical board proceedings, forward the medical records and related papers to the PEB. Should the soldier refuse to accept the findings and recommendations of the informal board and demand a formal hearing with personal appearance, the PEB conducting the informal hearing will schedule the formal board. The PEB will inform the overseas MTF commander of the scheduled hearing and request that the soldier's travel orders be issued. Authorize the soldier 5 days TDY at the PEB. The soldier will return immediately to his or her assignment overseas after the hearing unless otherwise directed by proper authority.

b. TDRL. When a soldier on the TDRL resides in an overseas command and demands a formal hearing with personal appearance, the soldier will perform necessary travel on the orders issued as prescribed in chapter 7. Authorize the soldier 5 days TDY at the PEB.

E–7. Continuance of disabled soldiers

Process disabled soldiers who request COAD according to chapter 6.

E–8. Army soldiers hospitalized in non-Army MTFs

Cdr, HSC is responsible for the administration of Army soldiers hospitalized in other than Army MTFs. This responsibility is exercised through Army MTFs designated by the HSC commander to assume responsibility for such soldiers as provided for in AR 40–3.

a. If transfer to an Army MTF is not contemplated or is inadvisable, commanders of Army MTFs designated to assume administrative control will exercise the functions and responsibilities necessary for the timely processing of such soldiers. If transfer of a soldier to an Army MTF is planned, defer disability processing until the soldier has been moved.

b. Medical board proceedings prepared by Navy and Air Force MTFs on Army soldiers will be routed through the responsible Army MTF commander and used for disability processing whenever feasible. Medical evaluation boards appointed by Army MTF commanders having administrative responsibility for soldiers in nonservice MTFs will evaluate such soldiers who require disability evaluation.

E–9. Final disposition instructions

After final approval, forward DA orders or other disposition instructions to the proper commander for final disposition. AR 635–10 establishes procedures for processing soldiers for retirement or discharge. The following instructions supplement those in AR 635–10 when soldiers who are unfit because of physical disability are processed for retirement or discharge:

a. Discharge. Discharge will be effected usually within 20 days from the date of secretarial approval of the determination of physical unfitness advanced by the number of days accrued leave which can not be sold back to the Government (para "*d*" below.)

b. Retirement. Retirement processing must be completed by the effective date established in DA orders. Retirement dates will be established as follows:

(1) *General officers.* Date of retirement will be on an individual basis.

(2) *Individuals processed for mandatory retirement.* Date of retirement will be one of the following:

(a) The mandatory retirement date.

(b) As soon thereafter as possible, as provided in (4) below.

(c) An earlier date, if requested.

(3) *Individuals processing for voluntary retirement at time of referral into the disability system.* Date of retirement will be one of the following:

(a) The date originally requested.

(b) As soon after the date requested as possible, as provided in (4) below.

(c) An earlier date if requested later.

(4) *All others.* Date of retirement will usually be 20 days from the date of secretarial approval of the determination of unfitness advanced by the number of days of accrued leave which cannot be sold back to the Government.

c. Release from active duty of recalled retired soldier. Processing required will be completed and the soldier released from active duty on the effective date established in DA orders.

d. Accrued leave. Soldiers may be permitted to use accrued leave in excess of that which may be sold back to the Government. If soldiers have not sold back their leave, they are required to do so in lieu of using their leave.

e. Requests for exception to established discharge or retirement date. Request for deviation from established discharge date or amendment or revocation of retirement orders for other than medical reasons will be submitted, with justification, to PERSCOM (TAPC–PDB). If the soldier is rehospitalized, and the presence of substantial new evidence indicates that the initial disability decision or percentage of disability should be changed, the MTF commander will notify the PEB that adjudicated the case. USAPDA will decide whether the case should be reconsidered by the PEB. USAPDA may request PERSCOM cancel discharge instructions, or amend or revoke retirement orders.

f. Responsibility of MTF commanders. MTF commanders will be responsible for final disposition of soldiers for physical disability separation within their area of responsibility.

E–10. Preparation and distribution of orders

Orders separating soldiers for physical disability will be prepared and distributed according to AR 310–10. If applicable, a statement will be made regarding termination of appointment.

E–11. Separation Documents

See AR 635–5 for instructions on completion of DD Form 214.

E–12. Type discharge certificate issued

a. Officers. Officers discharged for physical disability will be honorably discharged. Issue a DD Form 256A. An exception is a case in which the disability upon which discharge is based was the result of intentional misconduct or willful neglect of the officer concerned or was incurred during a period of unauthorized absence. In any of these circumstances, the officer will be discharged under honorable conditions and issued a DD Form 257A.

b. Enlisted personnel. Service of enlisted soldiers discharged by reason of physical disability normally will be characterized as honorable, or described as uncharacterized for those in entry level status. However, characterization of general under honorable conditions is authorized for soldiers beyond entry level status whose service is satisfactory, but not sufficiently meritorious to warrant honorable characterization.

E–13. Delivery of separation forms

Deliver separation forms to the soldier according to AR 635–5. If the soldier has been moved to a VA hospital before the date of separation or retirement, and is mentally incompetent, mail the separation forms to his or her next-of-kin or legal guardian. Furnish the director of the VA hospital a copy of the DD Form 214.

E–14. Retirement honors

Extend proper honors to soldiers retired for physical disability according to installation standing operating procedures.

(Letterhead)

(Office symbol) *(Date)*

MEMORANDUM FOR Commander, Walter Reed Army Medical Center
ATTN: HSHL-PAD-PA, Washington, DC
20307-5001

SUBJECT: Request for Permanent Change of Station Home Pending Disability Separation or Retirement

1. I have been informed that a Physical Evaluation Board (PEB) has found me unfit because of physical disability to perform my military duties. I agree with the PEB findings and recommendations as written. I understand that I may elect permanent change of station to my home (PCSH), pending final action on my case, subject to the conditions set forth below. I wish to be placed on PCSH at 12 Cross Street, Petersburg, Va 23803, to await further orders.

2. I understand I will be charged ordinary leave to the extent of my accrued leave during PCSH. Any unused leave remaining to my credit on the day before the effective date of separation or retirement will be computed. Payment will be made with my final pay, if proper.

3. I further understand that I remain subject to military control. I may need to undergo further medical treatment or evaluation. I may be declared physically fit for duty. Also other circumstances may prevent my separation or retirement. I will comply with orders or instructions issued by proper authority.

4. While PCSH, I am in an "awaiting orders" status. I am entitled to proper pay and allowances. Basic allowance for quarters is payable if I am not occupying Government quarters. If an enlisted soldier, I am entitled to subsistence allowance or rates prescribed when rations inkind are not available.

5. I am entitled to shipment of household goods to the place at which I will await further orders or temporary storage.

a. My entitlement to further transportation or travel allowances (to a home of selection) will be exhausted if I am discharged without severance pay. They will also be exhausted if I am discharged with severance pay before 8 years continuous duty (with no single break of more than 90 days).

b. If I am discharged for physical disability with entitlement to severance pay and have completed at least 8 years of continuous active duty (with no single break of more than 90 days) immediately before discharge, or, am retired by reason of physical disability (permanent or temporary), I will be authorized additional transportation or travel allowances for my dependents and household goods, to a home of my selection. However, entitlement to additional transportation or travel allowances for my dependents and household goods may not exceed the entitlement from my last permanent duty station to home of selection, minus any transportation or travel allowances furnished while PCS in awaiting orders status.

c. If ordered to return to duty, I will be entitled to travel and transportation allowances for myself, my dependents and household goods based on permanent change of station entitlements from the location of my awaiting orders location to my new permanent duty station (including return to present duty station).

6. If retirement or discharge is delayed or stopped for any reason, I remain subject to military control and subject to orders to a duty station for duty, further medical treatment, or for any other purpose as determined by the Army.

JOHN E. DOE
987-65-4321
SSG, Medical Holding Co., WRAMC

Figure E-1. Sample Request for PCSH

Glossary

Section I
Abbreviations

ABCMR
Army Board for Correction of Military Records

ACRB
Army Council of Review Boards

ADRRB
Army Disability Rating Review Board

ADSW
active duty special work

ADT
active duty for training

AGR
Active Guard Reserve

APDAB
Army Physical Disability Appeal Board

ARNG
Army National Guard

ARNGUS
Army National Guard of the United States

ASD(HA)
Assistant Secretary of Defense (Health Affairs)

AT
annual training

AWOL
absent without leave

COAD
continuance (continued) on active duty

DA
Department of Army

DAC
Department of Army civilian

DCSPER
Deputy Chief of Staff for Personnel

DMPM
Director of Military Personnel Management

DODD
Department of Defense Directive

DVOP
Disabled Veterans Outreach Program

EPTS
existed prior to service

EUR
Europe

FTTD
full time training duty

GCMCA
General Court Martial Convening Authority

HQ
headquarters

HSC
Health Services Command

IDT
inactive duty training

JAGC
Judge Advocate General's Corps

JUMPS
Joint Uniform Military Pay System

LES
Leave and Earnings Statement

LD
line of duty

MEBD
Medical Evaluation Board

MEDCOM
medical command

MOS
military occupational specialty

MPRJ
Military Personnel Records Jacket

MSC
Medical Service Corps

MTF
medical treatment facility

NARSUM
narrative summary

NGB
National Guard Bureau

NOAA
National Oceanic and Atmospheric Administration

OBV
obligated volunteer

OSA
Office of the Secretary of the Army

OSD
Office of the Secretary of Defense

NCO
noncommissioned officer

PEB
Physical Evaluatioin Board

PEBLO
Physical Evaluation Board Liaison Officer

PERSCOM
U.S. Total Army Personnel Command

RA
Regular Army

RC
Reserve Components

ROTC
Reserve Officers' Training Corps

SA
Secretary of the Army

SBP
Survivor Benefit Plan

TDRL
Temporary Disability Retired List

TJAG
The Judge Advocate General's Corps

TSG
The Surgeon General

TTAD
Temporary Tour of Active Duty

UCMJ
Uniform Code of Military Justice

USAFAC
U.S. Army Finance and Accounting Center

USAPDA
U.S. Army Physical Disability Agency

USAR
U.S. Army Reserve

USARPERCEN
U.S. Army Reserve Personnel Center

USC
United States Code

USMA
United States Military Academy

USPHS
U.S. Public Health Service

VA
Department of Veterans Affairs

VASRD
Department of Veterans Affairs Schedule for Rating Disabilities

Section II
Explanation of Terms

Accepted medical principles
Fundamental deductions that are consistent with medical facts. They are accepted for

treating and practice in current major textbooks and publications.

Active duty
Full-time duty in the active military service of the United States. This general term applies to all active duty service with the active forces without regard to duration or purpose.

Active service
Service on active duty.

Acute, grave illness
A pathological condition having a sudden onset or sharp rise that is very serious or dangerous to life. It is usually short and relatively severe as opposed to a prolonged chronic condition.

Armed conflict
Any activity in which American military personnel are engaged with a hostile or belligerent nation, faction, or force. The activity may include a war, expedition, occupation, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action, or similar situation.

Combat-related injury
A personal injury or sickness that a soldier incurs under one of the following conditions: as a direct result of armed conflict; while engaged in extrahazardous service; under conditions simulating war; or which is caused by an instrumentality of war.

Conditions simulating war
Those circumstances of training so simulating conditions of war that a special personal risk attends the situation. The mere fact that training (calisthenics) was required, or that training (football) is sponsored by the military, does not equate with "conditions simulating war."

Counsel
As used is this regulation, the term "counsel" will be construed to include members in good standing of the Federal bar or the bar of any State, accredited representatives of veterans' organizations recognized by the Administrator of Veterans Affairs under section 3402, title 38, United States Code (10 USC 3402), and other persons who, in the opinion of the board, are considered to be competent to present equitably and comprehensively the soldier's case.

Disease
An abnormal condition affecting a person that is not defined or classified as an injury. (A detailed listing of diseases may be found in Volume I, International Classification of Diseases, Adapted for Use in the United States (ICD–9–CM) Eighth Revision, diagnostic codes 000 to 796.9.)

Deleterious-type cases
A case in which disclosure of information on a soldier's physical condition would be harmful to his physical or mental health.

Deterioration of existing condition
When recurring coincident with non-disability separation, it must be equivalent to acute, grave illness to overcome the presumption of fitness.

Extended active duty
The duty status of a member of the Regular Army. It is also the duty status of a non-Regular member who is called or ordered to active duty for a period of more than 30 days other than for training under section 270(b), title 10, United States Code (10 USC 270(b)).

Impairment of function
The lessening of the capacity of the body or its parts to perform normally because of disease or residual of an injury.

Impairment, manifest
An impairment evidenced by signs or symptoms.

Impairment, physical
Any anatomic, functional, or physiologic abnormality of the body. The term is synonymous with "physical defect."

In loco parentis
In the place of a parent instead of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities.

Injury
A condition caused by trauma, such as a fracture, wound, sprain, dislocation, concussion, or compression. Also, an injury includes conditions resulting from extremes of temperature or prolonged exposure. Acute poisonings resulting from exposure to a toxic or poisonous substance are also classed as injuries. Poisoning due to contaminated food is not considered an injury. (A detailed listing of injuries may be found in Volume I, International Classification of Diseases, Adapted for Use in the United States (ICD–9–CM), Eighth Revision, diagnostic codes 800 to 999.9.)

Instrumentality of war
A device designed primarily for military service and intended for use in such service at the time of the occurrence of the injury. It may also be a device not designed primarily for military service if use of or occurrence involving such a device subjects the individual to a hazard peculiar to military service. This use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits. There must be a direct causal relationship between the use of the instrumentality of war and the disability and the disability must be incurred incident to a hazard or risk of the service.

Maximum hospital benefits
The point during hospitalization when a patient's progress appears to be stabilized. At this point, it can be anticipated if additional hospitalization will contribute to any further substantial recovery. A patient who can be expected to continue to improve over a long period of time without specific therapy or medical supervision, or with only a moderate amount of treatment on an outpatient basis, may be considered as having attained maximum hospital benefits.

Next-of-kin
An individual's nearest relative. (See AR 600–8–1 for identification as well as the definition of "parent" in this glossary.)

Not on extended active duty
The duty status of a non-Regular member who is ordered to active duty for training under section 270(b), title 10, United States Code (10 USC 270(b)); ordered to active duty or active duty for training for 30 days or less; or performing inactive duty for training.

Office, grade, rank, or rating
For the purpose of this regulation—

a. Office is a position of duty, trust, or authority to which an individual is appointed.

b. Grade is a step or degree in a graduated scale of office or military rank that is established and designated as a grade by law or regulation.

c. Rank is the order of precedence among members of the Armed Forces.

d. Rating is the name prescribed for members of an Armed Force in an occupational field. The term equates with military occupational specialty.

Optimum hospital improvement
The point during hospitalization when a patient's fitness for further military service can be decided. Also further treatment for a reasonable period in a military medical treatment facility will probably not result in material change in his condition so as to alter his type of disposition or amount of separation benefits.

Parent
Father of a legitimate child, mother of a legitimate child, father through adoption, mother through adoption, mother of an illegitimate child, and father of an illegitimate child but only if—

(a) He acknowledged paternity in writing signed by him; or

(b) He had been judicially ordered to contribute to the child's support; or

(c) He had been judicially decreed to be father of such child; or

(d) Proof of paternity is established by a certified copy of the public record of birth or church record of baptism showing that he was the informant and was named as father of the child; or

(e) Proof of paternity is established from service department of other public records, such as school or welfare agencies, which show that with his knowledge he was named as father of the child.

Physical disability
Any manifest impairment due to disease or injury, regardless of degree, that reduces or prevents an individual's actual or presumed ability to engage in gainful or normal activity. The term includes disability due to mental disease.

Physical evaluation board liaison officer (PEBLO)
An experienced, mature officer, NCO, or civilian employee designated by the MTF commander to perform the primary duties of counseling soldiers who are undergoing physical disability evaluation. The PEBLO provides soldiers with authoritative and timely answers to their questions about the physical disability system and aids them in understanding their rights and entitlements. The PEBLO is not, and need not be, an attorney.

Physically unfit
Unfitness due to physical disability. The unfitness is of such a degree that a soldier is unable to perform the duties of his office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of his employment on active duty. "Physically unfit" is synonymous with "unfit because of physical disability."

Preponderance of evidence
Factual information that tends to prove one side of a disputed fact by outweighing the evidence on the other side. Preponderance does not necessarily mean a greater number of witnesses or a greater mass of evidence; rather, the term means a superiority of evidence on one side or the other of a disputed fact. The term requires consideration of the quality rather than the quantity of the evidence.

Presumption
An interference of the truth of a proposition or fact. It is reached through a process of reasoning and based on the existence of other facts. Presumed matters need no proof to support them. They may be rebutted by evidence to the contrary, however.

Processing for separation from active service
A soldier is "processing for separation from active service" when he has requested retirement by reason of age or length of service or is being processed for administrative separation to include separation at ETS or ESA date (for officers only).

Proximate result of performing duty
A disability may reasonably be assumed to have been the result of, arising from, or connected with active duty, full-time training duty, other full-time duty, or inactive duty training. All facts, circumstances, and laws on a particular case must be considered.

Reasonable doubt
Reasonable doubt exists when evidence does not satisfactorily prove or disprove a claim. Reasonable doubt is substantial, not specious. It is within the range of probabilities as distinguished from pure speculation or remote possibility. It is not means of reconciling conflicts or contradictions in evidence.

Reserve Components of the Army
The Army National Guard of the United States and the US Army Reserve.

Separation
An all-inclusive term that is applied to personnel actions resulting from release from active duty, discharge, retirement, dismissal, resignation, dropped from the rolls, or death. In this regulation, separation means discharge because of physical disability with or without severance pay.

Service aggravation
a. Medical treatment facilities frequently list a medical condition as "service aggravated" based on the fact that the condition becomes symptomatic under certain conditions found in the military. Symptoms arising when limits imposed by a condition have been exceeded are poor criteria of service aggravation of the condition, itself.

b. When an EPTS condition becomes symptomatic under the stress of active duty it may be unfitting but it has not been aggravated by AD unless it has been permanently worsened over and above natural progression.

Unfit because of physical disability
Synonymous with physically unfit.

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PEB REFERRAL TRANSMITTAL DOCUMENT

For use of this form, see AR 635-40; the proponent agency is DCSPER

DATA REQUIRED BY THE PRIVACY ACT OF 1974

Authority: 10 USC chapter 61 and 5 USC 301

Principal Purpose: Transmittal of Medical Evaluation Board and allied documents to the Physical Evaluation Board.

Routine Uses: Confirmation of documents submitted. Reference data to contact soldier as required.

Disclosure: Disclosure is voluntary; however, failing to provide information may delay timely processing of case.

1. TO *(Designate applicable PEB and address)*		
2. FROM *(MTF and address)*		3. DATE
4. NAME *(Last, first middle)*	5. RANK	6. SSN
7. SOLDIER'S UNIT ADDRESS		8. DUTY PHONE*(List Autovon)*
9. SOLDIER'S HOME ADDRESS		10. RESIDENTIAL PHONE

11. ENCLOSURES

a.	g.
b.	h.
c.	i.
d.	j.
e.	k.
f.	l.
12. TYPED NAME OF PEBLO	13. SIGNATURE

DA FORM 5889-R, JUN 90

ACKNOWLEDGEMENT OF NOTIFICATION OF FORMAL PHYSICAL EVALUATION BOARD HEARING

For use of this form, see AR 635-40; the proponent agency is DCSPER

DATA REQUIRED BY THE PRIVACY ACT OF 1974

Authority: 5 USC 301 and 10 USC 1214

Principal Purpose: To have as a matter of record the notification to the soldier *(or the individual authorized to act in the soldier's behalf)* of the scheduled formal hearing and the Legal Counsel appointed to represent the soldier's case before the Physical Evaluation Board.

Routine Uses: Confirmation that soldier is informed of the date and time of the scheduled hearing and has contacted the Appointed Legal Counsel for counseling or representation. To identify essential witnesses to be secured by the Physical Evaluation Board. The SSN is used to identify the soldier.

Disclosure: Disclosure of all data is voluntary. Failure to provide the data may adversely effect the soldier's interests in the presentation of his/her case before the Physical Evaluation Board.

SECTION I. APPLICABILITY

This form is to be completed by the soldier *(or the individual authorized to act in the soldier's behalf)* upon notification of the scheduled formal hearing.

SECTION III. INSTRUCTIONS

The Physical Evaluation Board will forward this form to the soldier with the letter of notification of the scheduled formal hearing. The signed acknowledgement will be filed in the original, PEB, and USAPDA copies of the PEB proceedings.

SECTION III. ACKNOWLEDGEMENT

1. I acknowledge receipt of the letter informing me of the date and time of the formal hearing.

2. I _____ have _____ have not contacted the Appointed Legal Counsel identified in the letter.

3. I _____ will _____ will not appear for the hearing.

4. I _____ do _____ do not authorize counsel of record access to my medical records and allied papers, to include the extracting of portions therefrom, if necessary, for the purpose of counseling, assisting in the preparation of, or preparation of, my case for presentation before a formal hearing by the U.S. Army Physical Evaluation Board.

5. I understand that the PEB Recorder will arrange for the attendance of those witnesses that I request who are determined by the Physical Evaluation Board to be essential and reasonably available and who are members or employees of the U.S. Army or another Army Service. I request the individual*(s)* whom I have listed on the back of this form be summoned as essential witness*(es)*.

6. I understand that I am responsible for securing those witness*(es)* that do not meet the criteria in "5" above and that their appearance is at no cost to the government.

7. PRINTED OR TYPED NAME	8. SIGNATURE	
9. ADDRESS	10. SSN	
	11. PHONE NUMBER	12. DATE

DA FORM 5890-R, JUN 90

ACKNOWLEDGEMENT OF COUNSELING ON LEGAL/PROCEDURAL RIGHTS

For use of this form, see AR 635-40; the proponent agency is DCSPER

DATA REQUIRED BY THE PRIVACY ACT OF 1974

Authority: 10 USC chapter 61 and 5 USC 301

Principal Purpose: To explain legal and procedural rights and to ensure that the understanding of these rights by the soldier, or the individual authorized to act in the soldier's behalf, is a matter of record.

Routine Uses: Information on legal and procedural rights.

Disclosure: Disclosure of Social Security Number is voluntary.

SECTION I. APPLICABILITY

This form is to be provided to the soldier (or the individual authorized to act in the soldier's behalf) before the conduct of the formal Physical Evaluation Board.

SECTION III. INSTRUCTIONS

The Appointed Legal Counsel is responsible for advising the soldier (or individual authorized to act in the soldier's behalf) of his or her legal and procedural rights before the formal Physical Evaluation Board.

SECTION III. LEGAL/PROCEDURAL RIGHTS

1. I have been informed of the impact of the Privacy Act of 1974 on personal information I am requested to provide during the formal hearing. I understand that --

   a. The authority for requesting personal data in connection with physical disability evaluation is 10 USC chapter 61 and 5 USC 301.

   b. The principal purpose for the requested data is to obtain information needed by the Physical Evaluation Board during the formal hearing and to identify both the soldier and witness*(es)*.

   c. Routine uses of the information include --

      (1) To evaluate a soldier's physical condition to determine whether the soldier is unfit because of physical disability to perform the duties of the soldier's grade, rank, or rating.

      (2) To determine whether the soldier is entitled to disability benefits if unfit because of physical disability.

      (3) To provide information after final disposition to the Department of Veterans Affairs (VA) or the Office of Personnel Management (OPM) as required.

      (4) Information will become part of the soldier's Official Military Personnel File, Health Record, and the Physical Evaluation Board and USAPDA's files of individual case processing.

   d. Disclosure of information is voluntary. Failure to provide requested information could have an adverse effect on the proper disposition of the case.

2. I understand, that in accordance with 10 USC 1214, I may not be separated or retired for physical disability without a full and fail hearing, if I request a hearing.

3. I understand, that in accordance with 10 USC 1219, I may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that I have. Any such statement against my interests, signed by me, is invalid.

4. I understand I may testify as a witness under oath in my own behalf, in which case, I may be cross-examined as any other witness.

5. I, or my counsel, may introduce witnesses, depositions, documents, or other evidence in my own behalf, and cross-examine witnesses who have been examined by the PEB, including witnesses who have specific knowledge of my case and whose conversations have been summarized for the record.

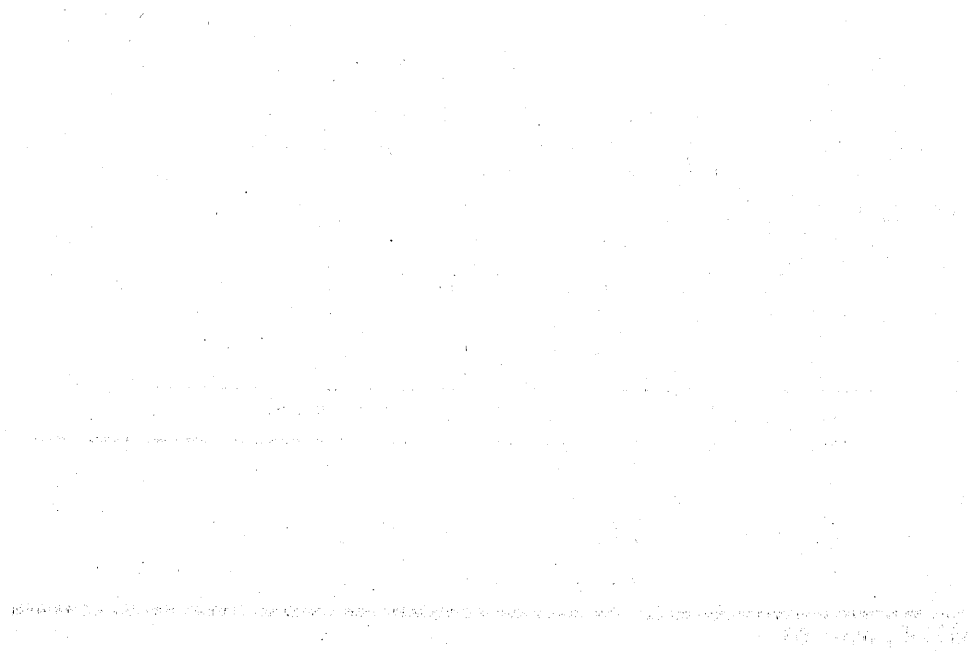
6. I may make unsworn statements, orally or in writing or both, without being subject to cross-examination.

7. I may remain silent. The choice not to make a statement or answer questions will not be considered adverse to my interests.

8. I and/or my counsel may object to any action taken or proposed to be taken by the board or to the admission of evidence. The President of the Physical Evaluation Board will rule on the objection.

9. I and/or my counsel may review all records assembled for use during the hearing, including those furnished by HQ, DA and by other official sources. The assembled records will include memoranda of conversations with individuals who have specific knowledge of my case, to include, but not limited to my chain of command or treating physician.

10. PRINTED OR TYPED NAME	11. SSN
12. SIGNATURE	13. DATE



PEBLO ESTIMATED DISABILITY COMPENSATION WORKSHEET

For use of this form, see AR 635-40; the proponent agency is DCSPER

DATA REQUIRED BY THE PRIVACY ACT OF 1974

Authority: 5 USC 301 and 10 USC, chapters 61 and 71

Principal Purpose: To provide an estimate of disability compensation.

Routine Uses: To provide information on how disability compensation is computed and the requirements for compensation to be exempted from federal taxation.

Disclosure: Disclosure is voluntary; however, failure to provide information will adversely affect accuracy of estimate.

SECTION I. APPLICABILITY

This form is to be completed for soldiers entitled to Army disability compensation

SECTION II. INSTRUCTIONS

The PEBLO will complete the form as part of disability counseling of the soldier or authorized individual acting in the soldier's behalf. PEBLO will explain the notes on the back of the form. Form is provided to the soldier for his/her records and does not need to be retained in the record copies of PEB evaluation.

SECTION III. ESTIMATED COMPENSATION

1. _____ *(Name and Grade)*

2. _____ *(Years of Service (YOS))*

3. _____ *(Monthly Basic Pay)*

4. _____ *(Estimated Retired Pay Base)*

5. _____ *(Disability Percentage)*

6. _____ *(Disposition)*

7. Estimated retired Pay (PDRL or TDRL)

   a. Years-of-service computation

   2.5 x _____ *(YOS)* x $ _____ *(retired pay base)* = $ _____ *(retired pay)*

   b. Disability rating computation

   _____ *(rating-limit 75%)* x _____ *(retired pay base)* = _____ *(retired pay)*

   c. Estimated taxable Army retired pay $ _____

   d. Estimated non-taxable disability retired pay $ _____

8. Estimated disability severance pay

   2 x _____ *(basic pay)* x _____ *(YOS-limit 12))* = _____ *(severance pay)*

9. **REMARKS**

Notes of Explanation for Estimated Disability Compensation

1. Years of Service *(YOS)*

   a. Retirement: YOS equals the number of active years of service. Each full month of service is counted as 1/12 of a year and any remaining fractional part of a month is disregarded.

   b. Severance pay: YOS equals the number of active years of service. A part of a year that is six months or more is counted as a whole year. A part of a year that is less than six months is disregarded. A soldier who has less then six months of active service at time of separation is not entitled to disability severance pay.

   c. Nonregular service: For members of the Reserve Components (RC), YOS is the combined years of active federal service (including Annual Training (AT)) and Inactive Duty Training (IDT) (including membership points). Equivalent service may be estimated using the calculation shown below. (See AR 37-104-1 for additional information.)

      (1) One point for every day of actual active duty.

      (2) Fifteen points for each year of membership in an active status in a Reserve Component.

      (3) One point for each authorized participation in drills or periods of instruction, not to exceed 60 points a year, including membership.

      (4) Divide total number of points in (1) thru (3) above by 360 to convert points to years. (Insert answer into formula on worksheet where it calls for YOS.)

2. Maximum percentage: Under law, retired pay is limited to a maximum of 75% of the retired pay base regardless of the award of a disability rating that is higher than 75%.

3. Retired pay base: Computation method is based on the date soldier entered the service.

   a. For soldiers who entered the service prior to 8 September 1980, the retired pay base is the basic pay of the highest grade satisfactorily held or the current grade, whichever is higher. DA makes the final grade determination.

   b. For soldiers who entered active duty after active duty after 7 September 1980, the retired pay base is 1/36 of the total amount of monthly basic pay received for any *(the highest)* 36 months of active duty. When a soldier has less than 36 months of active duty, the amount equal to the total amount of basic pay which was received during the period of active duty is divided by the number of months of service *(including any fraction thereof).*

4. TDRL: If YOS is less than 20, the percent multiplier is not less than 50% of the retired pay base. If YOS is 20, or more retired pay is computed the same as for permanent retirement.

5. Non-Taxable Compensations: Army disability severance pay or that portion of disability retired pay based on the disability percentage is non-taxable under either of the following conditions.

   a. The soldier was serving in the Armed Forces or was under a binding written commitment to become such a member on 24 September 1975.

   b. The disability is the result of combat related injuries.

PEBLO COUNSELING CHECKLIST/STATEMENT

For use of this form, see AR 635-40; the proponent agency is DCSPER

DATA REQUIRED BY THE PRIVACY ACT OF 1974

Authority: 10 USC chapter 61 and 5 USC 301

Principal Purpose: To explain disability evaluation and to ensure the performance of such counseling is a matter of record.

Routine Uses: Confirmation of counseling performed and counseling received.

Disclosure: Disclosure of Social Security Number is voluntary

SECTION I. APPLICABILITY

This form is applicable to all soldiers undergoing disability evaluation, to include soldiers who request separation for physical disability with waiver of a Physical Evaluation Board under AR 635-40, chapter 5.

SECTION II. INSTRUCTIONS

The Physical Evaluation Board Liaison Officer is responsible for counseling soldiers throughout all phases of disability evaluation. The PEBLO will use this form to document counseling. A copy of this form will be forwarded to the PEB with the soldier's final election for inclusion in the case file. PEBLO will mark each item completed.

SECTION III. COUNSELING

I.	**MEBD:**
	Soldier has read the MEBD report and the narrative summary. *(C-6)*
	Inquired of the soldier whether all medical conditions and physical defects are covered in the narrative summary and whether they are adequately described. *(C-6)*
	Explained how more evidence may be presented for consideration of the MEBD. *(C-6)*
	Advised the soldier of MEBD appeal procedures. *(C-6)*
	Informed the soldier of procedures for requesting separation with waiver of a Physical Evaluation Board, stressing that such request is voluntary. *(para 5-3)*
	Informed the soldier of criteria and procedures for requesting continuance on active duty or in the Active Reserve. *(para 6-4, or 8-4)*
	Requested soldier to sign MEBD. If soldier does not sign, informed soldier that MEBD will be forwarded to the PEB with a statement explaining the circumstances of refusal. *(C-6)*
	If applicable, explained provisions for retention beyond scheduled separation or retirement date for purposes of disability evaluation (*para 3-7, 4-15h)*
II.	**PEB Adjudication *(informal and formal)*:**
	Described the course of disability processing through the PEB. *(4-20, 4-21, C-7)*
	Informed soldier of PEB findings and recommendations. *(4-20, 4-21, C-7)*
	Counseled soldier on election options, guidelines for submitting a rebuttal, time limits, and impact of timely rebuttal on case review by USAPDA. *(4-20, 4-21, C-7)*
	Prepared and discussed with soldier estimates of disability retired or severance pay. (*DA Form 5892-R) (PEBLO Estimated Disability Compensation Worksheet))*
	Informed soldier of the following legal rights in reference to a formal hearing: *(para 4-21, C-3)*
	Right under law to a full and fair hearing before separation or retirement for physical disability.
	Right to and options for representation by counsel before a formal hearing.
	Right to call witnesses on his/her behalf and to question all witnesses called by the PEB.
	Right to testify or to remain silent and to make unsworn statements orally or in writing, or both, without being subject to questioning by the members of the PEB.
	Right to request, female, minority, or enlisted representation on the formal PEB; and that the PEB president will determine if such representation is reasonably available.
	Right to review all records used by the PEB in evaluating the soldier's case.
III.	**Review by USAPDA/APDAB:**
	Advised soldier of USAPDA review process, to include the circumstances requiring mandatory review and the criteria to be confirmed. *(4-22, C-8).*

	Advised soldier of election rights, rebuttal procedures, and time requirements for response if USAPDA modifies PEB findings and recommendations. *(4-22, C-8)*
	Advised soldier of APDAB review process when soldier nonconcurs with USAPDA modification and submits a rebuttal. *(4-23, C-9)*
	Advised soldier of election rights, rebuttal procedures, and time limits in response to APDAB decision. *(4-25, C-9).*
IV.	**Temporary Disability Retired List *(TDRL)*:**
	Informed soldier of requirements for placement on the TDRL. *(para 3-9)*
	Informed soldier of maximum tenure on TDRL. *(para 7-7, C-10)*
	Informed soldier of requirement for periodic medical examination and PEB evaluation. *(7-4, C-10)*
	Informed soldier of minimum rate of retired pay while on TDRL and provided an estimate. *(C-10)*
	Informed soldier that while on the TDRL no change will be made in the disability rating. *(7-20, C-10)*
	Informed soldier of criteria for retention on the TDRL. *(7-20)*
	Advised soldier that if the PEB recommends retention on the TDRL, he/she may not appeal the recommendation since status is not being changed. *(7-20)*
	Advised soldier that failure to report for a scheduled examination or to keep PERSCOM informed of current address will result in the suspension of retired pay. *(7-4, 7-11, C-4)*
V.	**Benefits/Programs:**
	Informed soldier of rights available to retired members. *(C-11)*
	Explained tax benefits and rights of disabled veterans who are later employed by the Federal Government. *(4-19 j-k, C-12)*
	Explained VA compensation and impact on military disability retired pay. *(3-8, C-13)*
	Advised soldier to file a claim with the VA during outprocessing at the Transition Point. *(C-13)*
	Assisted soldier in arranging contact with the VA and Social Security Administration. *(C-13, C-14)*
	Coordinated with the Installation Retirement Services Officer for SBP counseling. *(3-8, 4-20d, C-12e)*
	Coordinated with the Disabled Veterans Outreach Program Specialist for a counseling appointment. *(3-8, C-15)*

SECTION IV. ACKNOWLEDGEMENT

A. I was counseled on the above marked items as they pertained to my disability evaluation.

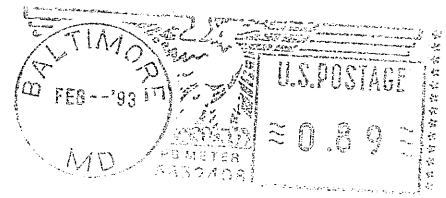
1. Typed or printed name and rank	2. Soldier's signature *(or authorized individual)*
3. Social Security Number	4. Date signed

B. I counseled the above-named soldier on those items listed in the above checklist as they pertained to the case.

1. Typed or printed name and rank	2. Position title and grade
3. Soldier's signature *(or authorized individual)*	4. Date signed

*U.S. G.P.O. 1990-261-884:20033

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