

Physical Evaluation Boards Explained

a. The functional proponent for the Physical disability Evaluation System is the U.S. Army Physical Disability Agency, FGS-WRAMC, WASH DC 20307-5001. The agency's Website can be found at <https://www.hrc.army.mil/site/Active/TAGD/Pda/pdapage.htm>. A phone number for information on physical disability evaluation policy and procedures is DSN 291-5133/5169 or commercial (301) 427-5133/5169. The Agency maintains a file copy of individual case processing for five years and a computer database of disability processing back to fiscal year 1981.

b. Soldiers enter the Physical Disability Evaluation System four ways.

(1) Referred by a Medical Evaluation Board (MEBD). When a soldier has received maximum benefit of medical treatment for a condition that may render a soldier unfit for further military service, the medical facility (MTF) conducts a MEBD to determine whether the soldier meets the medical retention standards of AR 40-501, chapter 3. If the soldier does not meet medical retention standards, he or she is referred to a Physical Evaluation Board (PEB) to determine physical fitness under the policies and procedures of AR 635-40.

(2) Referred by the MOS/Medical Retention Board (MMRB). The MMRB is an administrative screening board a soldier's command to evaluate the ability of soldiers with permanent 3 or 4 medical profiles to physically perform in a worldwide field environment in their primary military occupation specialty. referral to a MEBD/PEB is one of four actions the MMRB Convening Authority may direct. If the MMRBCA directs referral to a MEBD/ PEB, conduct of the PEB is mandatory whether or not the soldier meets medical retention standards.

(3) Referred as the result of a fitness for duty medical examination. When a commander believes a soldier of his or her command is unable to perform MOS related duties due to a medical condition, the commander may refer the soldier to the MTF for evaluation. If an evaluation results in a MEBD, and it determines that the soldier does not meet medical retention standards, the soldier is referred to a PEB.

(4) Referred as a result of HQDA action. The Commander, PERSCOM, upon recommendation of The Surgeon General, may refer a soldier to the responsible MTF for medical evaluation as described in (3) above. PERSCOM also directs referral to a PEB when it disapproves the MMRB recommendation to reclassify a soldier.

c. When a soldier is referred for a MEBD/PEB, the Physical Evaluation Board Liaison Officer (PEBLO) assigned to the MTF counsels the soldier on MEBD/PEB findings and the related rights and benefits. If the MTF determines that the soldier is not mentally competent, the PEBLO counsels the designated next-of-kin.

d. A soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the soldier's office, grade, rank, or rating.

e. Notwithstanding the above, when a soldier is referred for physical disability evaluation after having applied for length of service retirement or who is within nine months of mandatory retirement or who has been approved for certain separation actions, the soldier enters the disability system under the presumption that he or she is physically fit. This is known as the Presumption of Fitness Rule.

(1) The soldier is presumed fit because he or she has continued to perform military duty up to the point of separation for reasons other than physical disability.

(2) The presumption originated in 1973 as a result of Congressional dissatisfaction over general officers retiring for physical disability when they were eligible for length of service retirement. It was incorporated into the DOD Directive governing military disability evaluation and applies to all soldiers.

(3) The philosophy behind the rule is that military disability compensation is for career interruption, compensation for service-incurred conditions. The latter falls under the purview of the Department of Veterans Affairs.

f. Application of the Presumption of Fitness Rule does not mandate a finding of unfit. The presumption is overcome if the preponderance of evidence establishes either of the circumstances described below per DOD Directive 1332.18.

(1) The soldier, because of disability, was physically unable to perform adequately the duties of office, grade, rank or rating. This circumstance is aimed at long-term conditions. Efficiency reports and/or other performance related evidence must show that the soldier was not reasonably performing the duties of his or her office, rank, grade, or rating. Essentially, the burden of proof is on the soldier to establish unfitness. Ability to perform duty in the future is not an issue under this circumstance.

(2) Acute, grave illness or injury, or other 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 which rendered the soldier unfit for further duty. Future duty is a factor in this circumstance.

g. Once a determination of physical unfitness is made, the PEB is required by law to determine the physical disability rating using the Veterans Schedule for Rating Disabilities (VASRD).

h. Physical disability disposition--retirement or separation with severance pay--is based on the criteria set forth in 10 USC chapter 61. The 15-year retirement plan does not apply to soldiers who are determined physically unfit.

i. Per 10 USC chapter 61, three factors determine disability disposition: the rating percentage, the stability of the disabling condition, and total years of active federal service. For service-incurred or aggravated conditions not involving misconduct, the dispositions are described below.

(1) Permanent disability retirement occurs if the condition is permanent and stable and rated at a minimum of 30 percent or the soldier has 20 years active federal service.

(2) Temporary disability retirement occurs if the soldier is entitled to permanent disability retirement except that the disability is not stable for rating purposes. However, stability does not include latent impairment -- what might happen in the future.

j. If placed on the TDRL, the soldier is required to undergo a periodic medical reexamination within 18 months followed by PEB evaluation. The soldier may be retained on the TDRL or final determination made. While the law provides for a maximum tenure on the TDRL of 5 years, there is no entitlement to be retained for the entire period.

k. Military disability compensation is based on disposition, rank, and years of service.

(1) For permanent retirement or placement on the TDRL, compensation is based on the higher of two computations: disability rating times retired pay base; or the years of service percentage computation (2.5 x years of service) times retired pay base. Soldiers on the TDRL receive no less than 50 percent of their retired pay base. Retired pay base depends upon when the soldier entered the service. For soldiers on active duty prior to 6 September 1980, it is the basic pay of the highest rank held.

(2) Disability severance pay equals 2 months basic pay for every year of service not to exceed 12 years.

1. The PEB, composed of a field grade president and personnel management officer and medical member, initially conducts an informal adjudication. This is a records review of the MEBD and applicable personnel documents without the soldier present. The informal decision is forwarded to the PEBLO for counseling of the soldier.

m. If the soldier concurs with the findings, the case is forwarded to the Physical Disability Branch (PDB), a part of the U.S. Army Physical Disability Agency (USAPDA), to accomplish disposition.

n. If the soldier disagrees with the findings, the soldier has the right to submit a rebuttal for reconsideration and the right to elect a formal hearing. At the time of election for a formal hearing, the soldier may also elect to appear or not appear and to be represented by the regularly appointed military counsel or to have counsel of his choice at no expense to the government. He may also request essential witnesses to testify in his behalf.

o. If the soldier agrees with the findings of the formal hearing, the case is forwarded to PDB for disposition. If the soldier does not agree and submits a statement of rebuttal, the case is forwarded to USAPDA for review.

p. If USAPDA review confirms the PEB findings, the case is forwarded to PDB for disposition. If USAPDA modifies the PEB findings, the revised findings are forwarded to the soldier for election. If the soldier does not concur and provides a statement of rebuttal, the case will be forwarded to the U.S. Army Physical Disability Appeal Board for final decision if the rebuttal does not result in a reversal of the modification.

q. While both the Army and the Department of Veterans Affairs (DVA) use the VASRD, not all the general policy provisions set forth in the VASRD apply to the Army. Consequently, disability ratings may vary between the two agencies. The Army rates only conditions determined to be physically unfitting, compensating for loss of a career. The DVA may rate any service-connected impairment, thus compensating for loss of civilian employability. Another difference is the term of the rating. The Army's ratings are permanent upon final disposition. DVA ratings may fluctuate with time, depending upon the progress of the condition. Further, the Army's disability compensation is affected by years of service and basic pay; while VA compensation is a flat amount based upon the percentage rating received.

PEB FORMAL BOARD INFORMATION SHEET

Please fill out the following information to assist your attorney in preparing your case. Bring this questionnaire and other items you gather with you to your interview.

a. RESULTS OF THE INFORMAL BOARD:

b. WHAT DO YOU WANT TO ASK FOR AT THE FORMAL?

c. WHAT ARE THE DUTIES DAY-TO-DAY IN YOUR PRIMARY MOS?

d. WHICH OF THOSE DUTIES CAN/CAN'T YOU DO BECAUSE OF YOUR MEDICAL CONDITION(S)? (LIST EACH CONDITION SEPARATELY)

e. IN THE PAST YEAR, HOW MANY TIMES HAS YOUR MEDICAL CONDITION CAUSED YOU TO:

1. MISS WORK TOTALLY:

2. LEAVE WORK EARLY:

3. NOT PERFORM SPECIFIC TASKS/MISSIONS: (WHO FILLED IN FOR YOU ON THE TASKS?)

4. VISIT THE EMERGENCY ROOM:

5. BE HOSPITALIZED:

f. HAVE YOU BEEN COUNSELED BY YOUR SUPERVISOR/1SG/CO REGARDING HOW YOUR MEDICAL CONDITION IS AFFECTING YOUR PERFORMANCE? IF SO, BRING THE COUNSELING STATEMENTS WITH YOU

g. HAS YOUR MEDICAL CONDITION BEEN MENTIONED ON YOUR OER/NCOER? IF SO, BRING THE OER/NCOER WITH YOU.

h. WILL YOUR CDR/1SG/SUPERVISOR ETC WRITE A MILITARY MEMORANDUM DESCRIBING EXACTLY WHICH OF YOUR TASKS/DUTIES YOU CAN OR CAN NOT PERFORM DUE TO YOUR MEDICAL CONDITION(S)? PLEASE GET THESE LETTERS BEFORE COMING TO THE BOARD. ALSO GIVE ME:

POSITION TEL # (DSN AND COMMERCIAL)

1.

2.

3.

4.

5.

THE PHYSICAL EVALUATION BOARD FORMAL HEARING

Fourth Infantry Division (Mechanized) Legal Assistance Staff

1. This memorandum contains important information that you should know before you appear for your formal hearing at the Physical Evaluation Board (PEB). In order to have the best chance to meet your desired goal, you should begin taking steps to prepare for your formal hearing.
2. You will have an attorney assigned to you. This attorney is not a member of the board. Their job is to educate you about the physical disability system, advise you on your options, represent you at your formal hearing, and counsel you on your rights and options after your formal hearing. The attorney is on your side and will provide the necessary information so you can make an informed decision.
3. The PEB has two purposes: to determine whether or not you are fit for duty, and ii you are unfit, to determine what disability Compensation you are entitled to receive. The PEB cannot address issues such as lack of treatment or mistreatment by medical personnel, reclassification to another MOS, or changing a finalized line of duty.
4. The standard the PEB must use in determining fitness is whether you can reasonably perform the duties of your office, rank, grade, or rating. The PEB can be better described as a performance evaluation board -- it will only find you unfit for duty if you cannot reasonably perform your job due to a *medical* condition.
 - a. This decision is made by relating the nature and severity of your medical condition to the requirements and duties you may reasonably be expected to perform in your primary MOS. As a reference, the PEB uses AR 611-201 to determine what duties you perform in your MOS and the physical requirements of those duties. Therefore, while a certain medical condition may make an 11B unfit, the same condition may not make a 71L unfit.
 - b. While the ability to do PT, take the APFT, perform basic soldier skills, or be world wide deployable may impact on the determination of fitness, they do not by themselves make you unfit for duty For example, if a soldier is unable to take the APFT, he is still fit for duty if he can perform his MOS.
 - c. You must also remember that this determination is also based on your rank. Usually, the higher the rank, the less physically demanding the job, and therefore, a certain condition may make a PFC unfit, but that same condition may not make a SSG unfit.
5. The PEB can only consider conditions that are listed on the MEB, Narrative Summary (NARSUM), or any official addendum. Conditions that are not listed on these documents as "diagnosis" cannot be considered. Therefore, if you have an undiagnosed condition, see your physician so an addendum can be written.
6. If you have more than one diagnosed condition, the PEB will only rate those conditions that make you unfit for duty. To determine this, the PEB will determine what condition(s) ended your career. Therefore, it possible for a soldier with several different medical conditions to be found unfit for only one of them. You must remember that just because you have a medical condition, it does not mean you will be compensated, it first must make you unfit for duty.
7. The second function of the PEB is to determine what disability compensation you are entitled to if you are found unfit. If you are found unfit, the PEB will use AR 635-40 and DOD Dir. 1338.18 to determine whether the medical condition was caused or permanently aggravated by the service. If you are found unfit by reason of physical disability neither incurred nor aggravated during your service, you will be separated without benefits. However, if the condition was caused or aggravated by service, then the PEB will use AR 635-40, DOD Dir. 1338.18 and the VA schedule for Rating Disabilities (VASRD) to assign an appropriate rating. This rating is determined by your condition and its severity.

8. You are entitled to severance pay if you receive a rating of less than 30%. Therefore, soldiers with a 0%, 10%, or 20% rating will receive the same amount of severance pay. Severance pay is calculated by taking 2 months of basic pay times the number of years of active duty service up to 12 years (6 months or more counts as a whole year). If you receive a disability rating of 30% or more, you are entitled to disability retired pay. If you are eligible for retirement, speak to your attorney about how your disability compensation is calculated.

9. While it is your absolute right to request a formal hearing, there are certain risks associated with having a formal hearing. The PEB can change the informal findings in any way that is appropriate based on the evidence and the regulations. The PEB will review your case in its entirety. The PEB can increase or decrease your disability rating, find an unfit soldier fit and vice versa. You must remember that the PEB must evaluate your present medical condition. They cannot consider how you were in the past nor speculate how your condition will be in the future.

10. While you should speak to your attorney about what you should do to help your case, listed below are some general guidelines for whatever evidence you should try to obtain. Keep in mind that you will have the best chance to change the informal findings by producing new evidence. While your testimony alone may change the outcome, it is often not enough

a. If you were found fit and want to be unfit:

1. Letters from commanders/supervisors which indicate you are unable to perform in your MOS due to a medical condition. This statement should be specific on what condition is preventing you from performing and what duties you are unable to perform.
2. Your latest NCOERs/OERs that reflect your duty performance has been hindered by a medical condition.

b. If you are unfit but believe you are entitled to a higher disability rating:

1. Additional medical evidence showing your condition is much worse than originally diagnosed or described in your NARSUM.
2. Documentation of hospital/ emergency room visits, being put on quarters, and physical therapy records since your MEB was dictated.
3. Copies of your VA treatment records, including your disability award letter(s)

c. If you want to be found fit:

1. Letters from commanders/supervisors which indicate that you are able to perform in your MOS and you are participating in unit PT and field exercises.
2. A new permanent profile that reduces your assignment/activity limitations
3. A copy of your PT card showing you have recently passed the APFT
4. Your latest NCOER/OER

11. If you obtain this evidence prior to your formal board, contact your attorney. Your attorney may submit this information to the PEB for reconsideration and have the informal decision changed without the need of having your formal board. If you are thinking about bringing witnesses to your hearing, contact your attorney ASAP to discuss this possibility with them.

12. While the PEB only needs your NARSUM to adjudicate your case, they should also have your medical records and portions of your personnel records. However, you should bring any copies of these records that you think are relevant to your case. Discuss any adverse information (i.e. article 15's, QMP actions, bars to reenlistment, letters of reprimand, and information that would incriminate you in the commission of a crime) with your attorney. You should be totally honest with your attorney about these matters because they could have an impact on your case.

13. Requests to delay your formal board must be submitted in writing to: President, Physical Evaluation Board, Fort Sam Houston, Texas 78234. However, these requests will generally not be granted. Extraordinary reasons must exist to justify a delay. Additional time to get new medical evidence will usually be denied. If you need further treatment, speak to your doctor to see if he will recall your case.

14. If you still desire a formal hearing, you must arrive at the PEB NLT 0800hrs on the weekday prior to your formal hearing for the interview with your attorney (if your formal board is on a Monday - report on Friday). The uniform for that day is civilian attire. At your interview, your attorney will prepare you for your formal board. He/she will explain to you reporting procedures, how the board is conducted, and what will be covered at your formal hearing. If you have requested a nonpersonal appearance, contact your attorney ASAP. While it is your right to request such a hearing, a personal appearance is recommended.

16. The PEB's findings and recommendation may be reviewed by the U.S. Army Physical Disability Agency (USAPDA). This review occurs whether or not you appeal the PEB's findings after your formal hearing or even choose to have your formal hearing. However, the USAPDA must review the case if one or more of the PEB members disagree with the other board members (a minority report is filed) or if you appeal the formal board findings.

17. The USAPDA will review the entire record. However, you will not personally appear before the USDA. Because any appeal to the USAPDA is done in writing be prepared for your formal hearing. Do not assume that you will get better results with the USAPDA. Like the PEB, the USAPDA can change the findings of your case in any way that is appropriate.

18. No matter what the final disposition of your case is, we cannot emphasize the importance of going to the Veteran's Administration. You may be entitled to benefits from the VA that you cannot receive from the Army. While your attorney can provide some guidance, you should contact your local VA disability section.

SOME HELPFUL HINTS FOR THE PEB PROCESS

The board places a great deal of weight on a soldier's credibility. It is important for a soldier to answer questions honestly and consistently. Sometimes the same question is asked in more than one way to see if a soldier is consistent. Also the board will compare testimony to medical or personnel records. The key rule: is to answer a question honestly, and also insure that the answer is correct.

1. Be prepared to answer any of these questions:

a. What do you want the board to do for you? This question may mean that particular board member is not sure what he is going to do. The board member that asks the question probably does not think that the condition is as severe as the soldier says.

b. How much work/school have you missed because of your medical condition (other than in preparation for the MEBD/PEB)?

c. Any time from work missed because of medical appointments, quarters, going home early etc. If you have quarter's slips bring them to the hearing

- d. When is the last time you went to the Emergency Room? The board believes that the more severe the condition, the more often a soldier will need to go to the ER. Big focus for medical member.
- e. When is the last time you went to the doctor? The more often a soldier sees the doctor usually the means the condition is worse.
- f. What medication did you take today? (day of the formal) What did you take yesterday? --looking to see if the soldier needs to take medication and that they in fact are taking it. If soldier says they are in pain then they will take some kind of medication even Tylenol/aspirin.
- g. When did you get your prescription refilled last? -looking to see how much medication the soldier takes. If the soldier says they take three pills a day and prescription has not been refilled in months; may show condition that is not severe. May impact negatively on soldiers credibility.
- h. Is the pain constant? -pain is very rarely constant. There are usually times that are better or worse. -can say that always have pain, but activities such as running, lifting etc. make it worse.
- i. What type of exercises do you do? -applies to orthopedic injuries when a soldier goes to, or went to, physical therapy. -Board wants to see what the soldier is doing to help with his injury. Board places a great deal of emphasis on soldiers trying to improve their condition. Soldier should be able to describe the specific stretches or exercises they do. If the soldier can't describe them then it shows the board the soldier may not do any exercises.
- j. What are you going to do when you get out of the Army? -Board may be looking to see if the soldier has made any definite plans. If the soldier has, the board may say that the plans and not the injury is the reason for the soldier wanting to get out. If the soldier has definite plans, and they involve physical labor it may show that the condition is not that severe.
- k. Have you ever injured your back before? This relates to credibility. If the soldier says no, the board may be skeptical of any other testimony. Everyone has strained their back in day to day living/exercising. A good reply might be I had some minor muscle pulls (moving furniture type). Careful if the injury you describe is serious, you risk a finding that the current condition existed prior to service.
- l. What kind of car do you drive? -usually in knee cases - if left knee is injured bad, it is bad if soldier drives standard transmission. Automatic is better. If right knee injured better if it has cruise control.
- m. Do you go shopping at the mall? looking to see if soldier can stand and walk for long periods. If you go tell the board how far you can stand/walk, if you need to rest (benches).
- n. Is your driver's license restricted? If condition is severe the Army or state may restrict, or revoke, driving privileges. Any restriction relating to impairment or handicapped license plates
- o. Do you get along with superiors? Board may be looking for ulterior motives--injury not that severe and board thinks that pressure from superiors is reason the soldier wants to get out. Answer - yes or no honestly - if no, explain. Board does not like to hear that superiors are "out to get" a soldier.
- p. If condition is old, when did you become unfit?
- q. What is your VA rating? If the soldier has one, use it to compare the severity -usually only applies to TDRL or Reservists or National Guard.

2. Other Tips

- a. Do not lie, the board will usually catch it.
- b. Say good morning/afternoon Sir when the board members are introduced.
- c. Look the board members in the eye when answering questions.
- d. Do not yell at a board member. Ask for a break first.
- e. If you need to, you may stand up during the hearing.

Developed by Fourth Infantry Division (Mechanized) Legal Assistance Staff