S/S 15 Feb 1980

ROBERT A. BYRNE, DAC
Health Evaluation Coordinator
PASC-PSP
Rm 2D 529
72743

*AR 635-40

ARMY REGULATION
NO. 635-40

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, D.C., *25 February 1975*

PERSONNEL SEPARATIONS

PHYSICAL EVALUATION FOR RETENTION, RETIREMENT, OR SEPARATION

Effective 1 April 1975

This revision provides updated policies and procedures for processing cases of members who may be unfit because of physical disability. Local supplementation of this regulation is prohibited, except upon approval of the Commanding General, USAPDA. This regulation has been reviewed by the Per Diem, Travel and Transportation Allowance Committee in accordance with Section III, DOD Directive 5154.13, dated 1 May 1958 as case PDC 6570.

			Paragraph	Page
CHAPTER	1.	GENERAL		
		Purpose	1-1	1-1
		Scope	1-2	1-1
		Explanation of terms	1-3	1-2
		Objective	1-4	1-2
		Basic concepts	1-5	1-2
		Physical disability evaluation system	1-6	1-3
		Expeditious processing	1-7	1-3
	2.	POLICIES		
		Standards of unfitness by reason of physical disability	2-1	2-0
		Presumptions	2-2	2-1
		Conditions originating prior to active military service	2-3	2-2
		Line of duty determinations	2-4	2-2
		Use of the VA schedule for rating disabilities	2-5	2-3
		Length of hospitalization	2-6	2-3
		Counseling	2-7	2-3
		Temporary Disability Retired List	2-8	2-4
		Continuance on active duty by members unfit because of physical disability	2-9	2-4
		Enlisted personnel processing for reenlistment	2-10	2-4
		Limitation on appearance by members	2-11	2-4
		Findings and recommendations of agencies which review disability cases	2-12	2-5
	3.	RESPONSIBILITIES AND FUNCTIONS		
		Secretary of the Army	3-1	3-0
		DCSPER	3-2	3-0
		USAPDA	3-3	3-0
		MILPERCEN	3-4	3-0
		The Surgeon General	3-5	3-0
		The Judge Advocate General	3-6	3-0
		The Army Disability Rating Review Board	3-7	3-0
		Army Physical Disability Appeal Board	3-8	3-1
		The Disability Review Council	3-9	3-2
		Physical Evaluation Boards	3-10	3-2
		Health Services Command	3-11	3-3
		Medical Treatment Facilities	3-12	3-3
		Commanders	3-13	3-3
	4.	PROCEDURES		

* This regulation supersedes AR 635-40, 15 May 67, including all changes.

Throughout this regulation "APRC" should read DRC

		Paragraph	Page
Section I.	Initiation of Medical Evaluation		
	Referral by HQDA and Major Commanders	4-1	4-0
	Referral by Commanders of MTF's	4-2	4-0
	Referral by Commander	4-3	4-0
II.	Medical Evaluation		
	Medical treatment facility Commander	4-4	4-0
	Documentation of disability evaluation cases	4-5	4-0
	Medical boards	4-6	4-1
	Conduct of medical board proceedings	4-7	4-1
	Referral to a physical evaluation board	4-8	4-1
	Mentally incompetent and spinal cord injury patients	4-9	4-1
	Action following approval of medical board's recommendation for PEB referral	4-10	4-2
	Rehospitalization of disabled member	4-11	4-3
III.	Physical Evaluation Board		
	Initial processing	4-12	4-3
	Common criteria and proceedings	4-13	4-3
	Informal board	4-14	4-8
	Formal board	4-15	4-10
IV.	Commanding General, US Army Physical Disability Agency (CG, USAPDA)		
	General	4-16	4-15
	Determinations	4-17	4-15
	Disposition of medical records	4-18	4-16
V.	Commanding General, US Army Military Personnel Center (MILPERCEN)		
	Actions by CG, MILPERCEN for the Secretary of the Army	4-19	4-17
	Disposition of medical records	4-20	4-18
CHAPTER 5.	EXPEDITIOUS DISCHARGE		
	General	5-1	5-1
	Applicability	5-2	5-1
	Procedures	5-3	5-1
	Authority to order discharge	5-4	5-2
	Action by Commander to effect discharge	5-5	5-2
6.	CONTINUANCE OF DISABLED PERSONNEL ON ACTIVE DUTY		
	General	6-1	6-1
	Objective	6-2	6-1
	Ultimate retirement or separation	6-3	6-1
	Exception	6-4	6-1
	Qualifications for continuance	6-5	6-1
	Disqualification for continuance	6-6	6-1
	Application for continuance	6-7	6-2
	Special counseling required	6-8	6-2
	Reclassification procedures (enlisted members only)	6-9	6-2
	Processing applications for continuance	6-10	6-2
	Action at HQDA	6-11	6-3
	Disposition of records	6-12	6-3
	PEB action upon disapproval	6-13	6-4
	Entries on medical and personnel records	6-14	6-4
	Utilization	6-15	6-4
	Disposition of members unable to perform duty	6-16	6-4
	Reevaluation and reenlistment	6-17	6-4
	Reevaluation on termination of waiver by HQDA	6-18	6-5
	Duty during processing	6-19	6-5
7.	TEMPORARY DISABILITY RETIRED LIST		
	General	7-1	7-1
	Placement on the TDRL	7-2	7-1
	Temporary Disability Retired List	7-3	7-1
	Requirement for periodic examination	7-4	7-1
	Counseling	7-5	7-1
	Expeditious processing	7-6	7-1
	Prompt removal from the TDRL	7-7	7-1
	Individual TDRL file	7-8	7-1

		Paragraph	Page
	Letter of instructions for periodic examination	7-9	7-1
	Notification letter to member	7-10	7-2
	Removal from the TDRL	7-11	7-2
	Restoration of eligibility	7-12	7-4
	Responsible MTF	7-13	7-4
	Selection of examining facility	7-14	7-4
	Medical records	7-15	7-4
	Notification of member	7-16	7-4
	Examination of member	7-17	7-5
	Report of examination	7-18	7-6
	Review and forwarding of report of examination	7-19	7-6
	PEB processing	7-20	7-7
CHAPTER 8.	RESERVE COMPONENTS		
	General	8-1	8-0
	Procedures	8-2	8-0
	Pay and allowances	8-3	8-0
	Hospitalization	8-4	8-0
	Continuation in an active status	8-5	8-0
	Action by MTF Commander	8-6	8-1
9.	PROCESSING TERMINAL CASES		
	General	9-1	9-0
	Benefits associated with terminal retirement	9-2	9-0
	Medical processing	9-3	9-1
	Administrative processing	9-4	9-1
APPENDIX A.	Explanation of terms		A-1
B.	Army application of Veterans Administration Schedule for Rating Disabilities		B-1
C.	Counseling		C-1
D.	Instructions for DA Form 199		D-1
E.	Personnel Processing Actions		E-1

CHAPTER 1

GENERAL

1-1. Purpose. This regulation establishes the Army Physical Disability Evaluation System in accordance with the provisions of chapter 61, title 10, USC and DOD Directive 1332.18, subject: Uniform Interpretation of Laws Relating to Separation from the Military Service by Reason of Physical Disability.

1-2. Scope. The policies, responsibilities and procedures in this regulation provide for the retention, retirement or separation of a member who is determined to be unfit to perform the duties of his office, grade, rank or rating because of physical disability. The provisions of this regulation apply to all members of the Army who are undergoing physical evaluation for retention, retirement or separation, subject to the limitations below.

a. A member of a Reserve component (USAR or ARNGUS) will be processed only as specified in chapter 8 of this regulation.

b. Cadets of the U.S. Military Academy are not eligible for processing under this regulation.

c. A member who is charged with an offense for which he could be dismissed or given a punitive discharge may not be referred for disability processing. However, if the officer exercising appropriate court-martial jurisdiction dismisses the charge or refers it for trial to a court-martial which cannot adjudge such a sentence, the case may be referred for disability processing. When forwarded, the records of such a case must contain a copy of the action signed by the court-martial authority who made the decision.

d. A member may not be referred for disability processing if he is under sentence of dismissal or punitive discharge. If the sentence is suspended, the member's case may then be referred for disability processing. A copy of the order suspending the sentence must be included in the individual's records. If action to vacate the suspension is initiated after the case is forwarded for disability processing, the PEB serving the area will be notified promptly. Disability processing will be discontinued and not resumed unless it is determined that the suspension will not be vacated.

e. No enlisted member may be referred for physical disability processing when action has been or will be taken to separate him for unfitness under chapter 13 or misconduct under chapter 14, AR 635-200, except when the officer exercising general court-martial jurisdiction determines that the disability was the cause or substantial contributing cause of the *misconduct*, or that circumstances warrant physical disability processing in lieu of administrative processing. A copy of the signed decision of the general court-martial authority directing processing under this regulation will be included with the records. Authority to determine that a case will be referred for disability processing in lieu of other administrative processing will not be delegated.

f. A commissioned or warrant officer will not be referred for disability processing in lieu of elimination action which could result in dismissal or separation under other than honorable conditions. Officers in the above category who are believed also to be unfit because of physical disability will be processed concurrently for administrative and disability separation action. Disability processing will be accomplished in accordance with chapter 4. Commanders exercising general court-martial authority will insure that the foregoing concurrently processed actions are appropriately identified and cross-referenced prior to forwarding the administrative action to HQDA (DAPC-PAS-RD), Alexandria, VA 22332. The Commanding General, US Army Military Personnel Center (CG,

MILPERCEN), will refer the entire file, including both courses of action, to HQDA (DAPE-MPO), WASH DC 20310, for necessary review and determination of proper disposition by the Secretary of the Army.

1-3. Explanation of terms. See appendix A for terms and abbreviations not in AR 310-25, Dictionary of U.S. Army Terms, and AR 310-50, Authorized Abbreviations and Brevity Codes.

1-4. Objective. To maintain an effective and fit military organization with maximum utilization of available manpower and to provide benefits for eligible members of the Army whose military service is terminated due to a service-connected disability.

1-5. Basic concepts. Implementation of disability separation and retirement laws by the Army must not deviate from the following basic concepts:

a. Laws relating to the separation or retirement of military personnel because of physical disability were enacted primarily for the purpose of maintaining a vital and fit military organization with full consciousness of the necessity for the maximum utilization of available manpower. These laws also provide benefits for eligible members whose military service is terminated due to a service-connected disability. Other laws provide for the separation of a member, who, at the time of separation, is physically fit to continue to perform the duties of his office, grade, rank or rating. A member separated under these other laws may have physical disabilities at the time of his separation and they could affect his potential for civilian employment. In some cases the effect on some civilian pursuits may be significant. Such a member may, if he desires, apply to the Veterans Administration at the time of or after release from active duty for adjudication of any claim for benefits for these physical disabilities.

b. The primary requisite for eligibility for retirement or separation under the provisions of this regulation is that the member must be unfit, because of physical disability, to perform the duties of his office, grade, rank or rating.

c. A determination of unfitness is a factual finding that a member is unfit to perform the duties of his office, grade, rank or rating. When such a finding is made, it would usually be inconsistent to expect the member to continue to perform satisfactorily in his office, grade, rank or rating. Exceptions may be made when the Secretary of the Army determines that a particular member's experience or skill, or a combination thereof, is such that it would be in the best interests of the Army to retain the member on active duty in a limited assignment status even though he is physically unfit. If a member is fit to perform the duties of his office, grade, rank or rating, he may not be separated for physical disability; if he is unfit to perform such duties, he may not be retained on active duty, unless he is retained as an exception to policy in a limited assignment status in accordance with the provisions of chapter 6.

d. Such factors as a member's—

(1) inability to meet the physical standards for initial entry into the service;

(2) pending voluntary or involuntary separation or retirement or release to an inactive status;

(3) lack of a special skill in demand to meet the needs of the military service;

(4) inability to physically qualify for specialized duties requiring a high degree of physical fitness; or

(5) inability to qualify for transfer to another service or another component or branch within the Army are not to be used as a basis for determining unfitness because of physical disability.

e. The Schedule for Rating Disabilities used by the Veterans Administration is irrelevant to determinations of fitness or unfitness for active duty. This schedule, as modified by appendix B, is used only after a finding of unfitness has been made to determine disposition and compensation for a member.

1-6. Physical disability evaluation system. *a.* The Army physical disability evaluation system consists of medical boards (a function of the Army Medical Department) and, as elements of the U.S. Army Physical Disability Agency, physical evaluation boards and the Army Physical Review Council. Additionally, the Army Physical Disability Appeal Board and the Army Disability Rating Review Board will consider all appeals properly referred to them.

b. The Army Disability Review Board and the Army Board for Correction of Military Records are statutory boards established by the Secretary of the Army. Although technically not a part of the physical disability evaluation system, they are closely related thereto in their functions of considering requests of retired and former Army members for specific reconsideration of previous disability determinations.

(1) The Army Disability Review Board was established in accordance with the provisions of section 1554, chapter 79, title 10, USC for the purpose of reviewing cases of officers released, without pay, for physical disability. The board is organized and functions within the framework of the Army Council of Review Boards in the Office of the Secretary of the Army. No review is authorized under this section of law unless application is filed within 15 years of the date of retirement or release of the former member.

(2) The Army Board for Correction of Military Records (ABCMR) was established in accordance with the provisions of section 1552, chapter 79, title 10, USC for the purpose of providing the Secretary of the Army with the means of correcting an error or removing an injustice. A member who believes an error or injustice has occurred during his physical disability processing and who has exhausted all administrative and legal remedies afforded by existing laws and regulations may, within three years of discovery of an error or injustice, submit an application to the ABCMR in accordance with AR 15-185.

c. Final approval authority for cases processed through the physical disability evaluation system is retained at Headquarters, Department of the Army, level. When final Secretarial determination is made, retirement orders or other appropriate disposition instructions will be forwarded to the headquarters maintaining custody of the personnel records of the members concerned.

1-7. Expeditious processing. All physical disability cases will be processed as expeditiously as possible with due consideration of the necessity for accuracy and thoroughness.

CHAPTER 2

POLICIES

2-1. Standards of unfitness by reason of physical disability. *a.* The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case considered, it is necessary to correlate the nature and degree of physical disability which is present with the requirements of the duties which the member reasonably may be expected to perform by virtue of his office, grade, rank, or rating.

b. To ensure that all members are physically qualified to perform their duties in a reasonably satisfactory manner, physical fitness retention standar-s, including guidelines for applying them to fitness determinations in individual cases, have been established in chapter 3, AR 40-501, for the purpose of referring members to a medical board for evaluation. However, this is not an all-inclusive list. The major objective in the use of such a list is to achieve uniform disposition of cases arising under the law. The retention standards and guidelines in chapter 3, AR 40-501 are not to be taken as a mandate that possession of one or more of the listed conditions or physical defects means automatic disability retirement or separation from the Army. In each case the physical condition of the individual must be evaluated against the physical requirements of his particular office, grade, rank, or rating, and the fact that he has one or more defects sufficient to require his referral for evaluation or that may be unfitting for members in a different office, grade, rank, or rating does not justify a determination of unfitness.

c. The over-all effect of all disabilities present in an individual whose physical fitness is under evaluation must be considered both from the standpoint of how the disabilities affect the individual's performance, and requirements which may be imposed on the Army to maintain and protect him during future duty assignments. An individual may be unfit because of physical disability caused by a single impairment, or physical disability resulting from the overall effect of two or more impairments even though no one of them, alone, would cause unfitness.

d. All relevant evidence must be considered in evaluating the fitness of a member. For example, when a referral for physical evaluation immediately follows acute, grave illness or injury, the medical evaluation may have the greater weight, particularly if medical evidence establishes that continued service would be deleterious to the member's health. However, when a member is referred for physical evaluation under other circumstances, evaluations of his performance of duty by his supervisors (letters, efficiency reports, or personal testimony) may provide better evidence than a clinical estimate by a physician of the member's physical ability to perform the duties of his office, grade, rank, or rating. Thus, if the evidence establishes that the member adequately performed the normal duties of his office, grade, rank, or rating until the time he was referred for physical evaluation, he might be considered fit for duty, even though medical evidence indicates his physical ability to perform such duties may be questionable. On the other hand, regardless of the presence of physical deficiencies, inadequate performance, per se, should not be considered as evidence of physical unfitness for a member's office, grade, rank, or rating unless it appears that there is a cause-effect relationship between the two factors.

e. Initial enlistment, induction, or commissioning physical standards are not relevant to determining unfitness for continued military service. Once a member has been enlisted, inducted, or commissioned, the fact that he may later fall below initial entry physical standards does not, in itself, authorize separation or retirement unless it is also established that he is unfit because of physi-

cal disability as described above. Similarly, inability to meet physical standards established for specialized duty such as flying, or duty aboard submarines, or for transfer between components or branches within the Army does not, in itself, establish eligibility for disability separation or retirement.

f. Notwithstanding any other provision of this regulation, after a member has been enlisted, inducted, appointed, or commissioned, he will not be declared unfit for military service because of disabilities which existed and were undetected at the time of his acceptance for military service, and which have remained essentially the same in degree since acceptance and have not interfered with his performance of effective military service.

2-2. Presumptions. The following presumptions will apply to physical diability evaluation:

a. Prior to and during active service:

(1) A member is presumed to have been in sound physical and mental condition upon entering active service except as to physical disabilities noted and recorded at the time of entrance. Any disease or injury discovered after a member enters active service, while entitled to receive basic pay and not due to the member's intentional misconduct or willful neglect, is presumed to have been incurred in line of duty.

(2) It is further presumed that, even if the foregoing provision is overcome by a preponderance of 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 pre-existing disease, based upon well-established medical principles, are sufficient to overcome the presumption of military aggravation.

(3) Acute infections, such as pneumonia, active rheumatic fever (even though recurrent), acute pleurisy, acute ear disease; and sudden developments, like hemoptysis, lung collapse, perforating ulcer, decompensating heart disease, coronary occlusion, thrombosis, or cerebral hemorrhage, occurring while in military service, will be regarded as service-incurred or service-aggravated, unless it can be shown by a preponderance of evidence that there was no permanent increase in disability resulting therefrom during active military service, or that such conditions were the result of "natural progression" of preexisting injuries or diseases as in (2) above.

(4) The foregoing presumptions may be overcome only by a preponderance of evidence as distinguished from personal opinion, speculation, or conjecture. When there is reasonable doubt concerning a member's condition, an attempt should be made to resolve the doubt on the basis of further clinical investigation and observation, and such other evidence as may be adduced. In the absence of such proof by a preponderance of evidence, reasonable doubt will be resolved in favor of the member.

b. Processing for separation from active service:

(1) When a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his continued performance of duty (until he is referred to the physical disability system for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to a physical evaluation board unless his physical defects raise substantial doubt that he is fit to continue to perform the duties of his office, grade, rank, or rating.

(2) When a member being processed for separation for reasons other than physical disability is referred to a physical evaluation board, the presumption of fitness may be overcome if the evidence establishes that:

(*a*) The member, in fact, was physically unable to adequately perform the duties of his office, grade, rank, or rating even though he was improperly retained in that

office, grade, rank, or rating for a period of time,

(*b*) Acute, grave illness or injury or other deterioration of physical condition, that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability, rendered him unfit for further duty.

(3) When the member's referral for physical evaluation is related to physical examinations given as a part of non-disability retirement processing (voluntary or mandatory), the above evidence must be clear and convincing to overcome the presumption of fitness. In other cases (resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), the presumption of fitness may be overcome by a preponderance of evidence.

2-3. Conditions originating prior to active military service. *a.* According to accepted medical principles, there are certain abnormalities and residual conditions which, when discovered, impel the conclusion that they must have existed or have originated before the individual entered the military service.

(1) Examples of these conditions are scars, fibrosis of the lungs; atrophy following disease of the central or peripheral nervous system; healed fractures; absent, displaced, or resected organs; supernumerary parts; congenital malformations; and 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 of their existence prior to military service.

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

(3) Conditions of infectious origin are to be considered with regard to the circumstances of infection and the incubation period.

(4) Manifestations of infectious disease within less than the minimum incubation period after enlistment will be accepted as proof of inception prior to military service.

b. Standard in-service medical and surgical treatment having the effect of ameliorating disease or other conditions incurred before entry into military service (including post-operative scars and absent or poorly functioning parts or organs) do not constitute service aggravation unless the treatment was required to relieve disability which had been aggravated by military service.

c. Ill effects directly attributable to treatment, anesthetic, or operation performed or administered for a disease or medical condition which existed prior to entry on active duty, must be reviewed to determine if such ill effects represent service aggravation.

(1) "Service aggravated" is the appropriate determination when the administration or performance of treatment, anesthetic, or operation produced unexpected ill effects, and such administration or performance was not a criminal offense under Federal or State law and it was performed or administered by an authorized person of the medical service of a Government agency, or by other properly licensed medical person.

(2) "Not service aggravated" is the appropriate determination when the ill effects resulting from the administration or treatment of an EPTS medical condition were the expected results of the administration or performance of indicated treatment, anesthetic, or operation.

d. See chapter 5 concerning expeditious discharge for disabilities existing prior to military service.

2-4. Line of duty determinations. *a.* For the purpose of this regulation, line-of-duty determinations are considered in two categories—

(1) Whether the disability is the result of the member's intentional misconduct or willful neglect or was incurred during a period of unauthorized absence.

(2) Whether the disability was incurred or aggravated while the member was entitled to basic pay.

b. The first category is a matter of Command responsibility, rather than a disability evaluation procedure, and will be resolved in accordance with policies and procedures prescribed in AR 600-33, with copies of the LOD determination (DA Form 2173 or DD Form 261) being included in the official records of the case. However, when a board or council has substantial evidence indicating that a prior determination may be incorrect for any reason, such evidence will be included in the case record, together with a request that The Adjutant General review the determination prior to final processing at HQDA level.

c. In the second category, a professional opinion as to whether the disability was incurred or aggravated while the member was entitled to basic pay will be made by the medical officer concerned, subject to review, change, or modification by the medical board, MTF commander, or adjudicative bodies in the physical disability evaluation system.

2-5. Use of the Veterans Administration schedule for rating disabilities. *a.* The VA Schedule for Rating Disabilities, as modified by appendix B, does not relate to findings of unfitness for military duty. While a member may have physical disabilities ratable in accordance with the VA Schedule, such disabilities, per se, regardless of degree, do not render him unfit by reason of physical disability within the meaning of the definition in appendix A. However, after a member's unfitness for military service has been established, the VA Schedule, as modified in appendix B, will be followed in rating his disabilities.

b. Appendix B supplements the VASRD thereby ensuring uniform application of disability ratings in the Army.

2-6. Length of hospitalization. It is not within the mission of the Department of the Army to provide definitive medical care to members on active duty requiring prolonged hospitalization who are unlikely to return to active duty. The time at which a member should be processed for disability retirement or separation must be determined on an individual basis, taking into consideration the interest of both the Government and the member. However, members will neither be retained nor separated solely for the purpose of increasing their retirement or separation benefits. Members who are medically unfit and not likely to return to duty will be processed for disability retirement or separation when it is determined that they have attained optimum hospital improvement. This is defined as that point when the patient can be evaluated for physical disability separation or retirement. Subject to the requirements noted below, a member whose normal scheduled date of non-disability separation occurs during the course of hospitalization may, with his consent, be retained in the Service until he has attained maximum hospital benefits.

a. No member will be retained on active duty past the date set by statute or regulation for mandatory retirement or separation without the approval of Headquarters, Department of the Army.

(1) Reserve officers and warrant officers on extended active duty may be retained on active duty pursuant to provisions of AR 635-100.

(2) Enlisted members on extended active duty may be retained on active duty pursuant to provisions of AR 635-200.

(3) Non-Regular members on active duty for training may be retained in accordance with provisions of AR 135-200.

b. MTF commanders concerned will notify HQDA (DAPC-PAS-DD), Alexandria, VA 22332, of the circumstances and the requirement for retention of members beyond scheduled non-disability separation dates and request necessary orders or instructions.

2-7. Counseling. *a.* During disability evaluating processing, each member (or, in appropriate cases, the next-of-kin or legal guardian) will be carefully counseled, in clearly understandable language, concerning the significance of actions being taken in his case, their probable effect on his future, and his rights with respect to options available to

him. Counseling will also be provided before, during and after physical evaluation board consideration, at each subsequent stage of processing, and as questions are raised by the member.

b. Counselors will cover such matters as legal rights, effect of findings and recommendations, retired or severance pay, grade upon retirement, potential veteran's benefits, and recourse to and preparation of rebuttals, and assist the member in their preparation, when indicated.

c. Counselors will use the Disability Counseling Guide (app. C) to assist in providing thorough and detailed counseling to each member.

2-8. Temporary Disability Retired List (TDRL). *a.* The TDRL provides a safeguard for the Government against permanently retiring a member who subsequently fully recovers, or nearly so, from the disability which caused him to be unfit because of physical disability. Conversely, the TDRL safeguards the member from being permanently retired with a condition which 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, except that a member is placed on the TDRL when his disability is determined not to be of a permanent nature. He must be unfit to perform the duties of his office, grade, rank, or rating at the time he is placed on the TDRL. Accordingly, a member who is fit for continued active duty at the time of his separation from active duty will not be placed on the TDRL, regardless of the severity of his physical defects or the fact that they might become unfitting were the member to remain on active duty for a period of time.

c. The TDRL will be used in the nature of a "pending list" for members who are unfit because of physical disability with conditions which may be permanently disabling and who meet the other requirements for disability retirement (chap. 7).

2-9. Continuance on active duty by members unfit because of physical disability. *a.* With the consent of the member, the Secretary of the Army may defer the disposition of a member who, although unfit because of physical disability, can still serve effectively with appropriate assignment limitations.

b. A member continued on active duty in accordance with the provisions of this regulation (chap. 6) must be unfit because of physical disability with a basically stabilized condition or one for which accepted medical principles indicate slow progression. He must be able to maintain himself in a normal military environment without jeopardizing his health or the health of others and without requiring an inordinate amount of medical care.

c. A member who is unfit because of physical disability will not be continued on active duty solely to increase benefits nor will he be continued unless his employment is justified as being of value to the Army. A member continued under these provisions will be reevaluated periodically to assure that further continuance, or conversely, separation, is consonant with the best interest of the Government and the member. Unless the disqualifying condition has progressed to a point where the member becomes unable to perform with limitations, the member remains liable to complete any service obligation he has incurred.

2-10. Enlisted personnel processing for reenlistment. For the purpose of this regulation, enlisted personnel whose reenlistments are approved prior to the end of their current enlistment are considered to be processing for reenlistment rather than processing for separation. Therefore, they do not fall under the provisions of paragraph 2-2*b* of this regulation

2-11. Limitation on appearance by members. A member or his representative will not be permitted to appear before the US Army Physical Review Council, the Army Physical Disability Appeal Board, or the Army Disability Rating Review Board.

2-12. Findings and recommendations of agencies which review disability cases. Review and appeal activities are generally bound by the same regulations under which adjudicative activities function. There may be a rare and unusual case to which current regulations do not apply. If so, the case will be referred through channels to the Secretary of the Army with a recommendation for disposition.

CHAPTER 3

RESPONSIBILITIES AND FUNCTIONS

3-1. Secretary of the Army. The Secretary of the Army (SA) is responsible for prescribing regulations to carry out the provisions of chapter 61, title 10, USC, and unless otherwise specified in this regulation, the Secretary reserves all of the powers, functions, and duties incident to the Army physical disability evaluation system. The authority conferred herein shall not preclude the referral of any case to the SA for consideration and final disposition.

3-2. DCSPER. The DCSPER has overall staff responsibility for the Army physical disability evaluation system of the Army.

3-3. USAPDA. CG, USAPDA, under the general staff supervision of the DCSPER, is responsible for the operation of the Army physical disability evaluation system, to include:

a. Interpretation and implementation of policies emanating from higher authority.

b. Development of policies, procedures, and programs in respect to the Army physical disability evaluation system.

c. Coordination with other military departments to insure that applicable laws, policies and directives are interpreted uniformly so that a member of the Army will be granted benefits substantially the same as a member of another service under similar conditions.

d. Command and management of the Physical Evaluation Boards (PEB's), subordinate elements of the USAPDA.

e. Review of PEB proceedings utilizing the APRC, a staff element of the USAPDA, to assure that individuals are accorded uniform and equitable consideration under applicable laws, policies, and directives.

3-4. MILPERCEN. The CG, MILPERCEN, is responsible for:

a. Administrative actions in finalizing physical disability cases for the Secretary of the Army, based on the recommendations of the CG, USAPDA, or the APDAB. (See chap. 4 and app. E.)

b. Control and maintenance of the TDRL to include the timely scheduling of members for periodic examinations, and the disposition of members based on recommendations of activities cited in subparagraph 3-4*a* above. (See chap. 7.)

3-5. The Surgeon General. The Surgeon General is responsible for establishing and interpreting medical standards for retention on active duty. (See AR 40-3 and AR 40-501.)

3-6. The Judge Advocate General. The Judge Advocate General is responsible for rendering opinions on and interpreting laws and regulations governing the physical disability evaluation system.

3-7. The Army Disability Rating Review Board. *a.* The Army Disability Rating Review Board (ADRRB) is established as a component of the Army Council of Review Boards for the purpose of reviewing petitions from retired personnel for administrative relief which pertains to correction of percentage ratings for physical disability. Such petitions will be accepted from those members who were processed through the Army physical disability evaluation system and are receiving or are entitled to receive disability retired pay.

b. A fully executed retirement order of a member listed in *a* above may be modified or amended by the ADRRB if—

(1) The original order was based on fraud, manifest error, or mistake of law including the failure to grant the member a full and fair hearing where the member had made timely demand for such a hearing; or

(2) There is substantial new evidence which by due diligence could not have been presented prior to disposition and which would have warranted the assignment of a higher percentage of disability if presented prior to disposition.

c. Request for relief on the grounds set forth in *b* above may be made by the individual concerned, by the legal representative of the individual concerned, or by any cognizant authority of the Department of the Army. Request will be by petition filed within 5 years from the effective date of the disposition complained of, addressed to the Army Disability Rating Review Board. No particular form is required. However, the petition will set forth the grounds for requesting relief and the relief desired; and, if the petition is based upon evidence which is not of record in the Department of the Army, the evidence upon which it is based will be forwarded as an inclosure. Petitions will be considered on the records only.

d. All petitions submitted pursuant to *c* above will be considered by the ADRRB for the purpose of making recommendations relative to whether the relief requested (or any other relief) should be granted. If a petition was not submitted by the individual concerned (or his legal representative), the individual concerned (or his legal representative) will be given reasonable notice of the matter presented by the petition and afforded an opportunity to submit a statement or other evidence in rebuttal. All petitions considered and the recommendation of the Board thereon will be referred to the Director, Army Council of Review Boards.

e. The Director, Army Council of Review Boards, may in his discretion, take action for the Secretary on petitions submitted pursuant to *c* above, if the recommendation of the ADRRB is unanimous. All other cases will be referred to the Secretary for action. The authority herein conferred is permissive only and will not preclude the referral of a case to the Secretary for action incident to the specific direction of the Secretary.

f. In acting on a petition referred for consideration, the Secretary may, in his discretion, either deny relief, set aside the final disposition or placement on TDRL directed in a case and direct further retirement proceedings, or direct such action as is necessary to effect the relief requested or any other action deemed appropriate.

g. The filing of a petition for relief shall not affect the directed disposition of an individual or suspend its operation until and unless the Secretary of the Army (or authority acting for the Secretary) shall so direct. Such action by the Secretary of the Army (or authority acting for the Secretary) will not extend the time limit for application for review of the original disposition by a statutory board.

3-8. Army Physical Disability Appeal Board (APDAB). *a.* The Army Physical Disability Appeal Board, as a component of the Army Council of Review Boards, is established for the purpose of reviewing disability evaluation cases forwarded by the CG, USAPDA, as provided in chapter 4 and such other cases as may be referred to it.

b. In considering disability evaluation cases referred to it, the APDAB will determine whether—

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

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

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

c. The Army Physical Disability Appeal Board will take one of the following actions and forward the case to MILPERCEN, or other Army agency or activity, as appropriate.

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

(2) Concur with the recommendations of the PEB.

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

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

(5) Specify new findings and recommendations or other action deemed appropriate for the disposition of the member concerned.

3-9. The Disability Review Council. *a.* The Disability Review Council is established to review all physical disability cases referred to it by the CG, USAPDA. The DRC acts in an advisory capacity to the CG, USAPDA, rather than as an adjudicative body.

b. The DRC is responsible to assure that Army physical disability cases are accorded uniform and equitable consideration under applicable laws, policies and directives and to insure uniformity among Army PEBs. After review the DRC will submit its recommendations to the CG, USAPDA. The DRC will not recommend revision of PEB findings except when the evidence in the record is so clear and compelling as to require revision, or accepted medical principles preclude a reasonable possibility of the correctness of the PEB findings and recommendations.

3-10. Physical Evaluation Boards. *a. Boards.* Physical Evaluation Boards are established to evaluate all cases of physical disability equitably for the individual and the Government. The PEB is not a statutory board, and its findings are subject to revision. It is a fact-finding board for the purpose of—

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

(2) Evaluating the physical condition of the member against the physical requirements of his particular office, grade, rank or rating.

(3) Providing a full and fair hearing for the member concerned.

(4) Making findings and recommendations required by law to establish the eligibility of a member for disability retirement or separation.

b. Staff. PEBs will be staffed with mature officers of demonstrated sound judgment who are familiar with administrative board procedures. Full-time members of the PEBs are appointed by the CG, USAPDA. Part-time members are selected and appointed by the CG, USAPDA, with the concurrence of the installation and MTF commanders where PEB's are located to supplement or temporarily replace full-time members as necessary to facilitate the prompt processing of disability cases. These boards are attached to the installation where located for logistical and administrative support. Support agreements will be entered into between the CG, USAPDA, or his representative, and the installation and MTF commanders concerned.

c. President of PEB. The appointing authority will assign a senior commissioned officer as permanent president of each PEB. The President has full responsibility for the board and its function. He is responsible that the law, regulations, and adjudication principles laid down by the Department of the Army are followed in all actions. Designation of a non-medical member of the board as alternate permanent President is authorized to avoid unnecessary delay in processing due to temporary absences or challenge of the permanent President. A medical member is not authorized to preside as President even though senior to the President or his alternate.

d. PEB. Each PEB considering a case will consist of at least three field grade officers on active duty in the US Army, other than active duty for training. One will be a member of the US Army Medical Corps and the other two will be of Corps other than the Medical Corps. The medical member is not eligible to sit as a member if he served in any capacity with the medical board which referred the case to the PEB.

e. Counsel. The appointing authority will designate a member of the Judge Advocate General's Corps to serve as counsel to represent members appearing before the Physical Evaluation Board. Counsel will not be used as alternate voting members or recorders. Counsel will render assistance to members in the exercise of their right to counsel (including assistance in the preparation thereof) to

the recommended findings of a board and to any subsequent proceedings.

f. Recorder. The appointing authority will assign a permanent recorder for the PEB. This assignment will be a primary duty. The recorder will be a commissioned officer or warrant officer of any branch except the Medical Corps, Dental Corps, Army Nurse Corps, Army Medical Specialist Corps, Judge Advocate General Corps, Chaplains, or an officer detailed as an Inspector General.

g. Reporter. The appointing authority will assign a permanent qualified reporter to the PEB.

3-11. Health Services Command. The CG, Health Services Command, is responsible for—

a. Ensuring that Army medical treatment facilities fulfill their responsibilites in connection with the Army Physical Disability Evaluation System, as outlined in paragraph 3-12 below and AR 40-3.

b. Designating the MTF responsible for accomplishment of periodic medical examinations for TDRL members (see chap. 7).

3-12. Medical treatment facilities. Commanders of medical treatment facilities are responsible for—

a. A thorough and expeditious evaluation of a member when his medical condition for retention or his physical ability to perform duty is questionable.

b. The counseling of a member in accordance with appendix C. For this purpose, an experienced, qualified officer or civilian employee (of equivalent grade) at each MTF which refers cases to a PEB, will be appointed as the Physical Evaluation Board Liaison Officer (PEBLO). A copy of the orders appointing the PEBLO will be forwarded to the Physical Evaluation Board which processes cases originating at the MTF. At least one additional qualified officer or civilian employee (of equivalent grade) will be designated as an alternate PEBLO. Only personnel whose duties will not conflict with their counseling responsibilities will be selected. Duties and responsibilities of the PEBLO are contained in appendix C.

c. The complete documentation of medical board proceedings referred to a PEB in order to assist this board in determining whether a member is physically capable of performing duties commensurate with his office, grade, rank, or rating.

3-13. Commanders. All commanders will—

a. Become thoroughly familiar with the purpose of, and the policies and procedures governing the physical disability evaluation system.

b. Insure that any physical defects which impact on an individual's performance of duty are reflected in member's evaluation report.

c. Refer members to the servicing MTF for a medical evaluation when it is believed that the member is unable to perform the duties of his office, grade, rank, or rating because of physical disability.

d. Provide, upon request of the MTF commander, the information, statements and records pertaining to members of their command being processed for physical disability evaluation.

CHAPTER 4

PROCEDURES

Section I. INITIATION OF MEDICAL EVALUATION

4-1. Referral by HQDA and Major Commanders. CG, MILPERCEN, upon recommendation of The Surgeon General, and commanders specified in paragraph 2-17*a*, AR 635-200, upon recommendation of their Staff Surgeon, may refer a member to an appropriate MTF for medical evaluation when there is a question as to the member's ability to perform the duties of his office, grade, rank, or rating because of physical disability.

4-2. Referral by commanders of MTF's. Commanders of MTF's who are treating patients in an assigned, attached or outpatient status may initiate action to evaluate a member's physical ability to perform the duties of his office, grade, rank, or rating.

4-3. Referral by commander. When a commander believes that a member of his command is unable to perform the duties of his office, grade, rank, or rating because of physical disability, he will refer the member for evaluation to the Commander of the MTF who provides primary medical care to his command. The request for evaluation will be in writing and will state the commander's reasons for believing that the member is unable to perform his duties. The Individual Sick Slip (DD Form 689) may be used for such referral (see AR 600-6). Commanders of Reserve units which are not on active duty will be guided by chapter 8 and AR 140-120 in referring members for evaluation.

Section II. MEDICAL EVALUATION

4-4. Medical treatment facility commander. The MTF commander having primary medical care responsibility will conduct an examination of a member referred to him for evaluation. He will advise the member's commanding officer of the results of the evaluation and proposed disposition. If it appears that the member is not medically qualified to perform duty or that he fails to meet the criteria for retention (chap. 3, AR 40-501), he will be referred to a medical board. MTF commanders will be guided by instructions contained in AR 40-3 and AR 40-501 in making disposition of the member. The MTF commanders will be assisted in the processing of the member's case by the PEBLO in accordance with appendix C.

4-5. Documentation of disability evaluation cases. *a.* It is emphasized that the medical report is the heart of the disability evaluation system. Incomplete, inaccurate, misleading, or delayed reports may result in an injustice to the member or to the Government. In describing a member's condition, it is not sufficient that a diagnosed condition may render the individual unfit for further military service. The history of his illness, objective findings on examination, results of x-ray and laboratory tests, reports of consultations, and subjective conclusions with the reasons therefore, are pertinent evidence and are essential for supporting findings and recommendations.

b. Apparent contradictions in the records, such as disagreement with a report of consultation, incomplete laboratory reports, faulty x-rays and incomplete studies must be thoroughly explained. The condition of a patient following therapy, his response thereto, the degree of severity of his disease or injury, and when appropriate, their effect on his functional ability must be described in detail to enable the PEB to make a determination of whether the member is physically unfit and to arrive at a proper disability percentage rating if found unfit.

c. Examining physicians or medical boards WILL NOT qualify diagnoses by such terms as "fitting," "unfitting," "disqualifying," "ratable," or "not ratable." These are determinations exclusively within the province of adjudicative bodies. Reliance on accepted medical principles and expressions of medical judgment provide guidelines for adjudicating disabilities.

4–6. Medical boards. As prescribed in AR 40–3, medical boards are appointed by the commander of a MTF for the purpose of assisting him in the determination of medical fitness, mental competence, mental responsibility and disposition of patients. In the initiation and processing of disability evaluation cases, special liaison and direct communication with other agencies and activities in the disability system is authorized as required.

4–7. Conduct of medical board proceedings. *a.* Medical board proceedings of disability cases are conducted in accordance with the provisions of AR 40–3.

b. Determination is made of the member's qualification for retention on the basis of criteria set forth in chapter 3, AR 40–501 and this regulation.

c. Examining officers and medical board members will use, as a reference, the "VA Physician's Guide—Disability Evaluation Examinations." Recording of defects in accordance with this guide is essential in order to provide adjudicative boards with the information necessary for evaluation of disabilities. For psychiatric cases, in the statement of present condition, there will be a clear description as to how the member's symptoms affect his employability and ability to function. (e.g., Can the member work independently; can he work with minimal supervision; or will he require close supervision? Will his mental impairment cause extensive, occasional, or minimal job instability?) For TDRL cases in which the member has not been able to sustain meaningful employment, a statement should be made as to whether such unemployment is due to the effect of the disease or due to other factors. If an accurate prognosis as to future industrial adaptability cannot be made, and should await future developments, such should be stated.

d. The member will be counseled in accordance with appendix C.

e. The patient will not be told—

(1) That he will be discharged or retired from the service because of physical disability.

(2) The percentage of disability.

(3) The line of duty finding, unless final approval has been obtained on such findings.

4–8. Referral to a physical evaluation board. *a.* The medical board will recommend referral of members who do not meet medical retention standards to a PEB, including those who apply for continuance on active duty under the provisions of chapter 6. (Members who request expeditious discharge under the provision of chap. 5 will not be referred to a PEB). Except for members previously found unfit and retained in a limited assignment duty status by the Secretary of the Army under chapter 6 of this regulation or a previous authority, a member being processed for nondisability separation will not be referred to a PEB unless he has a medical impairment or impairments which raises substantial doubt as to his ability to continue to perform the duties of his office, grade, rank, or rating.

b. Members may provide additional information to the MTF commander from their commanders, supervisors or other persons who have information pertinent to their case.

c. Administrative processing of members referred to a PEB will be accomplished in accordance with appendix E.

4–9. Mentally incompetent and spinal cord injury patients. AR 40–3 provides for the transfer of mentally incompetent and spinal cord injury patients to a VA medical facility after completion of medical board action. In such cases, counseling will be completed as

prescribed in appendix C and the medical board proceedings will be referred to the PEB after transfer of the patient to insure timely processing.

4-10. Action following approval of a medical board's recommendation for PEB referral. The unit commander will be notified of the planned referral and will advise the MTF commander in writing whether a personnel action is pending which would bar further disability processing. After initial counseling, if further action is not barred, the records listed below, as appropriate, will be forwarded to the servicing PEB as indicated at table 4-1.

a. Approved Medical Board Proceedings (DA Form 3947), with inclosure 1, Narrative Summary (SF 502), and inclosure 2, Report of Medical Examination (SF 88) (original and 5 copies).

b. All clinical and other medical records, including those received from MILPERCEN, other service hospitals, the Veterans Administration and civilian sources, if applicable. X-ray films will be retained by the medical treatment facility until requested by an adjudicative or review body when they will be forwarded without delay. However, SF 519a's will be forwarded with the clinical records.

c. Health Record (DD Form 722).

d. A reproduced copy of DA Forms 2 and 2-1 (Personnel Qualification Record, Parts I and II) for active duty personnel or DA Form 66 (Officer Qualification Record) or DA Form 20 (Enlisted Qualification Record) for Reserve Component personnel.

e. If the current grade is private (E-1), a statement will be included outlining circumstances which preclude advancement to the grade of private (E-2) under the provisions of AR 600-200.

f. Statement from the custodian of an enlisted member's records that an unfavorable action as defined by AR 600-31 is not pending. If such action is pending on a case being referred to a PEB, a statement required by paragraph 1-2*c*, *d*, or *e* will be attached.

g. A statement indicating whether elimination proceedings are pending against a commissioned or warrant officer, and providing the current status of such proceedings, if applicable.

h. Approved copy of Report of Investigation—Line of Duty and Misconduct Status (DD Form 261), or Statement of Medical Examination and Duty Status (DA Form 2173), or a copy of a message to DA requesting a Line of Duty Determination, as applicable. (When a case is considered without benefit of an advance line-of-duty determination, the commander of the MTF where the medical board is held will telegraphically (in the event of MINIMIZE, notification will be forwarded by airmail) provide HQDA (DAAG-PSC), Alexandria, VA 22332, the following information:

(1) Name, grade and SSN.

(2) Date of injury.

(3) Short summary of incident causing injury to include medical facility where initially admitted or treated.

(4) Unit of assignment of member when injured.

(5) Why a line-of-duty investigation is required.

(6) Measures taken to secure the approved line-of-duty determination to include all offices, installations or commands contacted in an effort to obtain the approved report.)

i. Member's request for continuance on active duty under the provisions of chapter 6, if applicable.

j. Statement of retention beyond ETS, if applicable. (See AR 635-100 and AR 635-200.)

k. When the patient is not on extended active duty, a copy of the orders which ordered him to active duty, active duty for training, or inactive duty training, and if applicable, a copy of the order rehospitalizing the patient, pursuant to paragraph 15, AR 135-200.

l. In mentally incompetent or deleterious type cases, a statement showing: Name, address, and relationship of next-of-kin (or

court-appointed guardian); whether he is available for counseling following PEB action; and whether he has been advised of the PEB referral. If the next-of-kin is not known or cannot be located and there is no court-appointed guardian, a summary of attempts to identify or locate him will be provided.

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

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

o. Copy of letter(s) to appropriate State authorities for disposition of psychotic members who are not eligible for VA hospitalization, as applicable.

p. Statement by the custodian of the member's personnel records indicating the cause for initiating the medical board proceedings, e.g., in connection with voluntary or mandatory retirement, expiration of term of service, expiration of term of service with bar to reenlistment, involuntary release, qualitative management denial of reenlistment, career interrupted due to physical disability, or other appropriate explanation.

q. If applicable, letters, efficiency reports and other documents from the member's commander, rater, or other knowledgeable individuals addressing the member's physical ability to perform the duties of his office, grade, rank, or rating.

4–11. Rehospitalization of disabled member. A member rehospitalized while undergoing disability evaluation or awaiting final disposition will be evaluated to determine if his condition may change the findings and recommendations of the Physical Evaluation Board. If it appears that the member's condition will alter the findings and recommendations, the MTF Commander will notify the President of the PEB. Further adjudicative and review action will be suspended pending resolution. When the member has received optimum hospital improvement for disposition purposes, an addendum to the original medical board will be prepared and forwarded to the PEB with any other pertinent records unless some other disposition is indicated. The PEB will be notified if disability processing is to be terminated.

Section III—PHYSICAL EVALUATION BOARD

4–12. Initial processing. *a*. Upon receipt of a case by the PEB, the case file will be reviewed to insure that it is complete. If documents are missing, action will be taken to complete the file. On completion of the review, the case will be referred to the board for evaluation.

b. The PEB may return a case to the MTF commander for reasons such as that stated below. Efforts should be made, however, to resolve the problem without returning the case. When circumstances permit resolution of the problem by discussion, a memorandum for record will be prepared and included in the 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 are as follows:

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

(2) Additional description and information by the medical board of the member's defects and their effect on his functional ability or inability to perform duty.

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

(4) Additional information concerning member's ability to perform the duties of his office, grade, rank, or rating.

4–13. Common criteria and proceedings. *a*. *Voting members.* The voting members of a PEB will determine the findings and recommendations based on the following aspects of the case. Vote of the majority will be controlling. The board will determine—

(1) Whether the member is fit or unfit by reason of physical disability. If the member is found fit, no further determinations will be made.

(2) Whether the disability is the result of

intentional misconduct or willful neglect, and whether such disability was incurred during a period of unauthorized absence.

(3) Whether the disability is permanent, or may be permanent, in accordance with accepted medical principles.

(4) Percentage of disability of each diagnosis and the overall combined disability rating according to the current VASRD as modified by appendix B.

(5) In the case of a member of the Regular Army or of any other member ordered to active duty for more than 30 days (except those ordered to active duty for training pursuant to section 270(b), title 10, USC)—

(*a*) Whether the disability or aggravation thereof was incurred while he was entitled to basic pay.

(*b*) If he has less than 8 years of service, whether the disability or aggravation thereof was the proximate result of performing active duty. (Until termination of the current national emergency proclaimed on 16 December 1950, or any subsequent period of war or national emergency, any disability incurred or aggravated in line of duty is considered to be the proximate result of performing active duty.)

(*c*) Whether he is currently entitled to basic pay.

(6) In the case of a member ordered to active duty for 30 days or less, to active duty for training under the provisions of section 270(b), title 10, USC, or engaged in inactive duty training, whether the disability is the result of an injury which is the proximate result of the performance of such duty.

b. Additional documents. When a PEB finds that additional documents are needed to assist in the determination, it will suspend action and contact the member through the PEBLO, PEB recorder, or PEB legal counsel. If the member considers that additional documents are pertinent, the PEBLO, PEB recorder, or PEB legal counsel will assist the member in identifying, locating, and obtaining them. Documents may include supervisor evaluations covering duty performance since the last efficiency report, other efficiency reports as pertinent, and letters or statements from co-workers or other knowledgeable individuals. If the member feels that additional documentation would not be of value to the PEB's consideration, or refuses to cooperate in obtaining such documents, the PEB will adjudicate the case on the available evidence. The PEB will record all actions taken to obtain additional documents and will attach this record together with the additional documents to the case file when forwarding the case for review.

c. Determination of member's fitness. When the board considers that proper determination as to the member's fitness for duty and/or the permanency of the disability cannot be made, a statement to that effect will be included in the record of the board proceedings, together with a recommendation for appropriate disposition, and the case will be forwarded to USAPDA.

d. PEB findings and recommendations. In those cases where a final line of duty determination has not been completed, the line of duty status will be resolved at HQDA. The board's findings and recommendations will be based on the assumption of a favorable line of duty determination.

e. EPTS conditions.

(1) *Unchanged physical defects.* A member will not be found unfit because of physical defects which were known to exist at the time of his acceptance for military service and which have remained essentially unchanged since acceptance and have not interfered with his performance of effective military service.

(2) *Application of accepted medical principles.* The fact that a member was examined and accepted for active duty is not conclusive evidence that the disability was incurred after such acceptance. It is one piece of evidence to be considered with all other medical evidence. In addition to and in conjunction with all pertinent medical evidence, due consideration and weight must be given to accepted medical principles authenticated by medical authorities in arriving at a determination. It is not proper nor shall the practice be followed of excluding such accepted medical principles in making the aforesaid deter-

minations, even in cases where there is no other evidence that the disability existed prior to the member's entry on active duty. Due consideration will be given, however, to the length of service of the member with respect to the aggravation of such disability. In order to facilitate review by appropriate agencies, which may not have the medical expertise of the PEB members, the basis for the finding that accepted medical principles apply will be clearly stated in the record of formal proceedings or attached as an exhibit to informal proceedings.

(3) *Service aggravation.* When it is determined that a member has a physical defect which existed prior to entry on active duty or inactive duty for training (EPTS), or which resulted from some other nonservice connected condition (not in line of duty), the board must further consider whether the defect was aggravated by military service. If the worsening of such condition is attributable to or has been accelerated by the member's military service beyond the normally anticipated rate, had he not been exposed to such service, a finding of aggravation must be considered. Guidance in this connection is contained in paragraph 2-16, chapter 2, AR 600-33. When a condition is determined to have been aggravated by service, the degree of disability that is in excess of the degree that existed at the time of entrance into service, will be considered to have been incurred while entitled to receive basic pay (para 10, app B).

(4) *Nonservice aggravation.* Members who are unfit by reason of physical disability neither incurred nor aggravated during any period of service will be recommended for one of the following dispositions, unless they are eligible for retirement under some other provision of law:

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

(*b*) Enlisted members of the Army covered by this paragraph will be recommended for discharge without entitlement to disability benefits, subject to restriction in (5) below.

(*c*) Members who elect to apply and who meet the criteria for continuance on active duty as set forth in chapter 6 will be processed under the provisions of that chapter.

(*d*) Officers and warrant officers of the Regular Army with less than 3 years of active service since appointment will be recommended for discharge without entitlement to disability benefits. Officers and warrant officers of the Regular Army with more than 3 years active service since appointment may not be discharged solely on the basis of physical disability incurred prior to service and not aggravated by such service.

(*e*) Members of Reserve components may be recommended for discharge without disability benefits, or permitted to request transfer to the Retired Reserve in lieu thereof.

(*f*) Officers and warrant officers of the Army of the United States (AUS) will be recommended for discharge without disability benefits.

(5) *Involuntary release.* No member who is on active duty and is within 2 years of becoming eligible for retired pay will be involuntarily released from active duty before becoming eligible for that pay, unless his release is approved by the Secretary of the Army. Such cases, appropriately annotated, will be forwarded to the CG, USAPDA.

f. Entitlement to benefits. Basic principles for determining entitlement to physical disability benefits (retirement or severance pay)—

(1) If the PEB finds that a member is physically unfit for military service, the board must then determine whether the member is eligible for physical disability retirement or severance pay.

(2) A member is eligible for consideration for physical disability benefits if his physical defects were incurred or were aggravated while entitled to basic pay, were not the result of intentional misconduct or willful neglect, and were not incurred during a period of unauthorized absence.

(3) If the PEB finds that the member is eligible for disability benefits, the percent-

age of disability upon which benefits may be based is determined by applying the VA Schedule for rating disabilities, as modified by appendix B, to those defects which are compensable (see tables 4-4 and 4-5).

(4) Any defect of a member who is eligible for disability benefits is compensable if it was incurred or aggravated while the member was entitled to basic pay, and the incurrence or aggravation of such a defect was not due to intentional misconduct or willful neglect, or during a period of unauthorized absence. In addition in those cases covered by table 4-5, the defect must be the proximate result of the performance of active duty.

g. Line of duty determinations. The policy on LD determinations is stated in paragraph 2-4.

(1) In the first category, informal line-of-duty determinations may be made by the organization commander with the concurrence of the medical officer for injuries and diseases in all cases not requiring a formal investigation. Such determination will be entered on DA Form 2173 and included in the case file. Formal line-of-duty determinations will be entered on DD Form 261 and included in the case file. It is not expected that PEB's will need to consider the validity of the approved informal or formal line-of-duty investigation and report. However, should there be a substantial question of whether an adverse or favorable line-of-duty determination is appropriate because of new information not previously considered, PEBs will comment on this new information, either in the remarks section of the DA Form 199 or by attaching an exhibit to the record. If the PEB questions the line-of-duty determination because of the absence of an approved line-of-duty report or because of new, substantial evidence, the PEB will process the case as if a favorable determination had been made, commenting in the remarks section of the DA Form 199 that this action is being taken and the circumstances in connection with the action. The member will be informed of the conditional processing and that final processing at HQDA will be held in abeyance pending resolution of the line-of-duty determination.

(2) In the second category, the initial determination will be made by the medical officer concerned. The medical board will record its determination in the board report (DA Form 3947). This determination is subject to change or modification by the PEB and other adjudicative bodies in the physical disability evaluation system.

h. Determination that defect was result of performance of active duty. In cases covered by table 4-5, the PEB must determine whether each defect listed on the DA Form 199 was the proximate result of performance of active duty or inactive duty training. This finding is not required in cases covered in table 4-4. A determination whether an injury was incurred or aggravated during active duty or inactive duty for training must be made by the PEB based upon all the facts and circumstances of the case. In this connection, a disability is considered to be the result of such training if it was incurred or aggravated while the member was performing military duties, or was otherwise subject to military control during a period of authorized training.

i. Determining permanency of disability.

(1) A disability will be considered "permanent" if, based upon accepted medical principles, the defect has stabilized to the extent that the compensable percentage rating, with reasonable expectation, will remain unchanged during the 5-year statutory period; or if the compensable percentage rating is 80 percent or more and there is a reasonable expectation that it will not be ratable below 80 percent during the 5-year statutory period.

(2) A disability will be considered as "may be permanent" if, based upon accepted medical principles, the defect is of such a nature that accurate assessment cannot be made of its permanent degree of severity or percentage rating. This disposition is used *only* when "permanent" retirement is inappropriate under the criteria of (1) above.

(3) Permanent retirement or placement on the TDRL will be recommended by the

PEB, consistent with the determination made under (1) and (2) above.

j. Percentage of disability. The VASRD, as modified by appendix B, is used in determining the percentage of disability of a member who is found to be unfit because of physical disability and is otherwise eligible for disability benefits. Raters and reviewers of ratings must be familiar with the entire contents of the VASRD, including introductory paragraphs to sections, and italicized footnotes. Appendix B of this regulation sets forth Army policies and modifications governing use of the VASRD when rules or ratings provided by the VA schedule are inappropriate for Army use or do not provide a rating basis.

k. Armed conflict and instrumentality of war. A member whose retirement or separation from the service is 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 and incurred in line of duty during a period of war will have the block "is" checked in item 10 of the DA Form 199.

(1) *Armed conflicts.* A disability may be considered a direct result of armed conflict (app A) if—

(*a*) It was incurred while the member was engaged in armed conflict or an operation or incident involving armed conflict or the likelihood of armed conflict, or while interned as a prisoner-of-war or detained against his will in the custody of a hostile or belligerent force or while escaping or attempting to escape from such prisoner-of-war or detained status, and

(*b*) A direct causal relationship exists between the armed conflict or the incident or operation and the disability. A determination that a disability resulted from injury or disease received in line of duty as a direct result of armed conflict will be appropriate only when it is also determined that the disability so incurred in itself renders the member physically unfit.

(2) *Instrumentality of war.* A determination that a disability was caused by an instrumentality of war (app A) and incurred in line of duty will be appropriate only when it is also determined that the disability so incurred in itself renders the member physically unfit and was incurred during one of the periods of war as defined by law, i.e.:

(*a*) *World War II:*

1. Period beginning 7 December 1941 and ending 31 December 1946.

2. Any period of continuous service performed after 31 December 1946 and before 26 July 1974, if such period began before 1 January 1947.

(*b*) *Korean War.* The period beginning 27 June 1950 and ending 31 January 1955.

(*c*) *Vietnam Era.* The period beginning 5 August 1964, and ending on such date as shall thereafter be determined by Presidential proclamation or concurrent resolution of the Congress. (It should be noted that the "Dominican Intervention" occurred during this period.)

l. Recording of rationale and minority reports.

(1) *Rationale:* The rationale for the findings and recommendations will be included on the DA Form 199. A short, concise statement of the reasons for finding a member fit or unfit, and if unfit, the basis for the rating will be included. The rationale will support specifically the finding that the member was or was not capable of performing the duties of his office, grade, rank, or rating. Unless it supports the finding of unfitness, or degree of unfitness, reference to a member's hospitalization in the rationale will not be made. When there is a significant variance between the diagnosis or degree of impairment described in item 8 of DA Form 199, and that reflected in the medical board proceedings, a complete explanation for change will be made in item 16.

(2) *Minority report.* Any dissenting voting member of a board may make and sign a minority report. The report will be attached as part of the record of proceedings. When made, reference will be made to the minority report in the "Remarks and Continuations" section of DA Form 199.

m. Continuances. A PEB may continue a hearing upon its own motion, at the request

of the recorder, or at the request of the member or his counsel, if the board deems a continuance necessary for a full and fair hearing. Examples of appropriate reasons are—for further medical evaluation—to obtain additional records, reports, or statement as evidence in the case. When a continuance is granted, only one DA Form 199 will be used in the case. Data such as the date, fact and time of recess and reconvening, and changes in membership will be recorded in the transcript of proceedings at the point in time when the event occurred. If a change of membership is involved, the record will show the reason for the change and that the new member(s) had familiarized himself with the records of the case and the transcript of testimony prior to proceeding with the hearing.

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

(1) Proceedings of PEB's will be recorded on DA Form 199. Instructions for completion of the form are at appendix D. Erasures and corrections on both DA Form 199 and transcripts of formal hearings which involve substantive matters will be initialed by the recorder.

(2) Assembly of the records of PEB proceedings will be as indicated in table 4-2. Pages of the transcript will be numbered consecutively beginning with page 1.

(3) Transmittal of case records of PEB proceedings will be in accordance with the distribution indicated in table 4-6.

o. Reconvened and improperly constituted boards.

(1) *Reconvened board.* Prior to final action by the Secretary of the Army, the proceedings of a properly constituted physical evaluation board may be returned to the same board for further investigation, further consideration of findings, correction of errors, or for other reasons. When proceedings are so returned, the reconvened board will include as many members of the original Physical Evaluation Board as practicable. However, proceedings may be conducted properly even though no members of the original board are available, provided that the board is otherwise properly constituted and the new members have familiarized themselves with the records of the case and the transcript of testimony prior to reconvening the board. Proceedings will be the same (formal or informal) as were utilized by the original hearing. If a formal hearing is held, the member (his next-of-kin or legal guardian if representing the member's interests) will be notified of the new hearing date. (See fig. 4-7.) Should the PEB reconsider the case and change its findings or recommendations, a new DA Form 199 must be prepared and referred to the member for his election. A statement will be placed in item 16, DA Form 199, to the effect "reconsidered in accordance with AR 635-40." The member will be afforded an opportunity to consult with counsel and to rebut any proposed changes. If the member desires to submit additional evidence, either documentary or testimonial, he shall be allowed a reasonable opportunity to do so. Regardless of the procedures employed, the member (next-of-kin or legal guardian) will be notified of the results if there is a change in the disposition or benefits from those originally recommended. When new findings are made by the PEB, they become the only findings on which subsequent action will be taken.

(2) *Improperly constituted boards.* Proceedings of an improperly constituted Physical Evaluation Board are null and void. Whenever it is discovered that a hearing has been conducted by an improperly constituted Physical Evaluation Board, the record of the proceedings (less the findings and recommendation) of the hearing will be referred for a new hearing by a properly constituted board.

4-14. Informal board. *a.* All cases will be considered initially by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must insure that each case considered is complete and correct in every respect. The rapid processing intended by the use of informal boards must not be permitted to override the fundamental requirement of consist-

ently superior evaluation of each case. All evidence in the case file will be examined and additional evidence, including the OMPF, will be obtained if required. The board will consider, evaluate and adjudicate each case using the criteria outlined in paragraph 4-13. Findings and recommendations will be recorded on DA Form 199 (Physical Evaluation Board Proceedings) in accordance with appendix D. Following signature by the President of the PEB, the original, the member's and MTF copies of the DA Form 199 will be forwarded to the MTF commander concerned (ATTN: PEBLO) by the most expeditious means. Simultaneously, a telephonic notification of the PEB's findings and recommendations will be made to the PEBLO. If the case involved a member who is retiring outside CONUS, the DA Form 199 will be air mailed to the MTF commander without telephonic notification. If the MTF commander does not receive the original DA Form 199 within a reasonable time, a new original will be prepared from the retained copy and forwarded to the MTF commander.

b. The PEBLO will inform the member of the informal PEB's findings and recommendations. Each member will be counseled in accordance with appendix C. Choices of action listed in item 13, DA Form 199, will be explained to him. The member is authorized three working days to decide on his election. If he does not concur in the informal board's findings and recommendations, he may demand a formal hearing with or without personal appearance. He may, if he wishes, also state in writing his reasons for nonacceptance and furnish such supporting evidence as he considers appropriate. The member will enter his election by checkmark in item 13, indicate his choice of counsel if he is nonconcurring with the informal board, date and sign the original and MTF copies of the DA Form 199. The PEBLO will complete item 14 of both copies. If the member has furnished his reasons for nonacceptance, and has provided additional letters, supervisor evaluations, or efficiency reports, his statement and any additional supporting data will be attached to the DA Form 199 which will be returned to the PEB. If the member fails or declines to make an election, the PEBLO will prepare a brief statement detscribing the circumstances and indicating the date on which the member was first informed of and counseled on the informal board's action, and forward the DA Form 199 and his statement to the PEB. In deleterious-type cases or othese involving mental incompetence, the next-of-kin or legal guardian, if one has been appointed, will be contacted by the PEBLO and requested to act for the member.

c. When the completed DA Form 199 is returned to the PEB, the recorder will take the following actions as applicable:

(1) If the member accepts the findings and recommendations of the informal PEB, the records will be assembled as required by table 4-2 and distributed as shown in table 4-6.

(2) If a member fails or declines to make an election within the prescribed period of time, the PEB will proceed as if the member had accepted the findings and recommendations, and process the case as described in (1) above. If prior to the effective date of orders or instructions issued for his disposition, the member demands a formal hearing, his disposition will be suspended by revocation of the orders or instructions. The CG, USAPDA, will then arrange a formal hearing as described in (3) below.

(3 If the member nonconcurs in the informal findings and recommendations and, as a part of his demand for a formal hearing, the member states the reasons for his election, the board may reconsider their findings and recommendations in the light of the member's reasons for nonacceptance. Should the board agree with the member and modify their findings and recommendations, the member will be informed through the MTF commander of the results, and if he accepts them, the case will be processed as in (1) above. Otherwise, the case will be referred for formal hearing. If the member, without stating his reasons for nonacceptance, demands a formal hearing without personal appearance, the case will be referred to the PEB for a formal hearing. The appointed legal counsel will be informed of the pending action so that he may contact the member to

determine what issues he wishes to have presented in his behalf. If the member, in demanding a formal hearing, has elected to be represented by special counsel, arrangements for the hearing will be made with the special counsel. If the member elects to be present at the formal hearing, the recorder and appointed counsel will arrange for the hearing with the member and special counsel, if any. If the member is at some location other than that of the PEB, his commanding officer will issue necessary TDY orders, using locally available funds, for travel of the member.

(4) Whenever more than one PEB 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 each copy of the formal board's DA Form 199 will document the member's demand for a formal hearing without further comment or explanation.

(5) In all informal cases, the PEBLO of the MTF having control of the member will be the counselor for the member. As such, he is primarily concerned with the member's interests. He should consult with and obtain advice as needed from the local legal assistance officer on the disability cases he handles. He should also consult with the local finance officer as needed when computing estimated monetary benefits. He may also seek advice from the legal counsel at the nearest PEB. The PEB counsel may also call on the PEBLO for assistance in contacting and advising a member when necessary.

4-15. Formal board. *a.* A formal hearing prior to retirement or separation because of physical disability is the legal right of a member if he demands it. He alone must decide whether to exercise this right and, although he should be counseled, he may not be unduly influenced in exercising this right. If the member elects a formal hearing, he is entitled to the services of a legal counsel at the hearings as provided in paragraph 3-9*e*. A formal hearing will be convened when—

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

(2) The President of a Physical Evaluation Board determines that a formal hearing is necessary in the best interests of the member or the Government.

b. No arrangement is prescribed for a formal hearing room. Space which is locally available will dictate the arrangement. The minimum requirement is room for three board members, the recorder, the member whose case is to be heard, his counsel, and the reporter. Although proper decorum consistent with the purpose of the hearing is important, every effort should be made to maintain a relaxed and courteous environment. An implication of litigation of the case must be avoided.

c. The President of the PEB will establish the date, time, and place of the hearing subject to the following:

(1) The member (his next-of-kin or legal guardian) will be allowed 3 working days after notification that a formal hearing is to be held to review all records assembled for use during the hearing. He may make any notes necessary to prepare his case.

(2) The member may waive this 3-day period or any portion thereof.

(3) If additional time is required to prepare his case, a written request for an extension will be forwarded to the President of the PEB who in turn will indorse the request to the member indicating approval or disapproval of his request. The date and time of the hearing will be specified in the indorsement.

(4) Ample time for travel will be allowed if the next-of-kin desires to be present at the hearing in instances in which the next-of-kin represents the member.

(5) The recorder of the PEB will—

(*a*) Notify the member (next-of-kin or legal guardian) by telephone or by written notification of the scheduled hearing using figure 4-1 or 4-2 as a guide, as appropriate.

(*b*) Notify the board members, witnesses, counsel(s), reporter, and interpreter

(if necessary) of the date, time, and place of the hearing.

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

(*d*) Insure that the member's records are furnished to medical witness(es) for review before the hearing.

(*e*) Present all available evidence and witness(es) to the board.

(*f*) Perform such other duties as may be required by the President of the board.

d. If a member 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 member's absence. Subject to the provisions of (2) below, if there appears to be no reasonable excuse for the member's absence, the hearing may proceed and the President will include in the record a statement of circumstances. Should the member later appear before the hearing has been concluded, the President may recess the hearing and permit the counsel to brief the member on proceedings up to that point. The hearing will then proceed.

(2) In no case may a formal hearing proceed if the member's individually selected counsel, if he has one, is absent, unless the appointed military counsel is present in open session.

e. A member may waive in writing his appearance at a formal hearing. In such a case the appointed military counsel, or individually selected counsel, if he has one, must be present and represent the member during all open sessions of the hearing, and perform the duties required of a counsel during post-hearing actions.

f. Each member will be represented by counsel at a formal PEB hearing, unless representation by counsel is specifically declined in writing for hearings at which the member will be present.

(1) Representation will be by the appointed PEB counsel, other military counsel, reasonably available, or by civilian counsel, without expense to the Government or by both the PEB counsel and one of the latter two choices of counsel.

(2) The counsel safeguards the legal rights of the member and remains in attendance at all open sessions of the board unless excused in writing by the member. His duties include—

(*a*) Conferring with the member and advising him of his rights.

(*b*) Preparing the member's case for presentation to the board.

(*c*) Requesting the recorder to arrange for the attendance of available witnesses or to obtain their depositions or other specifically desired evidence in support of the member's position.

(*d*) Examining and cross-examining witnesses and otherwise assisting the member in presenting his case.

(*e*) Submitting oral or written arguments as appropriate.

(*f*) Counseling the member on the board's findings.

(*g*) Upon request, assisting 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 member in a case of this type unless replaced by special counsel. In the absence of the next-of-kin, the PEB counsel must be present, even though special counsel is representing the member, unless excused by the next-of-kin or special counsel.

g. All records assembled for use during the hearing, including those furnished by HQDA and by other official sources, will be made available to the member and his counsel for review. 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 member (next-of-kin or legal guardian) and counsel may make notes from the records for proper preparation of the member's case. However, the President may withhold from

civilian counsel, next-of-kin, or legal guardian, any security information.

h. Challenges will be treated as follows:

(1) After the recorder has announced the names and grades of the members of the board who are present, any member of the board or counsel who is aware of any facts which he believes to be grounds for challenge against himself or any other member, including the President of the board, will state such fact(s). If it appears that a member is subject to challenge for cause, and the fact is not disputed, such member will be excused forthwith. 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(s) indicating that an officer should not sit as a member of the board in the interest of having the hearing and subsequent proceedings free from substantial doubt as to legality, fairness and impartiality. Not more than one member will be challenged at one time. Subsequent 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 member an opportunity to introduce evidence, examine the challenged member under oath, and make an argument. The board will determine the relevancy and validity of any challenge. During deliberation and voting upon a challenge, the board will be closed. The challenged member will not be present at the closed session and will not vote upon the challenges. If the challenged member is the President of the board, the next senior non-medical board member will preside in the case. A tied vote will sustain the challenge. Upon the reopening of the board, the President of the board will announce whether the challenge has been sustained. This announcement will be reflected in the transcript of testimony. If a challenge is sustained, the proceedings will be suspended until a replacement for the challenged member is provided.

i. When the hearing begins, the member (his next-of-kin, legal guardian or counsel) will be advised by the President of the board that he may, if he so desires—

(1) Testify as a witness, under oath, in his own behalf, in which case he may be cross-examined as any other witness.

(2) Introduce witnesses, depositions, documents, or other evidence in his own behalf and cross-examine witnesses examined by the board.

(3) Make an unsworn statement, personally or through counsel, or both, oral and/or written, without being subject to cross-examination.

(4) Make an oral argument and/or file a written argument, personally or through counsel, or both.

(5) Remain silent. His election not to make any statement or to answer any question is not to be construed as adverse to his interests.

Note: When the member waives appearance before the board, the President will advise the counsel that he may take the actions set forth in (2), (3), and (4) above, for the member.

(6) Decline to make any statement touching on the circumstances surrounding the origin or aggravation of any injury or disease he may have unless he or his counsel opens up such matters during his direct testimony before the PEB.

j. Evidence will be treated as follows:

(1) Before taking testimony, the recorder will submit to the board in open session, all relevant records, reports, and other documentary evidence. The board must consider all relevant evidence, and accord such evidence weight it deems appropriate. However, a member is not required to make or sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interest made by a member before he is advised that he need not make such a statement, or any statement obtained under circumstances indicating that it was involuntary, is invalid. In the absence of special circumstances, such as the death, incompetence, or inaccessibility of a poten-

tial witness, the board may consider only official records, testimony of witnesses at the hearing, business entries, depositions, and affidavits. However, the board may examine documents such as letters and efficiency reports for evidence that the member's condition does or does not affect his ability to perform the duties of his office, grade, rank, or rating.

(2) Whenever documentary evidence is presented to the board by the recorder, the member (or counsel) may cross-examine the author of the document, record, or statement by calling him as a witness, if he is located at the installation at which the PEB is located, or by taking his deposition. Additionally, the member (or counsel) is entitled to take the deposition of any witness the board refuses to summon or is not authorized to summon to appear on his behalf, or those he is unable to present in person.

(3) Applications to take depositions will be made to the officer exercising general court-martial jurisdiction over the installation at which the PEB is located. The procedure set forth in paragraph 117, Manual for Courts-Martial United States 1969 (Revised edition), will be utilized. Depositions of persons located within 100 miles of the installation may be taken on oral interrogatories. Normally, the depositions of persons located at a greater distance will be taken on written interrogatories. The officer taking the deposition has no authority to subpoena witnesses; however, the appropriate commander or supervisor will insure that military members and employees of the Army are made available for such purposes.

k. Voting members of a PEB, the recorder, counsel and others who regularly participate in PEB evaluations and have no vested interest in the outcome of cases considered need not be sworn in connection with 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 faithfully perform their duties. A high standard of performance is to be expected, therefore, of individuals assigned to these duties.

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

(2) Since witnesses will sometimes have a vested interest in a case, often adverse to the member's or the Government's interest, and because this partiality is not evident initially, any individual who is to testify will first be sworn. The recorder will administer the following oath:

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

If the affirmation is used, the final sentence of adjuration is omitted.

l. The board may summon such witnesses who are members of the Army or employees of the Department of the Army including medical witnesses, as it may deem necessary and if they are available.

(1) With the concurrence of appropriate authorities, members or employees of other armed services may be summoned by the board as witnesses. The appropriate commander or supervisor of such witnesses will insure that they appear. Other witnesses may be requested to appear.

(2) Upon the request of the member, the board will summon as witnesses members of the Army or employees of the Department of the Army, located at the installation at which the PEB is located, if they are available. The appropriate commander or supervisor of such witnesses will insure that they appear. The board will summon members and employees of the Army located elsewhere, if they are available. If possible, members and employees of the other armed services will be summoned, if they are reasonably available, and the PEB determines that the presence of such witnesses will contribute substantially to its findings. The member is responsible for the attendance of witnesses who are not members or employees of the Army or other armed services (at no expense to the government), and is enti-

tled to present such witnesses to the board. Additionally, he is entitled to present the testimony of any member or employee of the Army or other armed services whom he obtains at his own expense, and who is given leave to attend.

(3) Witnesses summoned to testify at the board who are members or employees of the Armed Forces will be entitled to travel expenses and per diem allowances authorized by Joint Travel Regulations. Other witnesses summoned by the board will be entitled to the same payments made to civilian witnesses before courts-martial.

m. The member (his next-of-kin, legal guardian or counsel) may object to any actions taken or proposed to be taken by the board and/or to the admission of evidence and when such objection is made, it will be recorded as part of the proceedings. 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 and the objection 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 proceedings.

n. Upon completion of an open hearing, the Formal Board will be closed for deliberation. The voting members will meet in closed session and determine the findings and recommendations in accordance with criteria outlined in paragraph 4-13*a*.

o. Findings and recommendations of the Formal Board will be presented as follows:

(1) The board, upon completion of deliberations, will reopen and inform the member (in case of mental incompetence or in deleterious-type cases, his counsel, next-of-kin, or court-appointed guardian) of the findings and recommendations. The member will be advised that the board's action will not become final until it has been approved by the Secretary of the Army. He will also be reminded that he may, by rebuttal, request reconsideration of any finding or recommendation. If the member (his next-of-kin or legal guardian) is not present at the hearing, notification of the findings and recommendations will be in writing, using the Form Letter illustrated in figure 4-3 or 4-4 as appropriate.

(2) To assure each member a meaningful opportunity to rebut the findings and recommendations of the board, the PEB will provide a "statement of the case," upon request of the member or his counsel. The statement of the case will explain or clarify underlying rationale of findings (particularly findings based on "accepted medical principles") and recommendations which may not be obvious from other records available to the member or his counsel.

(3) The PEB may change, modify, or correct its findings and recommendations at any time before the record of proceedings is transmitted to the CG, USAPDA. When such changes are made in previously announced findings or recommendations, the member (his next-of-kin or legal guardian, as appropriate) will be informed in writing of them and will be afforded an additional opportunity to accept or rebut the changes.

(4) If the member personally appeared before the board, as soon as the PEB has completed its action and his presence is no longer necessary, he will be excused. The President of the PEB will mail a copy of the DA Form 199 and transcript testimony to the MTF commander concerned.

p. Except for mental incompetence or deleterious-type cases as provided in (2) below, a member whether or not he personally appeared before the board, will be afforded an opportunity to submit a written statement concerning the recommended findings of the Physical Evaluation Board.

(1) This statement may take the form of a rebuttal to the recommended findings of the board or a statement to the effect that the member does not desire to make a rebuttal thereto. A member will be afforded a period of 3 working days after receipt of his copy of the board proceedings in which to submit the rebuttal statement, unless the President of the Physical Evaluation Board approves his request for an extension submitted within the 3-day period. The statement or request submitted by the member will be attached to the record of the board

proceedings. If the member has not submitted either his statement or a request for an extension of time within the 3-day period permitted plus required mailing time, it will be deemed that the member has waived his right to a rebuttal. The case will be forwarded to the CG, USAPDA, with a statement as shown in figure 4-5 and the member will be furnished a copy of such statement.

(2) In cases involving mental incompetency or nonappearance because of a determination by the medical treatment facility commander that it would be detrimental for the member to appear, the board will forward a copy of the record of its proceedings to the party previously notified. The copy so forwarded will include the current DA Form 199 and a transcript of all testimony. Documents considered by the board, the original medical records and any classified information will be excluded. The record will be forwarded by certified mail, return receipt requested. Air mail will be used when it will facilitate prompt delivery. The letter of transmittal will advise the individual of the following:

(*a*) That these findings are not final until approved by the Secretary of the Army.

(*b*) That he may, within 7 days after receipt thereof, submit a written statement concerning the recommended findings of the Physical Evaluation Board. No extension of time will be granted unless a written request is received and approved by the president of the Physical Evaluation Board. The statement may be in the form of a rebuttal to the recommended findings of the board or a statement that he does not desire to make a rebuttal thereto. Further, that if a rebuttal is submitted within the allotted time it will be considered prior to submission of the case for final action by the Secretary of the Army.

(*c*) That upon failure to reply within the time allotted in accordance with (*b*) above, the appointed military counsel will take appropriate action in behalf of the member with regard to the recommended findings of the board. (The record will not be forwarded to the Commander, USAPDA, until a rebuttal or statement has been attached, or counsel has acted in behalf of the member (fig. 4-6).)

Section IV. COMMANDING GENERAL, US ARMY PHYSICAL DISABILITY AGENCY (CG, USAPDA)

4-16. General. *a.* The CG, USAPDA, will review all cases forwarded by the PEB's in accordance with the provisions of this regulation.

b. The review conducted by the CG, USAPDA, utilizing the DRC will be confined to the case records and proceedings and related evidence. The review will insure that:

(1) The individual being evaluated received a full and fair hearing.

(2) Proceedings of the medical board and the PEB were in accordance with governing regulations.

(3) Findings and recommendations of the medical board and the PEB were just, equitable, consistent with the facts and in conformance with the provisions of law and regulations.

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

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

17. Determinations. *a.* The CG, USAPDA, may—

(1) Concur with the findings and recommendation of the PEB, or make only minor changes or corrections which do not affect the recommended disposition of the member or lower the combined percentage rating, and forward the case records to MILPERCEN, ATTN: (DAPC-PAS-RD), for final action.

(2) Return the case to the appropriate PEB for reconsideration, clarification, further investigation, additional information or other action when the case records indicate

such action to be in the best interests of the member and/or the Government.

(3) Nonconcur with one or more of the findings and recommendations of the PEB.

(4) Refer the case to the APDAB. A detailed explanation of the reasons for referral will be provided.

b. When the CG, USAPDA, does not concur with one or more of the findings and recommendations of the PEB, he may—

(1) Concur with the specific request made by or for the member in his rebuttal, issue revised findings and recommendations accordingly and forward the case to MILPERCEN for final action.

(2) Issue revised findings and recommendations which provide for a change in disposition of the member or a reduction in the member's disability rating.

(3) If the revision is for other than administrative correction, the following actions will be accomplished:

(*a*) A copy of the revised findings and recommendations will be furnished the member (his next-of-kin or legal guardian) by certified mail with a return receipt requested. An infirmation copy will be sent to the counselor concerned to assist in counseling the member. The letter of transmittal will include a summary of the reasons for the change.

(*b*) The member (his next-of-kin or legal guardian) will be informed that a concurrence with the revised findings and recommendations or a rebuttal thereto must be submitted within 7 days after receipt of the notice. Additionally, if the USAPDA review was of a case processed after an informal hearing by a PEB, the member will be given the option of requesting a formal PEB hearing. Reasonable requests for extension of the 7-day period will normally be approved.

(*c*) If the member is eligible for and requests a formal hearing, the case records will be returned to a PEB. Subsequent processing will be in accordance with paragraph 4-15.

(4) If the member, next-of-kin, or legal guardian elects to submit a rebuttal to the revised findings and recommendations of the USAPDA, it will be duly considered. After considering the rebuttal submitted by the member or in his behalf, the CG, USAPDA, may—

(*a*) Accept the rebuttal, issue new findings and recommendations in accordance therewith, and forward the case to MILPERCEN for final action.

(*b*) Concur with the original recommendations of the PEB, and forward the case to MILPERCEN for final action.

(*c*) Adhere to his revised findings and recommendations and forward the case (table 4-2) to the Army Physical Disability Appeal Board.

(5) If, within the allotted 7 days after the date of the receipt of notification of the USAPDA revised findings and recommendations and right of rebuttal (or such extension of time as has been approved), the member has failed to submit any statement, either personally or through his counsel, and has not made a request for additional time, he will be deemed to have waived his right to file a rebuttal to the revised recommendations. The revised findings and recommendations of the USAPDA will then be substituted for those of the PEB and the case will be forwarded to MILPERCEN for final action.

c. The CG, USAPDA, will modify the findings and recommendations of a case when the Secretary of the Army rules that an unfavorable line of duty determination has been made on the member's unfitting condition(s). The member will be notified that the modification resulted from a final line of duty determination by HQDA and that USAPDA may not consider an appeal.

4-18. Disposition of medical records. On completion of required review by the CG, USAPDA, medical records will be disposed of as follows:

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

b. If further review or appeal of the case is involved, the medical records will accompany the case file for the required review or appeal action. Should the review or appeal action result in return of the case file to the CG, USAPDA, for final action, he will dispose of the medical records as indicated in a above.

Section V. COMMANDING GENERAL, US ARMY MILITARY PERSONNEL CENTER (MILPERCEN)

4–19. Actions by CG, MILPERCEN for the Secretary of the Army. *a.* CG, MILPERCEN, will take action for the Secretary of the Army to dispose of the case by publication of Department of the Army orders or the issuance of appropriate instructions to subordinate headquarters.

b. CG, MILPERCEN, will return any disability evaluation case to the CG, USAPDA, for clarification or reconsideration when newly discovered evidence becomes available and is not reflected in the findings and recommendations.

c. When action taken by the Army Physical Disability Appeal Board changes the disposition of the member or lowers his disability rating, CG, MILPERCEN, will notify the member or his next-of-kin, if applicable, by certified airmail, return receipt requested. A copy of the notification will be furnished the CG, USAPDA, and the PEB counsel. The addressee will be advised that he has 7 days, or such additional time as may be authorized, from the date of receipt of the letter, to file a rebuttal thereto or to accept the recommended findings of the Army Physical Disability Appeal Board. If, within the alotted 7 days from the date of receipt of the letter shown on the certified mail return receipt, or such additional time as has been allowed by CG, MILPERCEN, the member or his counsel (next-of-kin or legal guardian) fails to submit any statement and a request has not been made for additional time, the member will be deemed to have waived his right to file a rebuttal to the new findings. The findings of the APDAB will be binding, unless otherwise directed by the Secretary of the Army, and CG, MILPERCEN, will take action to finalize the case. The member (next-of-kin or legal guardian) will be counseled in accordance with appendix C. If the member or his counsel files a rebuttal indicating disagreement with the action of the APDAB, CG, MILPERCEN, will return the complete proceedings and the rebuttal to the APDAB for reconsideration. If the member (his counsel, next-of-kin, or legal guardian) submits a statement that he does not wish to file a rebuttal or if he files an answer indicating acceptance of the action of the APDAB, CG, MILPERCEN will take final action for the Secretary of the Army.

d. When revised or new findings of the CG, USAPDA or the APDAB do not affect the ultimate disposition of the member or reduce his disability rating, CG, MILPERCEN, will take final action on the case by direction of the Secretary of the Army.

e. Based upon review in HQDA of the findings and recommendations of the Physical Evaluation Board, CG, MILPERCEN, will take final action as shown below for the disposition of the member, by direction of the Secretary of the Army.

(1) Direct permanent retirement for physical disability under section 1201 or 1204, title 10, USC.

(2) Direct placement on the Temporary Disability Retired List under section 1202 or 1205, title 10, USC.

(3) Direct separation for physical disability with severance pay under section 1203 or 1206, title 10, USC.

(4) Direct separation for physical disability without severance pay under section 1203, title 10, USC.

(5) Direct separation for physical disability without severance pay or transfer to the retired reserve (para 4–13*e*) because of a condition which was neither incurred nor aggravated during any period of service.

(6) Direct separation for physical disabil-

ity without severance pay under section 1207, title 10, USC, when the disability was incurred as a result of intentional misconduct, willful neglect, or during a period of unauthorized absence.

(7) Direct return to duty when it has been determined that the member is physically fit to perform the duties of his office, grade, rank, or rating.

(8) Return the case to the MTF commander for appropriate action under other pertinent regulations, when the member has been found physically fit.

(9) Direct release from active duty and reversion to retired status of retired members serving on active duty who are found physically unfit.

4-20. Disposition of medical records. When medical records are contained in cases received by DAPC-PAS-RD, they will be removed and returned to the MTF which referred the member to a PEB.

TABLE 4-1.

LOCATION OF PHYSICAL EVALUATION BOARDS AND AREAS SERVICED

Instructions

CONUS Hospitals. Medical board proceedings, and supporting records, which recommend referral to a Physical Evaluation Board, including results of TDRL examinations, will be forwarded to the president of the supporting PEB at one of the locations listed below as determined by the Cmdr, USAPDA.

Fort Gordon, GA 30905

Fort Sam Houston, TX 78234

Presidio of San Francisco, San Francisco, CA 94129

Walter Reed Army Medical Center, Wash, DC 20012

Oversea Hospitals. Members assigned in an oversea command and those on the TDRL who are residing in an oversea area will be processed by a PEB in CONUS as shown below. Medical board proceedings and supporting records, which support referral to a PEB will be forwarded promptly to the PEB designated below:

Cases originating in:	Will be forwarded to the president of the PEB at:
ALASKA, FAR EAST AND PACIFIC	Presidio of San Francisco, San Francisco, CA 94129
SOUTH AMERICA AND CARIBBEAN AREA	Fort Gordon, GA 30905
EUROPE, AFRICA AND MIDDLE EAST AREA	Walter Reed Army Medical Center, Wash, DC 20012

TABLE 4-2.

ASSEMBLY OF CASE RECORDS BY PEB

Section I—INFORMAL PROCEEDINGS

	ORIG	DRC	MBR	HOSP	HR	PEB
Documents are to be assembled in the following order, availability based on type case.						
DA Form 199 (PEB Proceedings).	X	X	X	X	X	X
DA Form 3947 (Medical Board Proceedings) with attached SF 502 and SF 88 (Exhibit A).	X	X	X	X	X	X
Copy of orders appointing PEB (Exhibit B).	X	X				

TABLE 4-2.—Continued

	ORIG	DRC	MBR	HOSP	HR	PEB
Documents such as letters, efficiency reports or personal statements which provide evidence of physical ability or inability to adequately perform military duties.	X	X				
Other documents accepted as exhibits.	X	X				
DA Form 199 (For each prior informal PEB if there was more than one in current action).	X	X			X	X
Report of LOD (DD Form 261 or DA Form 2173, or copy of msg to TAG requesting LOD determination).	X					
Statement from custodian of member's personnel records that member is not pending unfavorable action (AR 600-31), or statement from General Courts-Martial authority as prescribed in paragraph 1-4.	X					
DA Form 20 (DA Form 2) (Enlisted Qualification Record) or DA Form 66 (DA Form 2-1) (Officer Qualification Record) (Copy only)	X					
Rebuttal or statement in lieu thereof by member, next-of-kin, legal guardian or counsel and action by PEB.	X	X				
Statement by recorder when member fails to respond to notification of PEB action.	X	X				
Request of member for PCS pending DA action if copy is available to PEB.	X					
Request for continuance on active duty in lieu of immediate disability separation or retirement and HQDA action.	X					
Medical and Health Records OR copy of request for designation of VA bed. (When member is scheduled for transfer to a VA facility, medical and health records will be returned by the PEB to the medical facility which convened the medical board. If scheduled for transfer to a VA hospital and approved LOD determination is not available, attach copies of all clinical records cover sheets, (DA Form 3647 or one of its variants to PEB proceedings.)	X					

Section II—FORMAL PROCEEDINGS

	ORIG	DRC	MBR	HOSP	HR	PEB
Documents are to be assembled in the following order.						
DA Form 199 (PEB Proceedings) (Attach transcript of formal hearing as continuation pages).	X	X	X	X	X	X
Documents submitted and accepted as exhibits.	X	X				
Copy of orders appointing PEB (Exhibit B).	X	X	X			
Notification of member, next-of-kin, or legal guardian of PEB action in a formal hearing.	X	X				
Rebuttal or statement in lieu thereof by member, next-of-kin, legal guardian or counsel and action by PEB.	X	X				
Statement by recorder when member fails to respond to notification of PEB action.	X	X				
Informal PEB Proceedings with exhibits.	X	X				
Medical and Health Records OR copy of request for designation of VA bed. (When member is scheduled for transfer to a VA facility, medical and health records will be returned by the PEB to the medical facility which convened the medical board. If scheduled for transfer to a VA hospital and approved LOD determination is not available, attach copies of all clinical records cover sheets (DA Form 3647 or one of its variants to PEB proceedings).	X					

TABLE 4-3.

ELIGIBILITY INDEX TABLE

RULE	A If the member is physically unfit by reason of physical disability and—	B The action is—
1	The disability was the result of his intentional misconduct or willful neglect, or was incurred during a period of unauthorized absence.	Discharge without benefits under this regulation (10 USC 1207).
2	He is a member of the Regular Army.	Go to table 4-4.
3	He is a non-Regular Army member of the Army called or ordered to active duty for a period of more than 30 days (except under 10 USC 270(b)).	Go to table 4-4.
4	He is a non-Regular member of the Army on active duty for 30 days or less, inactive duty training, or is on active duty for training under 10 USC 270(b) for any period of time (see note).	Go to table 4-5.

Note: See appendix A for definition of active duty and inactive duty training.

TABLE 4–4.

ELIGIBILITY INDEX TABLE FOR REGULARS AND MEMBERS ON ACTIVE DUTY FOR MORE THAN 30 DAYS EXCEPT UNDER 10 USC 270(b) (Rules 2 and 3, Table 4–3)

	A	B	C	D	E	F	G	H
RULE	If the member is entitled to basic pay, and the disability was incurred while he was entitled to basic pay.	And if he has at least 20 years of service.	And the percentage of his disability is—	And based upon accepted medical principals the disability is—	Member has at least 8 years of service.	Disability is proximate result of performing active duty.	Disability was incurred in LOD in time of war or National Emergency (note 1)—	The action is—
1	NO							Discharge under other than chapter 61, 10 USC. (Note 2.)
2	YES	YES	0–100	PERM				Permanent retirement under 10 USC 1201.
3	YES	YES	0–100	MAY BE PERM				Temporary retirement under 10 USC 1202.
4	YES	NO	30–100	PERM	YES			Permanent retirement under 10 USC 1201.
5	YES	NO	30–100	MAY BE PERM	YES			Temporary retirement under 10 USC 1202.
6	YES	NO	30–100	PERM	NO	YES		Permanent retirement under 10 USC 1201.
7	YES	NO	30–100	MAY BE PERM	NO	YES		Temporary retirement under 10 USC 1202.
8	YES	NO	30–100	PERM	NO	NO	YES	Permanent retirement under 10 USC 1201.
9	YES	NO	30–100	MAY BE PERM	NO	NO	YES	Temporary retirement under 10 USC 1202.
10	YES	NO	30–100		NO	NO	NO	Discharge with disability severance pay under 10 USC 1203.

TABLE 4-4.—Continued

ELIGIBILITY INDEX TABLE FOR REGULARS AND MEMBERS ON ACTIVE DUTY FOR MORE THAN 30 DAYS EXCEPT UNDER 10 USC 270(b) (Rules 2 and 3, Table 4-3)

	A	B	C	D	E	F	G	H
RULE	If the member is entitled to basic pay, and the disability was incurred while he was entitled to basic pay.	And if he has at least 20 years of service.	And the percentage of his disability is—	And based upon accepted medical principals the disability is—	Member has at least 8 years of service.	Disability is proximate result of performing active duty.	Disability was incurred in LOD in time of war or National Emergency (note 1)—	The action is—
11	YES	NO	UNDER 30		YES	NO	NO	Discharge with disability severance pay under 10 USC 1203. (Note 3.)
12	YES	NO	UNDER 30		NO	YES	NO	Discharge with disability severance pay under 10 USC 1203. (Note 3.)
13	YES	NO	UNDER 30		NO	NO	YES	Discharge with disability severance pay under 10 USC 1203. (Note 3.)
14	YES	NO	UNDER 30		NO	NO	NO	Discharge under other than chapter 61, 10 USC.

Notes:

1. The national emergency proclaimed by the President on 16 December 1950 (Proc No. 2914) has not been terminated. Until it is terminated, it is not necessary to determine whether the member has completed at least 8 years of service or whether the disability is the proximate result of performing active duty in cases covered by this table.

2. See chapter 5.

3. If a Reserve member is eligible under 10 USC 1209 (Has more than 20 years of satisfactory Federal Service), he may elect to be transferred to the Retired Reserve instead of being separated with disability severance pay.

TABLE 4-5.

ELIGIBILITY INDEX TABLE FOR NON-REGULAR MEMBERS ON ACTIVE DUTY FOR 30 DAYS OR LESS; INACTIVE DUTY TRAINING OR ACTIVE DUTY FOR TRAINING UNDER 10 USC 270(b) (Rule 4, Table 4-3)

	A	B	C	D	E	F
RULE	If the disability was due to an injury—	And was the proximate result of performing active duty—	And the member has at least 20 years of active Federal Service	And the percentage of his disability is—	And based upon accepted medical principles, the disability is—	The action is—
1	NO					Discharge under other than chapter 61, 10 USC (note 1)
2	YES	NO				
3	YES	YES	YES	0-100	PERM	Permanent retirement under 10 USC 1204
4	YES	YES	YES	0-100	MAY BE PERM	Temporary retirement under 10 USC 1205.
5	YES	YES	NO	30-100	PERM	Permanent retirement under 10 USC 1204.
6	YES	YES	NO	30-100	MAY BE PERM	Temporary retirement under 10 USC 1205.
7	YES	YES	NO	UNDER 30		Discharge with disability severance pay under 10 USC 1206 (note 2).

Notes:

1. See chapter 5.
2. If member is eligible under 10 USC 1209 (has more than 20 years of satisfactory Federal service), he may elect to be transferred to the Retired Reserve instead of being discharged with severance pay.

TABLE 4-6.

DISTRIBUTION OF PEB PROCEEDINGS AND ALLIED CASE RECORDS (Note 1)

RULE	When PEB action is—	Original	Copy 1	Copy 2	Copy 3	Copy 4	Copy 5
1	To forward disability evaluation case for review and action by Headquarters, Department of the Army.	Is forwarded to Cdr, USAPDA.	Is forwarded to Cdr, USAPDA.	Is retained at PEB	To MTF (notes 2 & 3)	To member.	To health record.
2	To forward unfit finding for continuation on AD under chapter 6 for action by Headquarters, Department of the Army.	Is forwarded to Cdr, USAPDA.	Is forwarded to Cdr, USAPDA.	Is retained at PEB.	To MTF (note 2)	To member.	To health record.
3	To return fit finding in chapter 6 cases to hosp for disposition.	Return to MTF (note 2).	Is forwarded to Cdr, USAPDA.	Is retained at PEB.	To MTF (note 2)	To member.	To health record.

Notes:
1. Records listed in table 4-2.
2. Commander of the medical treatment facility at which the medical board convened.
3. For TDRL cases, furnish copy to the MTF Commander responsible for TDRL periodic examination.

DEPARTMENT OF THE ARMY
U.S. ARMY PHYSICAL DISABILITY AGENCY
U.S. ARMY CENTRAL PHYSICAL EVALUATION BOARD
WALTER REED ARMY MEDICAL CENTER
WASHINGTON, D. C. 20012

USAPDA-C (Date)__

SUBJECT: Notification of a Formal Physical Evaluation Board

RANK, NAME OF SERVICE MEMBER
Street Address
City, State 00000

1. You are hereby notified of a formal hearing of your case before the US Army Central Physical Evaluation Board, on _____, at _____a.m., in Building 101, Room 2159, Forest Glen Section, Walter Reed Army Medical Center, Washington, DC 20012.

2. Consistent with the elections made by you on _____ in regard to the findings and recommendations of the informal hearing of your case the information contained in the paragraph indicated by an "X" below, applies.

/___/ Since you requested regularly appointed counsel to represent you, _____US Army Central Physical Evaluation Board, Forest Glen Section, Walter Reed Medical Center, Washington, DC 20012, has been appointed to advise you in the preparation of your case, assist in the examination and cross-examination of witnesses, and assist in the conduct of your case before the Board. Since a postponement cannot be granted solely on the grounds that you have not contacted Counsel, your failure to get in touch with regularly appointed Counsel may result in your case being submitted to the board with little or no argument on your behalf. You must communicate with him within 3 days after receipt of this letter and prior to signing the attached acknowledgement, by calling collect, Area Code 202, 576-5214.

/___/ Since in your elections, you indicated that you will have counsel of your own choice, it should be noted that counsel may be either civilian, military or both; provided that the securing of such counsel does not result in expense to the Government or in unreasonable delay of the formal board proceedings; and providing that military counsel of your choice is determined to be reasonably available. _____ US Army Central Physical Evaluation Board, Forest Glen Section,

Figure 4-1. Notification to member of formal PEB

USAPDA-C DATE
SUBJECT: Notification of a Formal Physical Evaluation Board

Walter Reed Army Medical Center, Washington, DC 20012, will, unless properly excused, act as associate counsel. You, or your counsel, must communicate with the associate counsel within 3 days after receipt of this letter and prior to signing the attached acknowledgement, by calling collect, Area Code 202, 576-5214.

3. You and your counsel are entitled to examine all documentary evidence, to examine and cross-examine witnesses, and to present your case orally or in writing. If you have selected a counsel of your own choice, complete the attached statement authorizing him access to your medical records and give the statement to your counsel.

4. The following witnesses will be notified by the Recorder:

5. At your request, the Recorder will arrange to secure the attendance of other witnesses who are members or employees of the Army or other Armed Services, if they are reasonably available. You are responsible for the attendance of witnesses who are not members or employees of the Army or other Armed Services.

6. It is requested that you complete and sign the attached acknowledgement and return it within 3 days after receipt.

FOR THE PRESIDENT:

Incl
1. Acknowledgement
2. Self-addressed envelope

Figure 4-1. (continued)

SUBJECT: Notification of a Formal Physical Evaluation Board

President
US Army Central Physical Evaluation Board
Walter Reed Army Medical Center, Washington, DC 20012

1. I acknowledge receipt of the notice that the US Army Central Physical Evaluation Board will hold a formal hearing of my case on_____.

2. /__/ I do not require any additional time to prepare my case.

/__/ I request ____ additional days to prepare my case (A written request, stating my reasons for this extension of time is attached.)

3. I (My counsel) have (has) communicated with the regularly appointed counsel (associate counsel) as required in paragraph 2 of the letter of notification.

4. I desire that the Recorder arrange for the attendance of witnesses whose names and addresses are listed below, who are members or employees of the Army or other Armed Services (if none so state.)

_____ (Date)

_____ (Signature)

_____ (Grade and SSN)

Figure 4-1. (continued)

US ARMY PHYSICAL EVALUATION BOARD
LETTERMAN ARMY MEDICAL CENTER
San Francisco, CA 94129

_____Date_____

DEAR (Next-of-kin, legal guardian):

The Army Physical Evaluation Board will convene on _____ at 10 a.m. (Designated place), Letterman Army Medical Center, San Francisco, California, to evaluate the physical condition of your (Relationship) (Grade, name, service number).

Since the member's physical condition precludes his personal appearance, he will not be present at this hearing. (Grade, name, address) has been appointed military counsel to represent (First name), but you may arrange for representation by other counsel of your choice at your own expense if you wish. You may attend the hearing if you desire and you and your counsel are entitled to examine all documentary 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.

The following witnesses will be called by the board: (If none so state.)

The recorder will arrange to secure attendance of other available witnesses desired by you or, under appropriate circumstances, obtain their depositions and other evidence. Following the formal hearing you will be notified of the board's findings and you will be required to indicate whether you concur with those findings or desire to submit a rebuttal. The rebuttal may be prepared by you or, on your request, by counsel.

The Physical Evaluation Board is a board of officers appointed to determine the following facts regarding each member referred to it:

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

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

Whether the disability is, or is not the proximate result of the performance of military duty, and

Establish a percentage of disability.

Please complete the inclosed letter, indicating your desires and intentions, and return the original and one copy of this notice in the self-addressed envelope. If your reply is not received by the Physical Evaluation Board within seven 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,

_____
(Signature of PEB president)

2 Incl
1. Printed indorsement.
2. Self-addressed envelope

Note: This letter *WILL NOT* be in pre-printed or mimeographed form and will be signed by the president of the PEB.

Figure 4-2. Notification to next-of-kin (legal guardian) of formal PEB hearing.

(Date)

President
Physical Evaluation Board
Letterman Army Medical Center
San Francisco, CA 94129

Dear Sir:

With reference to the formal Physical Evaluation Board hearing which will convene for consideration of my (relation) case, the following statements indicate my wishes in the matter:

/__/ I will be present on _____ when the Board considers this case and such appearance will be at my own expense

/__/ I do not desire to be present when the board considers this case.

/__/ I request that (name of appointed counsel) represent_____ in this matter.

/__/ I desire counsel of my own choice to represent_____ in this matter. His name and address are:

_____

_____

I desire that the recorder arrange for the attendance of military witnesses whose names and addresses are listed below. I understand that arranging for the attendance of other witnesses and their expenses are my responsibity.

_____
(Signature of next-of-kin)

Figure 4-2 (continued).

DEPARTMENT OF THE ARMY
US ARMY PHYSICAL EVALUATION BOARD
LETTERMAN ARMY MEDICAL CENTER
San Francisco, CA 93129

_____(Date)_____

Office Symbol
SUBJECT: Proceedings of Formal Physical Evaluation Board
TO: (Name, grade and address of member)

1. The inclosed copy of the proceedings of the recent hearing in your case is forwarded for your information and retention. You are requested to reply within 3 days after you receive this letter. Check one of the comments in the reply prepared for you below, enter date and your signature in the space provided, and return in the self-addressed envelope furnished for this purpose.

2. If you do not agree with the recommended findings of the board, you must prepare a letter of rebuttal, that is, a letter stating your reasons for disagreement. This letter of rebuttal must be prepared in two copies, addressed to the Army Physical Evaluation Board and mailed to this office within 3 days. Should you need more time for valid reasons, you may request a reasonable extension in the reply below. The counsel who represented you at the hearing may assist you in this matter.

3. If, within the 3 days allowed, you do not submit a rebuttal, or request an extension of time, it will be assumed that you agree with the recommendation of the Board and your case will be forwarded to Headquarters, Department of the Army, for review and action.

FOR THE PRESIDENT OF THE PHYSICAL EVALUATION BOARD.

2 Incl
1. PEB Proceedings
2. Self-addressed envelope.

Figure 4-3 Notification to member of results of PEB action (Formal Board).

1st Ind

SUBJECT: Proceedings of Formal Physical Evaluation Board

TO: President, US Army Central Physical Evaluation Board, Walter Reed Army Medical Center, Washington, DC 20012

/__/ I agree with the recommendations.

/__/ I do not agree with the recommendations, however, I do not desire to submit a rebuttal.

/__/ I do not agree with the recommendations and inclose a letter of rebuttal.

/__/ I do not agree with the recommendations and request until _____ to submit a rebuttal. My reason for this request is:

_____ _____
(Date) (Signature)

Figure 4-3. (continued)

US ARMY PHYSICAL EVALUATION BOARD
LETTERMAN ARMY MEDICAL CENTER
San Francisco, CA 94129

OFFICE SYMBOL (Date)

Dear (Name of next-of-kin or legal guardian):

The Army Physical Evaluation Board considered the physical condition of your (relation) (Grade, name) or (date). (Grade and full name), Judge Advocate General's Corps, the regularly appointed military counsel, represented your (relation) before the Board.

The Board found that your (relation) is one hundred percent permanently disabled. This means that the Board recommended that he be compensated for a complete disability which was incurred while in the military service and was the proximate result of the performance of such service. The findings of the Board are not final, however, until approved by the Secretary of the Army.

You have the right to submit a written statement concerning the recommendations of the Board. The statement may take the form of a rebuttal to the findings, or it may be a statement that you accept the recommendations or that you do not desire to submit a rebuttal. You may request additional time in which to prepare a rebuttal, if necessary. The rebuttal, statement of acceptance, or request for more time must be submitted within seven days after you receive this letter. A printed form and a self-addressed envelope are inclosed for your convenience in replying to this letter.

If no reply is received within the allotted time, the appointed military counsel will take appropriate action in behalf of your (relation) with regard to the recommendations of the board.

You will be notified as soon as it has been determined to which Veterans Administration hospital your (relation) will be transferred.

Sincerely yours,

(Signature of PEB President)

3 Incl
1. PEB Proceedings
2. Printed form letter.
3. Self-addressed envelope.

Note 1: The second paragraph above will, of course, vary, dependent on the recommendation of the PEB.
Note 2: The fifth paragraph is optional and dependent upon circumstances.
Note 3: This letter will NOT be in preprinted or mimeographed form and will be signed by the president of the PEB.
Note 4: The seven days referred to in the third and fourth paragraphs are exclusive of normal mailing.
Note 5: Use the appropriate enclosure (form letter) depending on whether or not the member is entitled to disability benefits.

Figure 4-4. Notification to next-of-kin (legal guardian) of PEB action.

INCLOSURE TO NOTIFICATION LETTER TO NEXT-OF-KIN

(Date)

President
US Army Physical Evaluation Board
Letterman Army Medical Center
San Francisco, CA 94129

With regard to the recommended findings of the formal Physical Evaluation Board dated _____ in the case of my (Relation):

(Check appropriate box(es))

/ / I do NOT desire to make a rebuttal.

/ / I desire to rebut the findings of the Board and such rebuttal is inclosed.

/ / I request until (Date) to prepare and submit a rebuttal.

/ / It is my desire that the appointed counsel act in my behalf in this matter, and that he submit a rebuttal if he desires such to be indicated.

(Signature) _____

(Address) _____

_____

NOTE: Although paragraph 3 of notification appears to make the fourth block unnecessary, if the next-of-kin should check the fourth block, it provides an additional safeguard in case of future claim by the next-of-kin.

Figure 4-4. (continued)

ANOTHER TYPE OF INCLOSURE TO NOTIFICATION LETTER
TO NEXT-OF-KIN

(Date)

President
US Army Physical Evaluation Board
Letterman Army Medical Center
San Francisco, CA 94129

Dear Sir:

I have this date been informed of the Physical Evaluation Board findings in the case of _____. I understand that these findings, if approved by Headquarters, Department of the Army, will result in separation from the service without compensation of any kind because service in the Army was not the cause of the disability.

I hereby indicate my wishes with respect to exercising the right of rebuttal in this matter by initialing the appropriate box below:

/__/ I do not desire to exercise the right of rebuttal.*

/__/ A statement of rebuttal is attached hereto for inclusion with the Board proceedings.*

/__/ I request until_____to prepare and submit a rebuttal.

/__/ I request that the appointed counsel act for me and that he submit a rebuttal if he deems such to be indicated.

(Signature)

(Address)

*Initial only appropriate box.

Sign and return two (2) copies.

Figure 4-4. (continued)

US ARMY PHYSICAL EVALUATION BOARD
LETTERMAN ARMY MEDICAL CENTER
San Francisco, CA 94129

Office Symbol
LAST NAME, FIRST, INITIAL

(Date)

SUBJECT: Waiver of Right to Rebut

TO: Commander, US Army Physical Disability Agency
Forest Glen Section, WRAMC, Wash, DC 20012

1. On (Date) (Grade, Name, SSN) received a copy of the formal proceedings of the Physical Evaluation Board convened in his case on_____. This is evidenced by the receipt signed by (Name).

2. (Name) after being fully apprised of his rights as to the submission of a rebuttal or a request for an extension of time to prepare such rebuttal, has failed to do so as of this date.

3. In view of the provisions of paragraph _____, AR 635-40, it is deemed that (Name) has effectively waived his right to a rebuttal and the proceedings are forwarded accordingly.

FOR THE PRESIDENT OF THE PHYSICAL EVALUATION BOARD:

Recorder

Figure 4-5. Waiver of right to rebut (Mentally competent only)

US ARMY PHYSICAL EVALUATION BOARD
LETTERMAN ARMY MEDICAL CENTER
San Francisco, CA 94129

_____(Date)_____

(Office Symbol)
201 Last name, first, initial
SUBJECT: Counselor's Statement Concerning Rebuttal

TO: Commander, US Army Physical Disability Agency,
Forest Glen Section, WRAMC, Wash, DC 20012

1. The evaluated member, _____, has been determined to be mentally incapable of commenting on the recommended findings in (His) (Her) case.

2. As counsel for the member I have carefully studied the evidence and proceedings in this case and feel that a full and fair hearing was conducted. In behalf of the evaluated member, I do (do not) desire to exercise the right of rebuttal in his (her) behalf.

_____(Counsel signature)_____

Note: Paragraph 2 will vary depending upon circumstances of the case. The counsel must, of course, be diligent in the exercising of his power of counsel, particularly in cases where proposed findings are unfavorable to the member.

Figure 4-6. Counselor's statement concerning rebuttal.

DEPARTMENT OF THE ARMY
US ARMY PHYSICAL EVALUATION BOARD
LETTERMAN ARMY MEDICAL CENTER
San Francisco, CA 94129

(Office Symbol) _____(Date)_____

SUBJECT: Convening of Physical Evaluation Board
TO: (Name, rank and address of member)

1. This board plans to reevaluate your physical disability at a formal hearing in the near future. It is not necessary for you to be present at this hearing, but you may do so if you desire. Further, a counsel regularly appointed to this board will represent your interests at the hearing but you may also have a counsel of your own choice, either military or civilian, provided such counsel does not result in expense to the Government.

2. You are requested to check two of the comments in the reply prepared for you below, enter date and your signature in the spaces provided, and return this letter in the attached self-addressed envelope on or before _____.

3. If you fail to reply by that date, it is assumed that you waive your rights with respect to counsel of your choice and appearance before the board and the regularly appointed counsel will represent you. A copy of the proceedings containing the recommended findings of the board will be mailed to you shortly after the hearing.

4. If you indicate your desire to appear before the board in person, travel orders stating the date and time of the hearing will be mailed to you in the near future.

FOR THE PRESIDENT OF THE PHYSICAL EVALUATION BOARD:

1 Incl _____(Signature of recorder)_____
Self-addressed envelope

Figure 4-7. Notification of reconvening of PEB and acknowledgement of receipt.

1st Ind

(Date) _____

TO: President, US Army Physical Evaluation Board,
Letterman Army Medical Center, San Francisco, CA 94129

Check one:

/__/ I desire to appear before the Physical Evaluation Board

/__/ I do not desire to appear before the board at this hearing.

Check one:

/__/ I desire regularly appointed counsel to represent me at this hearing.

/__/ I will have a counsel of my own choice (at no expense to the Government) to represent me at this hearing.

_____ (Date) _____ _____ (Signature) _____

Figure 4-7. (continued)

CHAPTER 5

EXPEDITIOUS DISCHARGE

5-1. General. This chapter provides for the expeditious discharge of enlisted personnel who, in accordance with chapter 3, AR 40-501, are not qualified for retention on active duty by reason of physical disability which was neither incurred nor aggravated during any period in which the member was entitled to basic pay.

5-2. Applicability. The provisions of this chapter apply to all enlisted members of the Army except the following:

a. Members who are mentally incompetent.

b. Members to whom disclosure of information regarding their condition would be deleterious to their physical or mental health.

c. Members who will require continued hospitalization or institutional care subsequent to separation.

d. Members who demand consideration by a PEB.

e. Members who are eligible for and request continuance on active duty under the provisions of chapter 6.

f. Members who are ineligible for processing under this regulation, as described in paragraph 1-2.

5-3. Procedures. *a.* When a commander believes that a member of his command is unable to perform the duties of his office, grade, rank or rating because of physical disability which was neither incurred nor aggravated during any period in which the member was entitled to basic pay, he will refer the member for medical evaluation to the Commander of the MTF which provides primary medical care to his command. The request for evaluation will be in writing and will state the commander's reasons for believing that the member is unable to perform his duties and that the physical disability was neither incurred nor aggravated during any period in which the member was entitled to basic pay.

b. The Commander of the MTF will conduct a type-A medical examination as prescribed in chapter 10 and appendix IX of AR 40-501. The SF 88 will be prepared in eight copies if the examination indicates that the member is not medically qualified for retention and is to be referred to a medical board. The original and six copies of the SF 88 will be forwarded to the medical board for its use in consideration of the case and attachment to the records of the proceedings. The eighth copy will be retained by the medical treatment facility accomplishing the examination. When the medical board is to be convened at a medical treatment facility other than the one accomplishing the examination, the SF 88 will be forwarded by indorsement to the basic communication which requested the examination.

c. Evaluation by a medical board will be accomplished in accordance with AR 40-3.

d. Upon receipt of medical board proceedings recommending separation of a member because of physical disability which was incurred or aggravated when the member was not entitled to basic pay, the Commander of the MTF upon approval of medical board proceedings, will refer the case to his PEBLO Officer for explanation to the member, advice of his rights, and the offer of an opportunity for expeditious discharge providing that the member agrees with the findings of the medical board and that the member is otherwise eligible for discharge.

e. The PEBLO will advise a member eligible for consideration under this chapter of the following:

(1) That he may not be separated under this chapter if he does not agree. If he does not agree, his case will be referred to a PEB for determination of whether he is fit or unfit because of physical disability and, if he

is unfit, whether he is entitled to benefits administered by the Army.

(2) An evaluation of his case by a medical board has found that the member is not medically qualified for retention on active duty, and that his condition is considered to be the result of a disability which has no connection with the member's military service.

(3) If the member agrees with the findings of the medical board that his physical disability existed prior to service and was not aggravated thereby, he may apply for expeditious discharge under the provisions of this chapter.

(4) His application and the approved medical board's report will be forwarded to the commander having separation authority who, if he approves the action, will order prompt separation.

(5) Any member of the Army discharged under the provisions of this chapter may not be considered for any disability benefits administered by the Army under chapter 61, title 10, USC. He may, however, apply for compensation, pension, or other benefits administered by the Veterans Administration. Entitlement to these benefits will be determined by the Veterans Administration.

f. After the member has been informed of the rights and conditions enumerated above and declines the opportunity to apply for expeditious discharge, the PEBLO will notify the Commander of the MTF in writing, stating that the member has been fully informed of the circumstances and his rights and that he has declined to apply for expeditious discharge under the provisions of this chapter. Further processing of the case will be in accordance with the procedures prescribed in chapter 4.

g. After the member has been informed of the rights and conditions enumerated above and indicates a desire to apply for expeditious discharge, he will be afforded necessary assistance in preparing an application on DA Form 2496 (Disposition Form) (fig. 5-1).

h. Upon completion of the application, the PEBLO will return the case records to the Commander of the MTF for referral to the member's immediate commander.

i. When the findings and recommendations of the medical board that a member should be separated under this chapter have been approved and the member has submitted the required application for expeditious discharge, the application and six copies of the medical board will be forwarded to the member's immediate commander who will refer the case to the separation authority specified in paragraph 5-4 for discharge of the member. The forwarding indorsement will include a statement as to whether any disciplinary or other action which may affect the member's disposition is pending and, if so, the nature of such action.

5-4. Authority to order discharge. Discharge of a member who is processed under the provisions of this chapter may be approved and ordered by a commander specified in paragraph 2-17*a*, AR 635-200.

5-5. Action by Commander authorized to effect discharge. *a.* Commanders authorized to effect the discharge of members under provisions of this chapter will accomplish such discharge within 72 hours after receipt of authorization therefor. Members to be discharged will be counseled as prescribed in current regulations, and will complete veterans application for compensation or pension at separation from service (VA Form 21-526e) or sign a statement in lieu thereof (DA Form 664 (Serviceman's Statement Concerning Application for Compensation from the VA)). Final separation processing will be accomplished in accordance with current regulations, except that no medical examination will be accomplished during separation processing unless there is reason to believe that material change has occurred in the member's physical or mental condition since his appearance before the medical board.

b. In the event of development of a circumstance described in paragraph 1-2, making the member ineligible for processing under this regulation, the commander authorized to order separation may disapprove the re-

quest for separation under this chapter and *direct other appropriate disposition.*

c. Unless otherwise indicated, DD Form 256 or DD Form 257A, as appropriate (see AR 635-200), will be issued to discharge enlisted members. DD Form 214 will be prepared in each case. An entry, "severance pay not authorized" will be made in item 30 of the DD Form 214.

d. One copy of the approved report of medical board proceedings (with copy of the report of the medical examination) will be furnished the member and one copy will be attached to copies no. 2, 3, and 4 of the DD Form 214.

e. One copy of each of the documents listed in (1) through (4) below will be transmitted through the commander of the medical treatment facility providing primary medical care for the headquarters effecting the discharge to the CG, US Army Recruiting Command, ATTN: USARCAO-M, Ft. Sheridan, IL 60037. A cover letter will cite this regulation as authority for the transmittal and will furnish the date on which the member was discharged, the date of the member's entry on active duty, and the name and location of the medical facility which conducted the member's medical examination prior to his enlistment or induction.

(1) Report of Medical Examination (SF 88) and Report of Medical History (SF 93) pertaining to entry pre-induction, induction, enlistment, or call to active duty examination.

(2) Report of Medical Examination (SF 88) and Report of Medical History (SF 93) pertaining to the separation examination.

(3) Medical Board Proceedings (DA Form 3947).

(4) Narrative Summary (SF 502).

TO: Commander, (Official designation of MTF)

1. I request discharge for physical disability. I have been informed that, based upon the findings and recommendations of a medical board, I am considered not qualified for retention in the military service by reason of physical disability which has been found to have existed prior to my enlistment (induction) and which is 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 member of the Army who is separated for physical disability. I understand that this includes consideration of my case by the adjudicative system established by the Secretary of the Army for processing disability separations. However, I elect not to exercise this right. I also understand that entitlement to VA benefits will be determined by the Veterans Administration.

3. If this application is approved, I understand that I will be separated by reason of physical disability (EPTS) and will receive a discharge of the type commensurate with the character of my service, as determined by the officer designated to effect my separation.

(Witness-PEBLO)	(Member)
(Date)	(Grade) (SSN)

DA Form 2496.

Figure 5-1. Application for expeditious discharge

CHAPTER 6

CONTINUANCE OF DISABLED PERSONNEL ON ACTIVE DUTY

6–1. General. This chapter prescribes procedures under which certain members of the active Army, who are eligible for retirement or separation because of physical disability, may be continued on active duty upon approval of their application for waiver.

6–2. Objective. The primary objective of this program is to conserve manpower by effective utilization of needed skills or experience. A member who is not physically qualified for further active duty has no inherent legal or vested right to be continued on active duty, and disapproval of such a request has no bearing on the disposition of a case processed under other chapters of this regulation.

6–3. Ultimate retirement or separation. An individual continued on active duty under the provision of this chapter will be penalized for such service. At the time of his ultimate retirement or separation, the disqualifying defect will be reevaluated and documented to reflect whether the condition has remained the same, increased in severity, improved or has been cured, and the case referred to a PEB. Since the finding of unfitness has been established by a previous board, a member whose condition has remained the same or has increased in severity will be found unfit since the basis for the finding of unfitness is still present. A member whose condition has improved, or has been cured will be reevaluated under current standards with respect to medical impairments which may be present and their effect as disabilities on performance of his duties.

6–4. Exception. A member otherwise qualified for continuance under the provisions of this chapter, who has completed 18 years but less than 20 years of active duty and requests continuance, will be processed under provisions of this chapter and his case forwarded to HQDA as prescribed in paragraph 6–10, regardless of the recommendations of medical board or PEB.

6–5. Qualifications for continuance. To be initially considered for continuance on active duty under the provisions of this chapter, a member must:

a. Be found unfit by a PEB because of a disability which was not the result of international misconduct, willful neglect or incurred during a period of unauthorized absence.

b. Be capable of maintaining himself in a normal military environment without adversely affecting his health or the health of others.

c. Be physically capable of performing useful duty in an MOS for which currently qualified or potentially trainable.

d. Be capable of performing useful active military service without undue loss of time from duty for medical treatment.

6–6. Disqualification for continuance. Members may not request continuance on active duty under the circumstances shown below. Should an application be received from a member when one or more of these prohibitions apply, it will be retained as part of the file and the PEB will cite this paragraph by an entry in the remarks section of DA Form 199 as the reason for not referring the records to HQDA for action under paragraph 6–11. Physical Evaluation Boards will dispose of such cases under chapter 4 of this regulation. A request will not be considered under this chapter if—

a. The medical board has stated that the member will be transferred to another medical treatment facility (e.g. VA hospital) for further long term treatment or rehabilitation, or

b. The member's mandatory retirement

date or mandatory release date is within 6 months of the date the case file is received by the PEB.

6-7. Application for continuance. A member on active duty being evaluated for possible unfitness because of physical disability may submit an application for continuance on active duty in lieu of being processed for disability retirement or separation. The member may apply while being evaluated by a medical board or a PEB. When a member expresses a desire to continue on active duty, a letter will be forwarded in six copies with the record of proceedings using the format in figure 6-1. One information copy of application will be forwarded as follows:

a. To HQDA (DACS-GO), WASH, DC 20310, for *all* general officers and *all* colonels selected for promotion.

b. To HQDA (DAPC-OPD-PA), Alexandria VA 22332, for officers and warrant officers under the purview of the Officer Personnel Directorate (except general officers).

c. To HQDA (DASG-PTS), WASH, DC 20314, for AMEDD officers and warrant officers (except general officers).

d. To HQDA (DAJA-PT), WASH, DC 20310, for officers and warrant officers of the Judge Advocate General's Corps (except general officers).

e. To HQDA (DACH-PEP), WASH, DC 20310, for officers of the Chaplain's Corps (except general officers).

f. To HQDA (DAPC-EPEEA), 9700 Page Blvd., St. Louis MO 63132, for enlisted personnel.

6-8. Special counseling required. Prior to signing an application for continuance on active duty, the member will be given special counseling by the PEBLO at the MTF where the medical board was convened. Counseling will include information about the effects of his application and rights and benefits afforded the member under chapter 61, title 10, USC, and this regulation (see app C). The member will be informed that if his request for continuance on active duty is disapproved by HQDA, his case will be returned to the PEB for processing under the provisions of this regulation for disability separation or retirement.

6-9. Reclassification procedures (enlisted members only). Reclassification action will be accomplished at HQDA upon receipt of an application for Continuance on Active Duty from Cmdr, USAPDA.

6-10. Processing applications for continuance. *a. Medical board procedures.* Policies and procedures prescribed in AR 40-3 will be utilized in the conduct of examinations and in medical board actions. When a member executes an application for continuance on active duty, as prescribed in paragraph 6-7, the medical board will indicate whether he is medically qualified for such continuance and will include a rationale for its findings. If the board indicates that he is medically qualified for continuance on active duty, assignment limitations will be specified. See paragraph 6-6d, AR 40-3, for specific rules. Upon approval of the medical board proceedings by the MTF commander, the case will be referred to the appropriate PEB with the records specified in paragraph 4-10; plus the following additional records:

(1) Application of the member for continuance on active duty.

(2) Whenever practicable, a recommendation concerning the member from the immediate commander under whose command the applicant was performing duty immediately prior to disability evaluation.

b. Physical evaluation board procedures. The PEB will consider, under this chapter, each case which contains an application for continuance on active duty even though a medical board may have recommended against continuance of a member. The function of the PEB in such cases is to establish that the member is physically unfit. The PEB's action is one of a series of actions to confirm the member's unfitness and determine whether he is acceptable for continuance on active duty. The PEB neither recommends for nor against his continuance.

(1) The PEB will determine what disability or disabilities are present and their severity and complete items 8a through 8e on DA Form 199. No disability rating will be made. Item 9 will be completed except for the reference to a combined rating which will be left blank. See appendix D for recommended disposition and item 10 entry.

(2) Since the PEB's action does not represent adjudication for the separation or retirement of the member, a formal board is not authorized nor are the actions of HQDA subject to rebuttal through the PEB. Accordingly, items 13, 14, and 15, DA Form 199, are not used.

(3) A member whose case is being considered by a PEB, if found unfit because of physical disability, may request continuance on active duty and have his request considered by the PEB even though he had declined to submit an application to the medical board. If he makes such a request, the PEB will telephonically request that the MTF Commander concerned forward an addendum to the medical board describing appropriate assignment limitations. Action should be expedited. No findings or recommendations relating to disability ratings will be made under these circumstances.

(4) On completion of action under this chapter, if the member is found unfit, the PEB will forward the record of proceedings in the number of copies required in table 4-6 and all supporting documents to the USAPDA, for further processing.

(5) If the PEB finds the member fit for duty and the member concurs in the finding, the case will be returned to the MTF concerned for disposition of the member. An information copy of the DA Form 199 with exhibits will be forwarded to the USAPDA, for statistical purposes.

c. Review by CG, USAPDA.

(1) If the CG, USAPDA confirms the PEB's finding that the member is unfit, he will forward the case file to the appropriate addressees listed in 6-7 above.

(2) If he does not agree with the PEB's finding, he will resolve the difference with the PEB before proceeding further. In unfitness is confirmed, he will forward the case file as provided in (1) above. If the member is found fit, he will return the case file to the PEB for disposition under *b*(5) above.

6-11. Action at HQDA. The case of a member who has applied for continuance on active duty (excluding cases of members barred from consideration by para 6-6) will be reviewed by HQDA to determine whether continuance of the member is consistent with applicable personnel utilization policies.

a. If the member's application is approved, the approving office will notify the MTF commander of the action and furnish assignment orders or instructions. An information copy of the action will be furnished to the PEB from which the case originated, the CG, USAPDA, and the member.

b. When HQDA determines that the member cannot be utilized in an assignment consistent with his ability or applicable personnel policies, the MTF commander will be notified promptly of the disapproval so that the member may be informed. The PEB from which the case originated will be furnished an information copy of the disapproval action.

6-12. Disposition of records. *a.* If the member's application for continuance on active duty is approved, the original of the DA Form 199 and the medical board proceedings and other inclosures to the DA Form 199, except medical records and health record and similar supporting documents, will be filed in the member's official military personnel file with a copy of the letter of approval. Medical records, Health Record and similar supporting documents will be returned, with the approval letter, to the MTF commander who sent the case to the PEB for disposition prescribed by other regulations. The MTF commander will provide the member a copy of the letter of approval. The remaining copy of the DA Form 199 and attachments is retained by HQDA as a working file copy and will be destroyed when no longer needed. Copies of PEB and medical board proceedings retained at the MTF will be annotated

by the MTF commander to reflect the approval action and filed. (See rule 2, table 4-3, this regulation, and fig. 7-1, AR 40-3, for distribution instructions). The letter of approval will be filed in the member's unit Military Personnel Records Jacket (DA Form 201).

b. If the member's application for continuance on active duty is disapproved, all records will be returned promptly to the PEB which originated the case with the information copy of the disapproval action.

6-13. PEB action upon disapproval. When the records of a case which has been disapproved by HQDA are returned to the PEB, the president will process the case under chapter 4 of this regulation. Prompt processing is essential. Propriety of the disapproval action is not a matter for consideration by the PEB in their subsequent adjudication. Accordingly, appeals or rebuttals and arguments which relate to such disapprovals will not be presented before PEBs.

6-14. Entries on medical and personnel records. Members continued on active duty under this regulation will have records annotated as prescribed below to insure proper identification, assignment, and/or retention on duties which they are physically qualified to perform.

a. Members who are found medically unfit because they do not meet retention medical fitness standards will have medical records coded with a "4" profile, code V with specific limitations indicated. This limiting profile is normally assigned at the MTF.

b. The MTF will sometimes refer a member as questionably medically unfit with two or more "3's" in the physical profile to a PEB because of two or more disabilities which individually are not unfitting but combine to make him unfit. When this occurs, the PEB medical officer will enter a "4" in the P factor of the serial, or under one of the other factors if appropriate, in item 76, SF 88 (Report of Medical Examination). The PEB medical officer is designated a profiling officer for the purpose of implementing this requirement.

c. Entries pertaining to physical profile status and assignment limitations will be made on DA Forms 2 and 2-1 (Personnel Qualification Record). A brief non-technical description of the defect will be recorded, together with the specific assignment limitation.

6-15. Utilization. Members approved for continuance on active duty under this regulation will be utilized in any element of the Army in the specialized fields for which they are qualified and in which they can perform duty effectively within their specific limitations.

a. When indicated, retraining will be accomplished prior to assignment. Members who are qualified for MOS training in any Army service school course for which a quota exists, may be ordered to the appropriate school for such training. If additional training is necessary in an MOS for which no school quota exists, the member will be ordered to on-the-job training at the installation to which assigned.

b. Members continued on active duty under this regulation will be utilized in worldwide duty assignments or training commensurate with their capabilities and physical limitations as prescribed by chapter 9, AR 40-501. When the approved medical board proceedings contain a specific recommendation that a member who has been fitted with an artificial eye or limb be stationed within a reasonable distance of a MTF capable of servicing the prosthesis, an assignment limitation to this effect may be imposed for a period not to exceed 1 year from the date of approval of the application.

6-16. Disposition of members unable to perform duty. Any member continued on active duty under the provisions of this regulation who is subsequently found to be unable to perform effectively the duties to which assigned, because of physical disability, will be referred to a MTF for reevaluation and appropriate disposition through the physical disability evaluation system.

6-17. Reevaluation and reenlistment. *a.* An

enlisted member continued on active duty under the provisions of this regulation who desires to reenlist upon termination of his present enlistment or expiration of the period for which continuance was approved will request a waiver of his unfitting condition for reenlistment. The request will be submitted on DA Form 3072, accompanied by a current Medical Board Proceedings (DA Form 3947, SF 502 and SF 88) recommending whether reenlistment should be accomplished as prescribed in line 3, table 3-1, AR 601-280, to the Commander Enlisted Eligibility Activity, 9700 Page BLVD., St. Louis MO 63132, who will approve or disapprove reenlistment. PEB consideration is not required. Such requests will be submitted between four and six months prior to expiration of term of enlistment or period for which continuance was authorized or as directed by HQDA. Examinations accomplished for this purpose may substitute for other scheduled periodic physical examination.

b. If reenlistment is disapproved the enlisted member will be referred to a MTF for disposition through the physical disability evaluation system.

6-18. Reevaluation on termination of waiver by HQDA. Any member continued on active duty, under the provisions of this regulation whose waiver is terminated by HQDA will be referred to a MTF for reevaluation and appropriate disposition through the physical disability evaluation system.

6-19. Duty during processing. Members being processed under this regulation may be placed on special duty as provided in AR 40-3, if assigned to the medical holding unit. If the member is attached to the medical holding unit, he may be returned to duty status with appropriate assignment limitations. These actions will be taken following PEB proceedings while awaiting action by HQDA.

TO: (Appropriate addressee in paragraph 6-7)

In the event that I am determined to be unfit because of physical disability, I ---------- , hereby make application for continuance on active duty with assignment to duties which I am able to perform within the limitations imposed by my physical disabilities. This request for continuance is in lieu of immediate evaluation and processing for disability retirement or separation action.

I understand that my application is subject to review and recommendation for continuance by a physical evaluation board and subsequent approval at Headquarters, Department of the Army.

I also understand that I must be able to maintain myself in a normal military environment without adversely affecting my health or requiring an inordinate amount of medical care; that I will be required to undergo periodic reevaluation of my disabilities to determine whether further continuance on active duty is in the best interests of the Government or myself; and that should I subsequently incur a service obligation, I remain liable to complete such obligation in spite of my condition unless my disabilities progress to a point so that I am no longer able to perform duty with appropriate limitations.

I further understand that 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 that I will not be separated without appropriate examination and physical disability evaluation processing.

I request consideration for assignment to one of the following installations. (List 3 in the order of preference).

1.
2.
3.

(Signature)

(Typed name)
(Grade and SSN)

Figure 6-1. Application for continuance on active duty

CHAPTER 7

TEMPORARY DISABILITY RETIRED LIST (TDRL)

7-1. General. This chapter establishes procedures for processing personnel on the TDRL.

7-2. Placement on the TDRL. A member who is unfit to perform the duties of his office, grade, rank, or rating will be placed on the TDRL if—

a. His disability has not stabilized at the time he is retired.

b. He has at least 20 years of service or his disability is rated at 30 percent or more, and;

c. He is otherwise qualified for physical disability retirement.

7-3. Temporary disability retired list. The TDRL will list names of all members temporarily retired. The list as a minimum will reflect identity of the member, the date placed on the TDRL, and the month and year in which the next examination is required.

7-4. Requirement for periodic examination. A member on the TDRL is required to undergo a periodic examination at least once every 18 months to determine whether there has been a change in the disability for which he was temporarily retired.

a. Members who have waived retired pay to receive compensation from the Veterans Administration, continue to be retired Army members and are required to undergo examinations when ordered by CG, MILPERCEN, acting on behalf of the Secretary of the Army.

b. Members recalled to active duty while still on the TDRL must also undergo a periodic examination when ordered by CG, MILPERCEN.

7-5. Counseling. A member on the TDRL will be counseled in the same manner as prescribed for a member undergoing initial evaluation, using the Disability Counseling Guide (app C).

7-6. Expeditious processing. To preclude the member suffering severe financial and other hardships, he will not be unduly detained or subjected to processing delays at the MTF. All portions of the examination will be accomplished expeditiously on a priority basis. In this connection, all involved agencies and personnel will insure that cases of members approaching expiration of 5-year TDRL tenure are identified as such and accorded priority handling to the maximum extent feasible.

7-7. Prompt removal from the TDRL. Medical examiners and adjudicative bodies will carefully evaluate each case and recommend removal from the TDRL as early as the member's condition will permit. Placement on the TDRL confers no inherent right to remain for the entire 5-year period allowed by section 1210 of title 10, USC.

7-8. Individual TDRL file. CG, MILPERCEN will maintain an active file for each member on the TDRL. The file will contain the following:

a. Complete identification, grade and total active service when placed on the TDRL, orders placing the member on the TDRL, and the current mailing address.

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

c. Current location of clinical, medical and/or health records to facilitate the next periodic examination.

7-9. Letter of instructions for periodic examination. *a. Procedural responsibilities.* Four months prior to the month during

which the examination is to be accomplished, MILPERCEN will, in coordination with USA Health Services Command, issue a letter of instructions to the MTF commander assigned responsibility for the examination. The letter will include—

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

(2) A statement that the periodic examination is required in accordance with this regulation, during the month prescribed.

(3) Location of medical records, if known. (Action to obtain all medical records will be taken by the MTF commander).

(4) Instructions regarding completion of inclosed travel order with respect to exact place and date of examination.

(5) Authority to the MTF commander to arrange for the examination to be conducted by, another US Government MTF, a civilian medical facility, or civilian physician(s), including medical consultants, as close to the member's home as circumstances and requirements of the case permit.

(6) Specific guidance governing conduct of the examination if appropriate.

b. Preparation of orders. Travel orders will be prepared by MILPERCEN and will accompany the letter of instructions. Such orders permit payment for TDY only for the period necessary to complete the TDRL examination and do not provide for periods of medical treatment subsequent to the examination.

c. Supporting documents. Proceedings of the PEB and supporting documents which placed the member on the TDRL, and a copy of the letter notifying the member of the examination will accompany the letter of instructions.

d. Final TDRL examination. MILPERCEN will initiate action as prescribed in *a* above and 7-10 below to process the member not later than 12 months prior to the fifth anniversary date of the member being placed on the TDRL. The MTF commander will be informed that the final examination must be expedited to insure removal from the TDRL prior to completion of 5 years on the list.

7-10. Notification letter to member. MILPERCEN will notify the member, by certified mail—return receipt requested, of the impending examination and the name, address, and telephone number of the designated MTF. He will also be informed that the MTF will contact and advise him of the name of the PEBLO who will assist him during and subsequent to the examination and of his right to telephone the MTF collect to resolve any problem. Additionally, he will also be informed that—

a. The MTF will arrange for and schedule the examination, and although every effort will be made to schedule the examination to meet his convenience, it must be accomplished within the calendar month prescribed.

b. The MTF will forward travel orders issued by MILPERCEN, if necessary, and information for obtaining transportation request and collection of authorized travel expenses, to include per diem allowance if applicable.

c. Failure to report for scheduled examination or to make acceptable arrangements with the hospital for accomplishment of the examination during the required month may result in termination of disability retirement pay.

d. He must inform the MTF of visits to civilian or military physicians or other Federal medical facilities for treatment while on the TDRL, and provide permission to obtain records of such visits, if available.

7-11. Removal from the TDRL. *a.* MILPERCEN will remove a member from the TDRL at the end of the 5-year statutory period, or sooner upon determination by the Secretary of the Army that the member's disability has become permanent (stabilized) or has improved to the extent that he is less than 30 percent disabled (in the case of those not eligible for length of service retirement) or he is physically fit for return to duty.

(1) *Permanent retirement.* If it is determined that the disability has become permanent, and is rated at 30 percent or more under the VASRD, or the member has at

least 20 years of service, his name will be removed from the TDRL and he will be permanently retired for physical disability and entitled to receive disability retired pay.

(2) *Separation.* If it is determined that the member's disability has become permanent and is rated at less than 30 percent under the VASRD, or has improved so that he is less than 30 percent disabled, even though his condition has not stabilized, and the member has less than 20 years of service, his name will be removed from the TDRL and he will be separated from the Army for physical disability with entitlement to disability severance pay.

(3) *Fit for return to duty.* If it is determined that the member is physically fit to perform the duties of his office, grade, rank, or rating, the following will apply:

(*a*) Former Regular Army officers and warrant officers will, subject to their consent, be recalled to active duty and action will be initiated 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 or warrant officer does not consent to be called to active duty, he will be separated or retired if eligible.

(*b*) Former Regular Army enlisted members will, subject to their consent, be reenlisted in their regular component, in the grade held on the day preceding the date placed on the TDRL, or in the next higher grade. If the member does not consent to reenlistment, he will be separated or retired if eligible.

(*c*) Former members of the Army Reserve will, subject to their consent, be reappointed or reenlisted in the Army Reserve in the grade held on the day preceding the date placed on the TDRL, or in the next higher grade or transferred to the Retired Reserve if eligible.

(*d*) Former members of the Army National Guard of the United States, will, subject to their consent, be reappointed or reenlisted in the ARNGUS in the grade held on the day preceding 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 of the state concerned. If he cannot be reappointed or reenlisted in the Army National Guard, the member will, subject to his consent, be reappointed or reenlisted in the Army Reserve or transferred to the Retired Reserve, if eligible.

(*e*) Former members with a service obligation under the Military Selective Service Act of 1967, as amended, who decline to (re) enlist on the day following removal from the TDRL may be transferred to the Ready Reserve. The period spent on the TDRL will be creditable as "service in one of the Armed Forces" and will be counted toward satisfying the member's reserve obligation.

(4) *Unfit for military service.* Once the diagnosis of schizophrenia has been established, a member will continue to be considered unfit for military service unless the original diagnosis was in error, and the member will be permanently retired or separated as outlined in *a*(1) and (2) above.

b. MILPERCEN will take the action described below when periodic examination cannot be performed:

(1) *Failure to report or reply.* If a member fails to respond to correspondence pertaining to the examination or fails or refuses to submit to examination, an effort will be made to determine the reason. If such action cannot be justified and the fifth anniversary of placement on the TDRL has not been reached, the Chief, Retired Pay Division, US Army Finance Support Agency, will be notified so that retired pay may be terminated. Member's name will be kept on the TDRL until the fifth anniversary unless sooner removed by other action.

(2) *Unable to locate.* When reasonable efforts to locate the member are unsuccessful, the action prescribed in (1) above will be taken.

(3) *Member imprisoned by civil authorities.* When a report by the responsible MTF commander indicates that examination of a member is not possible because he is imprisoned and civil authorities will not permit his examination, the action perscribed in (1) above will be taken.

(4) *Removal on fifth anniversary.* Six months prior to the fifth anniversary of placement on the TDRL, a final attempt will be made by MILPERCEN to contact a member ((1) and (2) above) or proper civil authorities ((3) above) and arrange a final examination. If this fails, the entire case file will be forwarded to the PEB nearest the member's last known location for consideration as provided in paragraph 7-20.

7-12. Restoration of eligibility. MILPERCEN may restore the member's eligibility to receive disability retirement pay if, after failure to report as ordered for the required periodic examination, he subsequently satisfactorily meets the examination requirements. Restoration of disability retired pay on notification by MILPERCEN to Chief, Retired Pay Division, will be retroactive to the date the member undergoes the examination provided he is still qualified for retention on the TDRL. The member's eligibility to receive retired pay may be made retroactive, not to exceed 1 year, provided he can show just cause for failure to respond to official communication or orders.

7-13. Responsible MTF. The Commander of the MTF designated to be responsible for the periodic examination of the member on TDRL will be informed in the manner prescribed by paragraph 7-9.

7-14. Selection of examining facility. *a.* Upon review of the medical records, the MTF commander or his designee will direct that the examination be conducted at one of the following locations in the order of preference listed:

(1) The MTF assigned responsibility for the examination.

(2) Other Federal medical facility at or near the member's home.

(3) Civilian operated clinic or hospital at or near the member's home.

(4) Civilian physician at or near the member's home.

b. Examination on an outpatient basis is preferred. However, when hospitalization is anticipated or when extensive tests or observations require inpatient status, the member will be ordered to report to the MTF designated or, if appropriate, to a Federal medical facility near the member's home. If the examination can be accomplished with the member in an outpatient status and circumstances of the case permit, the examinations may be conducted at a civilian medical facility or by civilian physicians at or near the member's home. If the member is hospitalized at the time examination is scheduled, a narrative summary from the hospital facility providing his care may suffice to meet the needs of a report of periodic examination.

c. The costs of examinations accomplished at MTFs, including consultations from civilian sources are payable from funds available to operate MTFs. The costs of examinations accomplished at civilian medical treatment facilities or by civilian physicians at or near the member's home will be charged to the allotment 21x2020 06-929 P84-0000.2572 S99999 and settled by the appropriate MEDDAC or medical center commander. Vouchers covering costs of medical examinations accomplished at other Federal agencies will be forwarded to HQDA (DASG-RMW), Wash, DC 20314, for settlement in accordance with AR 40-3.

7-15. Medical records. The Commander of the MTF assigned responsibility for the examination will promptly initiate a request for the member's medical records from information provided by MILPERCEN, and/or by the member. He will insure that the medical records are available to the examining physician prior to the periodic examination. The examining physician must return all records furnished with the report of examination to the MTF commander for forwarding to the appropriate PEB.

7-16. Notification of member. The MTF commander will coordinate the date, time, place, and other details of the examination with the member, recognizing that he may be employed and an absence from his job may be costly. Travel orders will be provided, if required, with instructions for obtaining a

transportation request or collecting authorized travel expenses to include per diem allowance. The name and telephone number of the PEBLO will be given with instructions to telephone collect or visit when information or assistance is needed. Notification to report for a scheduled examination will be by certified mail, return receipt requested. If the member does not acknowledge receipt or fails to report as directed, a second notification will be forwarded within 21 days using certified mail, with return receipt requested. The member will be specifically informed in the second notification that failure to comply will result in stoppage of Army retired pay. If this fails to elicit a response, the MTF commander will, within 60 days from date of initial attempt to contact the member, notify HQDA (DAPC-PAS-RD), Alexandria, VA 22332, of his inability to locate the member. Records will be retained by MTF pending instructions from MILPERCEN.

7-17. Examination of member. *a. Purpose of examination.* The TDRL periodic examination is first, to determine if there has been a change in the disability for which the member was placed on the TDRL, and, if a change has occurred, to determine his condition at the time of examination, or whether the disability has sufficiently stabilized to permit removal from the TDRL; and second, to identify any new disabilities incurred while on the TDRL.

b. Extent of examination. The examination must be objective and comprehensive, reported in a factual, detailed manner, fully describing the degree of severity of all impairments, including any from which he has recovered and new ones acquired while on the TDRL. One or more physicians will conduct the examination. Proceedings of previous PEB actions and all medical records will be made available to the medical examiner. Diagnostic, laboratory and radiological procedures, including photographs, should be employed to the extent necessary to establish and accurately describe the member's current physical condition. Further detailed requirements for examinations are contained in the Veterans Administration Physicians Guide—Disability Evaluation Examinations and the Veterans Administration Schedule for Rating Disabilities. See paragraph 6-5, AR 40-3.

c. Consultants. Advice of professional consultants may be obtained whenever indicated during accomplishment of periodic examinations. This may include forwarding case records to a specialized treatment facility for review and recommendations. A member may be transferred to another MTF for consultation purposes only when such transfer is directed by the MTF commander. MILPERCEN will be notified of the transfer. All medical records and x-rays involving members placed on the TDRL because of tuberculosis will be forwarded by the commander of the MTF conducting the examination to Fitzsimons Army Medical Center for review as prescribed by paragraph 6-13*c*, AR 40-3. Following a review of the medical records and x-rays by the specialized treatment center, the case will be returned to the MTF conducting the examination with appropriate findings and recommendations. The MTF commander will complete his report based on the findings and recommendations of the specialized treatment center prior to forwarding to the PEB for adjudication.

d. Members physically unable to travel or who are mentally incompetent. When the responsible hospital commander determines that a member is physically unable to travel (e.g., bedridden), or is or may be mentally incompetent, he will make all reasonable efforts to have the member examined, to include bringing the member to the hospital by ambulance or arranging for a visit by a physician to the member's residence when it is determined to be in the best interest of the Government. If the member is under medical treatment, current medical records from the MTF, or the physician treating the member, may provide sufficient clinical data as a basis for the report of periodic examination.

e. Members imprisoned by civil authorities. When it is determined that a member is imprisoned by civil authorities, the designated MTF commander will request that the confinement facility, or other appropriate

authority, accomplish a medical examination of the member and prepare a report of his current medical condition. The report will be processed in the normal manner upon receipt, and forwarded to the PEB for adjudication. If examination is not possible, or no report is received, the MTF commander will return the medical records and a report summarizing his efforts to obtain adequate information to MILPERCEN who will take action prescribed in paragraph 7-11*b*.

7-18. Report of examination. *a.* The report of the periodic examination may be prepared in letter or narrative summary form. It should contain an accurate medical history since the last examination and a report on all clinical evaluations and laboratory studies. The report should contain information regarding interim history, laboratory findings, details of physical examination, current condition, prognosis, results of consultation (e.g., x-ray reports, reports of EEG, ECG, audiometric examination, and un-retouched, color photographs of scars, copies of which should be attached to the report), and a comparative estimate of changes relative to the individual's previous condition. Additional information pertinent to an evaluation of a specific case should be included.

b. In addition to those diagnoses for which the member was originally placed on the TDRL, the report will also include a medical evaluation of all other significant defects that were incurred, or are discovered, after being placed on the TDRL. The report of examination must clearly indicate the etiology of defects discovered during the examination so a determination can be made of whether they relate to a condition that existed or was incurred while the member was on active duty or was incurred while the member was on the TDRL.

c. The examining physician should state whether or not, in his opinion, the conditions have stabilized. If not, an opinion should be expressed as to further progression or improvement of the disability, and a recommended time (not to exceed 18 months) for the next examination.

d. If disclosure to the member of information concerning his medical condition would adversely affect his physical or mental health, the fact will be noted in the report.

e. For members with psychiatric conditions, include a statement indicating whether or not the member is mentally competent for pay purposes; whether or not the member has the capacity to understand the nature of, and to cooperate in PEB proceedings and whether or not the member is dangerous to himself or others.

f. The report requires only the signature of the medical officer or physician designated to conduct the examination and will be forwarded to the commander of the MTF for his review and approval. If inadequate, deficiencies will be corrected before the report is forwarded to the appropriate PEB.

g. The MTF commander will afford the member an opportunity to review and comment on the report of examination prior to forwarding it to the PEB. If the member's health would be affected by disclosure of the content of the report, his next of kin will be permitted to act in his behalf. If the member (next of kin) does not agree with the report of examination, his objections will be reviewed and acted on by the MTF commander. The MTF commander is the final approving authority. However, any written appeal or objection prepared by or for the member will be attached to the medical examination report.

7-19. Review and forwarding of report of examination. The MTF commander or his designee will insure that the completed report clearly describes the member's present condition and functional impairment(s). He will return the report to the medical examiner if it is incomplete or insufficiently detailed or documented. Medical boards are not required for TDRL periodic physical examinations; however, the MTF commander may refer a TDRL examination to a medical board, particularly one which presents aspects of a problematical or controversial nature. If the report is complete, the fact of review will be noted thereon and signed by the reviewing officer. The report, consisting

of an original and 5 copies, and all medical and administrative case records, will be forwarded to the servicing PEB. The member's current mailing address, area code, and telephone number will be furnished to the PEB. A copy of the transmittal document will be furnished to HQDA (DAPC-PAS-RD), Alexandria, VA 22332.

7-20. PEB processing. *a. General.* Chapter 4 applies. Case will not be returned to MILPERCEN because of deficiencies or a need for additional information except through Headquarters, USAPDA. The board will be guided by medical fitness standards, rating principles, and policies in effect at the time of reexamination, and will determine if the member is fit or unfit, should be retained on the TDRL, permanently retired or separated from the service with or without severance pay.

b. Changes in member's condition while on the TDRL. The combined percentage rating approved at the time the member was placed on the TDRL cannot be changed by the PEB throughout the period the member is on the TDRL. A disability identified while the member is on the TDRL may have an etiologic relationship to a condition which existed during his active service. The disability rating, based on any changes in the degree of severity of previously identified disabilities which might increase or decrease the combined percentage rating will be appropriately adjusted only when the member is removed from the TDRL. However, when the member is recommended for retention on the TDRL, the PEB will make entries in items 8a, b, d and e of DA Form 199, if applicable, to record newly identified conditions. DA Form 199 will reflect the member's condition at the time of the most recent periodic examination. Changes or additions made in items 8a and b must be explained following the entries. When a member is recommended for permanent retirement, items 8a, b and g must be completed for all conditions present and not previously recorded. The PEB will explain in item 16, DA Form 199, the reason for variations between the original action (findings, recommendations or ratings) which caused the member's placement on the TDRL and current action removing him from the list. Explanations need not be lengthy, but must be understandable. Procedure for administrative relief which pertains to a correction or adjustment of the percentage of physical disability while a member is on the TDRL, is contained in chapter 3.

c. Notification procedure.

(1) When a PEB recommends removal of a member from the TDRL, the procedures described in chapter 4 for notification of the member and obtaining his election will be used.

(2) If the PEB recommends retention on the TDRL, no appeal by or for the member is authorized since the member's status is not changed. The following procedures apply:

(*a*) The member's copy of DA Form 199 will be forwarded by the PEB to the member as an inclosure to a letter of transmittal. (See fig. 7-1.) The letter of transmittal will inform the member of the next TDRL evaluation and that he has no appeal rights in the action taken. Transmittal will be by certified mail, addressee only, return receipt requested.

(*b*) At the same time, the responsible MTF commander (ATTN: PEBLO) will be furnished an information copy of the DA Form 199 and the letter of transmittal.

(*c*) When the PEB receives the receipt for the certified mail to the member, the receipt will be attached to a copy of the letter of transmittal and included in the file forwarded to the USAPDA.

(*d*) The case normally will include the return receipt or the envelope for the undeliverable letter of transmittal and the DA Form 199 when forwarded to the USAPDA. If the letter is not delivered, and receipt returned in 7 days and reasonable efforts to effect delivery fail, notification of attempts made will be entered on the copy of the letter of transmittal and the case will be forwarded to the USAPDA.

(*e*) If the CG, USAPDA, revises the PEB's recommendation, section IV, chapter 4 applies, except in those cases in which a change is made to retain the member on the

TDRL. The member will be informed of the decision to retain him on the TDRL and that no appeal is authorized since his status has not changed.

d. Formal hearing. If the member does not accept the findings and recommendations of the informal PEB removing him from the TDRL, and elects a formal hearing, the case will be processed as prescribed in chapter 4. When the member elects to appear in person at the hearing, the recorder of the PEB will issue travel orders which specify a reporting date, time and place, to include building and room numbers as appropriate. If the member lives in an area from which travel to the PEB is "local," as defined by paragraph 5200, Joint Travel Regulations, arrangements will be made locally by the PEB for the member's appearance before the PEB. If the member fails to appear as directed and has not notified the board in advance that he would be unable to appear, he will be deemed to have waived his right to personal appearance and the PEB will conduct the hearing without him.

e. Right of rebuttal. Subsequent to a formal appearance, the PEB counsel will advise the member of his rights and obtain his acceptance, nonacceptance, or rebuttal, as appropriate prior to departure from the board, if practical. For all other formal hearings, the member will be notified in writing by certified mail, return receipt requested, of the PEB findings and recommendations, advise him of his rights, and inform him that he has 7 days (exclusive of mailing time) in which to accept the PEB findings and recommendations or to decline to accept and submit a rebuttal or to request additional time in which to submit a rebuttal. If the member does not respond within the prescribed time and the certified mail receipt has been returned to show that he has, in fact, received his copy of the board proceedings, it will be assumed that he has waived his rights to a rebuttal, whereupon a statement to that effect and the certified mail receipt will be forwarded to the USAPDA. If the member does not respond within the prescribed time and the certified mail return receipt is not received by the PEB or if the correspondence is returned by postal authorities, the PEB recorder will seek verification of the member's address from MILPERCEN, the medical examining facility, US Army Finance Support Agency, or VA regional office. If the new address is obtained, the PEB results will be mailed to that address. If a new address is not available, the PEB recorder will summarize actions taken to contact the member in a letter of transmittal and forward the case to the USAPDA for review without elections.

f. Disposition without final examination. A case may be referred to a PEB as described in paragraph 7-11 without benefit of a recent examination. Findings and recommendations for disposition will be based on available information of record and the member will be informed of the action by certified mail directed to his last known address. The member will be counseled by the PEB counsel if he so requests. If a response is not received within 7 days, plus mailing time, forward the case to the USAPDA. Authorized dispositions are—

(1) Remove from TDRL and separate without benefits if found fit.

(2) If the member is found unfit, establish a percentage of disability on the assumption of maximum improvement and—

(*a*) Recommend permanent retirement if the established rating is 30 percent or more, or, if less than 30 percent, the member has completed at least 20 years of active Federal service.

(*b*) Recommend separation with severance pay if the rating is less than 30 percent and the member has completed less than 20 years of active Federal service.

USAPDA

SUBJECT: Recommended Findings of the Physical Evaluation Board (TDRL)

1. You are advised that this U.S. Army Physical Evaluation Board (USAPEB) has reevaluated your physical condition. Based on the thorough review of your most recent medical evaluation, all other available medical records, the USAPEB has recommended that you be retained on the TDRL with reexamination during the month of _____.

2. Since the Board has recommended that you be retained on the TDRL and your disability rating will remain unchanged, no appeal of these proceedings is authorized. However, if the U.S. Army Physical Review Council modifies the recommendation, you will be notified as to these changes and of your appeal rights.

FOR THE PRESIDENT OF THE PHYSICAL EVALUATION BOARD:

1 Incl
Cy DA Form 199

Figure 7-1. Recommended findings of the physical evaluation board (TDRL)

CHAPTER 8

RESERVE COMPONENTS

8-1. General. This chapter provides additional guidance for Reserve component members who are eligible for physical disability processing in accordance with the provisions of this regulation (see para 1-2*a*). Reserve component members called or ordered to active duty for a period of more than 30 days will be processed in the same manner as a member of the Regular Army.

8-2. Procedures. *a.* When a commander or other appropriate authority believes that a Reserve component member is unable to perform the duties of his office, grade, rank or rating because of physical disability resulting from an injury determined to be the proximate result of performing active duty (30 days or less), inactive duty training, or active duty under authority of 10 U.S.C. 270(b) (45 days or less), he will refer the member for medical evaluation in accordance with the provisions of AR 140-120.

b. If the results of the medical evaluation indicate that the member is not qualified to perform his military duties, he will be referred to a medical board for evaluation in accordance with the provisions of AR 40-3 and this regulation.

c. If the medical board finds that the member's physical disability is the result of a disease not directly caused by an injury, he will be processed in accordance with paragraph 6-8, AR 40-3 and AR 140-120. If the medical board finds that the member is not qualified for further military service as a result of an injury or a disease directly caused by an injury, the commander of the MTF will, upon approval of the medical board proceedings, refer the case to a PEB in accordance with the provisions of chapter 4 of this regulation.

d. The member will be retained with his consent under the control of the MTF during PEB processing. If the PEB finds the member unfit as a result of an injury or a disease directly caused by an injury, he will be processed in accordance with the provisions of chapter 4; however, if the member also has ratable disabilities (diseases) not related to his injury, such disabilities (diseases) cannot be included in the overall rating. He will be retained pending receipt of the Secretary of the Army's determination of the case. If the PEB finds the member fit, he will be returned to his duty station unless his training period has expired, in which case he will be permitted to return to his home. Prior to his release from the MTF, the member must sign a statement of concurrence or a rebuttal to the PEB proceedings. Notification of disposition, as prescribed in AR 40-3 and AR 140-120, will be accomplished by the commander of the MTF where the medical board was held.

8-3. Pay and allowances. A member of a Reserve component who is found to be unfit for military duty as a consequence of an injury or disease incurred in line of duty incident to service, in accordance with the provisions of this regulation, whether or not hospitalized, will be entitled to pay and allowances in accordance with paragraph 80254, DOD PM (DOD Military Pay and Allowances Entitlement Manual) and NGR 37-104-2.

8-4. Hospitalization. If disability retirement or separation proceedings have been initiated, a member who has been hospitalized will be retained, with his consent, until he has received maximum hospital benefits, in accordance with the provisions of AR 135-200, AR 635-100, and AR 635-200.

8-5. Continuation in an active status. Reserve members who have been found unfit not as a result of misconduct, willful neglect,

or during a period of unauthorized absence, may be considered for continuance in an active status of the USAR under the provisions of AR 140-120.

8-6. Action by MTF commander. MTF commander will take appropriate action upon completion of self-executing orders to ensure that the appropriate Reserve Component issues orders for the member's continued hospitalization or continuation in pay status pending action by the Secretary of the Army.

CHAPTER 9

PROCESSING TERMINAL CASES

9-1. General. *a.* This chapter establishes authority and procedures for processing a member for retirement who is hospitalized because of a terminal illness. A terminal illness for this purpose is one in which death is expected so soon as to preclude processing through the established physical disability retirement system, as prescribed in chapter 4.

b. Authority to approve terminal retirements under the provisions of this chapter is delegated to commanders specified in paragraph 2-17*a*, AR 635-200. This authority will not be delegated further. Hereinafter, these commanders are referred to as "terminal retirement approving authority" or "commander having terminal retirement approval authority."

c. The purpose of retiring a member with a terminal illness is to provide benefits to an eligible survivor which would not be available if the member were to die while on active duty, or because of an injury incurred as the proximate result of performing active duty or inactive duty training.

(1) An eligible survivor for the purpose of terminal illness retirements is a spouse, a dependent child under 18 years of age (between 18 and 22 years of age if attending school full-time, a dependent child incapable of self-support because of a mental or physical incapacity; or, if there is no spouse or dependent child, a natural person with an insurable interest in the member. Any pecuniary interest in the continued life of another is an insurable interest. It may be the result of relationship by blood or affinity or that of debtor and creditor and there is any reasonable expectation of pecuniary benefit or advantage from the continued life of the insured. Generally, any near relative would have an insurable interest in the retiree, such as spouse, children, dependent parents. No evidence of insurable interest would be required of a near relative, but the relationship by contract or otherwise would require proof of an insurable interest. (See Comp. Gen. 973.)

(2) The member must be administratively qualified for disability retirement. He may not be retired if the terminal illness was incurred prior to entry into active military service, was the result of misconduct or willful neglect or was incurred while absent without leave; or, if a member of a Reserve Component, is not eligible for processing under chapter 8 of this regulation.

9-2. Benefits associated with terminal retirement. *a.* The Survivor Benefit Plan (SBP) provides an annuity for certain survivors of members who die while in a retirement eligible or retired status. The maximum annuity is 55 percent of the retired pay to which the member would be or is entitled on the date of death, reduced by the amount of any Dependency and Indemnity Compensation payments for which the annuitants qualify. If a member with 20 or more years of active service creditable for retirement dies while on active duty, the surviving spouse is entitled to such an annuity. However, the survivors (spouse, dependent child(ren) or other eligible beneficiary) of a member with less than 20 years of service for retirement purposes are not entitled to an SBP annuity unless the member elects to participate in the Plan before retirement and is entitled to retired pay at the time of death. It is essential that a member in the latter case who is terminally ill be retired prior to death, if otherwise qualified, so that he or she may elect to provide SBP benefits for the eligible survivors. This would also apply to a retirement eligible member who does not have a spouse and desires to leave an annuity to a dependent child(ren) or other eligible survivor. DA Pamphlet 360-539 provides details regarding the Plan.

b. Any member who is retired or dis-

charged with a service connected disability, as determined by the VA, may buy up to $10,000 National Service Life Insurance (NSLI) coverage if he is not already insured under a VA insurance program for the maximum amount of $10,000. The insurance is issued as Service-Disabled Veterans Insurance (SDVI). (This is in addition to the $20,000 coverage provided by Servicemen's Group Life Insurance program.) The coverage is effective upon application signed by the member and payment of one month's premium. If the member is mentally unable to act for himself, his next-of-kin may apply to the VA within one year of his death for payment of the coverage. No premium is required. Evidence that the patient was mentally incompetent from date of discharge to date of death is required and the VA makes the decision.

9-3. Medical processing. *a. Member in Army MTF.* When a physician believes that a member under his care in an Army MTF is a terminal case, he will inform the MTF commander. The MTF commander will confirm that the member's condition is such that he qualifies medically as a terminal case. He will then determine whether the member qualifies administratively for terminal retirement. If the member qualifies, the MTF commander will require that the member and the eligible survivor, if available, be counseled by the PEBLO in accordance with the provisions of this chapter and appendix C. Great care must be exercised in counseling under these highly emotional circumstances. Promises or suggestions of promises which cannot be kept must be avoided. The member need not be counseled if the physician advises against informing him of his condition or he is unable to communicate. Under these conditions, the eligible survivor will be counseled. If the eligible survivor is not available for counseling and making a decision regarding terminal retirement, the facts of the case will be presented to the MTF commander who will decide for the member and the eligible survivor as to whether the member should be retired. The act of counseling and the decision reached by the member, the person authorized to decide for him or the MTF commander will be recorded, signed by the person making the decision, and witnessed by the PEBLO. The document will be a permanent part of the record later forwarded to a PEB.

b. Member in other than Army MTF. If a member is hospitalized in other than an Army MTF, chapter 18, AR 40-3, applies. If the terminal member is in an MTF where an Army Administrative Unit is established, the commander of the Army Administrative Unit is responsible for carrying out the procedures described in this chapter with guidance from the MEDDAC commander to whom he is responsible. If the terminal member is in an MTF within CONUS without an Army Administrative Unit, the commander of the MEDDAC/Medical Center responsible for his care and administration will carry out the procedures of this chapter. Outside of CONUS, the Army MTF commander, or other authorized person assigned responsibility for the member may exercise the authority to carry out the procedures of this paragraph. Outside of CONUS, the Army MTF commander, or other authorized person assigned responsibility for the member may exercise the authority to carry out the procedures of this chapter if circumstances of this case permit.

c. Medical documentation. Medical Board Proceedings (DA Form 3947 and inclosures) are required to substantiate the action taken in a terminal case. However, preparation may be deferred until retirement action is completed if the patient's condition so dictates. If preparation is deferred, the proceedings must be completed, including approval, by the fourth work day after issuance of retirement orders and forwarded to the appropriate PEB. An entry will be made in Item 19 on each copy of DA Form 3947, using capital letters identifying the case as a terminal retirement.

9-4. Administrative processing. *a. MTF commander.* After completion of medical processing, in accordance with 9-3 above, and a decision that the member should be retired as a terminal case, the responsible MTF com-

mander will transmit the required information listed below to the terminal retirement approving authority by the fastest means available.

(1) Request for Orders.

(2) Terminal Disability Retirement.

(3) Member's name (last, first, MI) grade, SSN.

(4) Years of active service, Branch, and Component (If Reserve Component, date last ordered to active duty. If not on active duty, why case is referred.)

(5) Member's organization.

(6) Dependency status (i.e., married, children, other insurable interest).

(7) Amount of NSLI and/or SGLI member has in force, if any.

(1) Survivor Benefit Plan option elected and if applicable, base amount.

(9) Life expectancy (i.e., hours, days).

(10) Diagnosis causing terminal condition and nomenclature code (ICDA).

(11) If terminal condition is the result of an injury or disease secondary to injury, or for some other reason, line of duty is not resolved, so state.

(*a*) Duty status when injury or disease was incurred (i.e., was member on leave or unauthorized absence).

(*b*) If an injury, opinion of investigating officer regarding line of duty and misconduct.

(*c*) Brief circumstances of injury, including time, date, and place of accident.

(12) Name and telephone number of MTF action officer.

b. Terminal retirement approving authority. On receipt of the information in *a* above, the approving authority will review the case to insure compliance with this regulation, resolve the LOD question if required, and issue orders placing the member on the temporary disability retirement list.

(1) Orders will be prepared in accordance with AR 310-10. The order placing the member on the TDRL must be completed before the member expires and must show the time of retirement. If the member dies before publication of orders, the retirement is invalid.

(2) Authority for retirement is 10 USC 1202 for all Regular Army members and for Reserve members who have been called or ordered to active duty for more than 30 days. If the member is on active duty for 30 days or less, or on active duty training under 10 USC 270(*b*), or on inactive duty training, the retirement authority is 10 USC 1205.

(3) The date placed on the retired list is the date the order is issued. The retired grade is the grade held at the time of retirement, subject to later correction. The disability percentage is always 100 percent.

c. Distribution of records. The MTF commander will forward the original and two copies of the medical board proceedings to the PEB responsible for disability processing. In addition to normal distribution, a copy of the order retiring the member will be attached to the original and each copy of the medical board proceedings. A letter of transmittal to the PEB will briefly discuss the circumstances and justification for terminal retirement. If the member has expired, the date, time, and cause of death, if known, will be noted. The records provided the PEB will be hand-carried to the PEB, if at the same installation, or mailed by certified mail, using the most rapid means available if the MTF and PEB are at different installations. These records must be sent to the PEB within 4 working days of retirement of the member. A copy of the medical board proceedings and orders retiring the member will be provided to the eligible survivor and a copy will be placed in the member's health record (DD Form 722).

d. PEB-USAPDA action. The PEB will review the records received and, insofar as possible, determine that the action reflected in the records received is correct and that the records are properly prepared. The case will then be processed in accordance with the provisions of chapter 4. The original and one copy of the medical board proceedings and attachments, including a copy of the retiring orders, will be forwarded without delay by indorsement of the MTF letter of transmittal

to the USAPDA. The USAPDA will review the file, process the case in accordance with chapter 4, retain one set for statistical purposes, and forward the original and attachments to HQDA (DAPC-PAS-RD), Alexandria, VA 22332. Any deficiencies will be noted by indorsement to the letter of transmittal.

e. MILPERCEN action. On receipt of the case from USAPDA, MILPERCEN will process, after the fact, in accordance with normal procedures. Orders placing the member on the TDRL will be reviewed and, if necessary, amended to correct any administrative errors and complete entries that were omitted. HQDA (DAPC-PAS-RD) will complete DA Form 3713 (Data for Retired Pay) and forward to USAFSA. If the member should survive, his case will thereafter be handled as that of any other member on the TDRL.

APPENDIX A

EXPLANATION OF TERMS

1. **Abbreviations.**

ABCMR — Army Board for Correction of Military Records
ACRB — Army Council of Review Boards
ADRB — Army Disability Review Board
APDAB — Army Physical Disability Appeal Board
ADRRB — Army Disability Rating Review Board
APRC — Army Physical Review Council
EPTS — Existed Prior to Service
MEDAC — Medical Department Activity
MTF — Medical Treatment Facility
PEB — Physical Evaluation Board
PEBLO — Physical Evaluation Board Liaison Officer
TDRL — Temporary Disability Retired List
USAPDA — US Army Physical Disability Agency
VASRD — Veterans Administration Schedule for Rating Disabilities

2. **Definitions and explanation of terms.**

Accepted medical principles. Fundamental deductions consistent with medical facts and based upon the observation of a large number of cases. To constitute accepted medical principles, the deductions must be so reasonable and logical as to create a virtual certainty that they are correct.

Active Duty. Full-time duty in the active military service of the United States. It includes duty on the active list, full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the Army.

Active duty for a period of more than 30 days. Active duty under a call or order that does not specify a period of 30 days or less.

Active service. Service on active duty.

Armed conflict. An armed conflict may include a war, expedition, occupation, battle, skirmish, raid, invasion, rebellion, insurrection, guerrilla action or insurgency, etc., in which American military personnel are engaged with a hostile or belligerent nation, faction or force.

Clear and convincing evidence. This term means such evidence as would convince an ordinarily prudent-minded person beyond a well-founded doubt. (It is a higher degree than preponderance of the evidence, but it does not require proof beyond a reasonable doubt as in criminal cases.)

Disease. A classification of a condition not defined or classified as an injury. A detailed listing of diseases may be found in Volume I, Eighth Revision, International Classification of Diseases, Adapted for Use in the United States (ICDA-8), diagnostic codes 000 to 796.9.

Deleterious-type case. One in which disclosure of information on a member's physical condition would be harmful or det-

rimental to his physical or mental health.

Extended active duty. A tour of active duty performed by a member who occupies an authorized troop space of the active military establishment.

Impairment of function. Any lessening or weakening of the capacity of the body or any of its parts, to perform that which is considered by accepted medical principles to be the normal activity in the bodily economy.

Impairment, latent. An impairment which is not manifested by current signs and/or symptoms, but which is of such a nature that there is reasonable probability, according to accepted medical principles, that signs and/or symptoms will appear within a reasonable period of time.

Impairment, manifest. An impairment which is manifested by signs and/or symptoms.

Impairment, mental. An alteration of mentality due to disease or injury. Excluded are such deviations from anticipated normals as behavior disorders, personality disorders and primary mental deficiency or retardation.

Impairment, physical. Any anatomic, functional or physiologic abnormality of the body. Synonymous with "physical defect."

Inactive duty training. *a.* Duty prescribed by the Secretary of the Army for members of Reserve components under provisions of section 206, title 27, USC or any other provision of law related to inactive duty.

b. Special additional duties authorized for members of Reserve components by an authority designated by the Secretary of the Army and performed in connection with prescribed training or maintenance activities of the units to which they are assigned. It includes those duties when performed by reservists in their status as members of the Army National Guard.

Injury. A term comprising conditions which normally are caused by trauma such as fractures, wounds, sprains, dislocations, concussions and compressions. In addition, it includes conditions resulting from extremes of temperature or prolonged exposure. Acute poisonings, except those due to contaminated food, resulting from exposure to a toxic or poisonous substance are also classed as injuries. A detailed listing of injuries may be found in Volume I, Eighth Revision, International Classification of Diseases, Adapted for Use in the United States (ICDA-8), diagnostic codes 800 to 999.9.

Instrumentality of war. A device primarily designed for military service and intended for use in such service at the time of the occurrence of the injury or a device not designed primarily for military service, but the use of or occurrence involving such device subjects the individual to a hazard peculiar to military service as distinguished from such use or occurrence under similar circumstances in civilian pursuits.

Maximum hospital benefits. That point during hospitalization when a patient's progress appears to have stabilized and it can be anticipated that additional hospitalization will not 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.

Member. Unless otherwise qualified, a commissioned officer, warrant officer or enlisted person of the Army.

Next-of-kin. A member's nearest relative or relatives as specified by law or regulations. See paragraph 1-5, AR 600-10.

Office, grade, rank or rating. *a.* Office is not defined by statute but means the position in which an individual is utilized within the Army, along with the authorized skills, rank and physical requirements pertaining thereto.

b. The terms "grade," "rank," and "rating" are defined by statute (10 USC 101) as follows:

(1) *Grade.* 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.

(2) *Rank.* The order of precedence among members of the armed forces.

(3) *Rating.* The name (such as "boatswain's mate") prescribed for members of an armed force in an occupational field.

c. For application in the Army, the term "office, grade, rank or rating" is further defined to include consideration being given to the member's current duty assignment, anticipated duty assignments, branch, age, and career specialties.

Optimum hospital improvement (for disposition purposes). The point during hospitalization when, following administration of essential initial medical treatment, the patient's medical fitness for further military service can be determined and it is considered probable that further treatment for a reasonable period will not result in material change in the patient's condition which would alter his ultimate type of disposition or amount of separation benefits.

PEB Counsel. Legal counsel (member of the Judge Advocate General Corps) assigned to physical evaluation boards for the purpose of representing members at PEB hearings and counseling members.

PEBLO. An experienced, mature officer, or civilian employee, designated by the MTF commander to perform the primary duties of counseling members who are undergoing informal physical disability evaluation, providing them with authoritative and timely answers to their questions, and aiding them in understanding their rights and entitlements. He need not be qualified as a legal officer.

Physical disability. Any physical or mental impairment, regardless of degree, which reduces or precludes an individual's actual or presumed ability to engage in gainful or normal activity.

Physically unfit. Physical disability of such degree that a member is unable to perform the duties of his office, grade, rank or rating in such a manner as to reasonably fulfill the purpose of his employment on active duty. "Physically unfit" is synonymous with "unfit because of physical disability."

Preponderance of the evidence. A set of scales are evenly balanced and into one you put all of the evidence which tends to prove a disputed fact and into the other you put all of the evidence which tends to disprove it. The fact will be proved by a preponderance of the evidence when that side of the scale which contains evidence tending to prove the fact outweighs, no matter how slightly, the evidence on the other side of the balance. Preponderance does not necessarily mean a greater number of witnesses or a greater mass of evidence; rather, preponderance means a superiority of evidence on one side or the other of a disputed fact. It is a term which refers to the quality of the evidence rather than its quantity.

Presumption. A presumption (an inference of the truth of any proposition of fact) is reached through a process of reasoning wherein one looks to probabilities rather than certainties. Matters, which are "presumed" need no proof to support them. A preponderance of evidence or in

some cases, clear and convincing evidence will rebut or overcome a presumption.

Proximate result of military service. A disease or injury or aggravation thereof, resulting in physical disability which, after consideration of all the facts and circumstances of a particular case, may reasonably be regarded as an incident of service or may reasonably be assumed to be the effect of service, will be considered the proximate result of the performance of active duty, or inactive duty training, as the case may be.

Reserve component of the Army. The US Army Reserve and the Army National Guard of the United States.

Separation. Relief from active duty, release from active duty for training, discharge, dismissal, resignation, retirement, placement on the temporary disability retired list, drop from the rolls of the Army, vacation of commission by reason of acceptance of an incompatible military or civil status, removal from office under the Criminal Code of the United States, or release from military control when enlistment or induction is determined to be void because of mental incompetency existing at the time of enlistment or induction.

Unfit because of physical disability. Synonymous with physically unfit.

APPENDIX B

ARMY APPLICATION OF THE VETERANS ADMINISTRATION SCHEDULE FOR RATING DISABILITIES

Section I. GENERAL RATING POLICIES

1. Use of the Veterans Administration Schedule for Rating Disabilities. Congress established the VA Schedule for Rating Disabilities (hereafter cited as the VASRD or the VA Schedule) as the standard under which percentage determinations are to be made pursuant to title IV of the Career Compensation Act of 1949 (now principally codified in chap. 61 of title 10, USC). However, not all the General Policy provisions as set forth in paragraphs 1–31 of the VA Schedule are applicable to the Army. Many of these policies were written primarily for VA rating boards in the field, and are intended to provide guidance under laws and policies applicable only to the VA. Section I of this appendix replaces paragraphs 1 through 31 of the VA Schedule. The remainder of the VA Schedule (paragraph 40 et seq.) is applicable except those portions that pertain to VA determinations of service connection, or refer to internal VA procedures or practices, or are otherwise specifically identified in section II of this appendix as being inapplicable.

2. Essentials of Evaluative Rating. The VA Schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. The percentage ratings represent, as far as can practicably be determined, the average impairment in earning capacity in civil occupations resulting from such diseases and injuries and their residual conditions.

3. Higher of Two Evaluations. In view of the number of atypical instances, it is not expected that all cases will show all the findings specified in the VA Schedule. Where there is a question as to which of two percentage evaluations shall be applied, the higher evaluation will be assigned if the disability picture 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 member.

4. 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 is adequately reflected under a single appropriate code. Disability from injuries to the muscles, nerves, and joints of an extremity may overlap to a great extent and special rules for their evaluation are included in appropriate sections of the VA Schedule and in section II of this appendix. Related diagnoses should be merged for rating purposes when the VA Schedule provides a single code covering all their manifestations. This prevents pyramiding and reduces the chance of overrating. For example, disability from fracture of a tibia with malunion, limitation of dorsiflexion, eversion, inversion, and traumatic arthritis of the ankle would be evaluated under one diagnostic code 5262 in accordance with the effect upon ankle function with no separate evaluation for the limitation of motion or traumatic arthritis.

5. Total Disability Ratings. Total disability will be considered to exist when the member'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) VA Code, a member may be assigned a disability rating of 100 percent if his impairment is sufficient to render it impossible for him to follow substantially gainful occupation.

6. Convalescent Ratings. Under certain diagnostic codes, the VA Schedule provides a convalescent rating 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 Army 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.

7. Analogous Ratings. When an unlisted condition is encountered, it will be permissible to rate it under a closely related disease or injury in which not only the functions, but the anatomical localization and symptomatology are closely analogous. Conjectural analogies will be avoided, as will the use of analogous ratings for conditions of doubtful diagnosis, or those not fully supported by clinical and laboratory findings. Nor will ratings assigned to organic diseases and injuries be assigned by analogy to conditions of functional origin.

8. Zero Percent Ratings and Minimum Ratings. *a.* Occasionally a medical condition which causes or contributes to unfitness for military service is of such mild degree that it does not meet the criteria even for the lowest rating provided in the VA Schedule under the applicable code number. A zero percent rating may be applied in such cases even though the lowest rating listed is 10 percent or more, except when "Minimum ratings" are specified (*b* below). It should be noted that the zero percent rating does not preclude the award of compensation as prescribed by law for ratings of less than 30 percent. The bilateral factor will be applied when a disability is present in two paired extremities, but one is rated at zero percent.

b. In some instances the VA Schedule provides a "minimum rating," without qualification as to residuals or impairment. Syringomyelia, code 8024, is an example. Diagnosis alone is sufficient to justify the minimum rating. Higher ratings may be awarded in consonance with degree of severity, but no rating lower than the "minimum" may be used if the diagnosis is satisfactorily established.

c. The VA Schedule provides for minimum rating for "residuals" in certain medical conditions. The instructions may be "rate residuals, minimum _____," or may specify what impairment to rate and give a minimum rating for that impairment. Examples are code 8011, anterior poliomyelitis, and 6015 benign new growth of eyeball and adnexa, or other than superficial. To justify the minimum rating for residuals, a functional impairment or other residual caused by the condition must exist. Otherwise a zero percent is appropriate.

9. Extra-Schedular Ratings in Exceptional Cases. The requirement to use the VA Schedule in rating disabilities vests the Secretary of the Army the same administrative power to assign ratings in unusual cases not covered by the Schedule as that exercised by the Central Office of the Veterans Administration. Therefore, in exceptional cases where the schedular evaluations are found to be inadequate extra-schedular ratings commensurate with the average earning capacity impairment due exclusively to service connected disability may be assigned in accordance with procedures to be established by the Secretary. In such a case, the recommending agency 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 schedular standards.

10. Rating of Disabilities Aggravated by Active Service. In 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, whether the particular condition was noted at the time of entrance into the active service or is determined upon the evidence of record to have existed at that time. It is necessary, therefore, in all cases of this character to deduct from the present degree of disability, the degree, if ascertainable, of the disability existing at the time of entrance into active service, in terms of the rating schedule, except that if the disability is total (100 percent), the EPTS factor will be recorded, and no deduction in compensable rating will be made. The resulting difference will be recorded on the rating sheet. If the degree of disability at the time of entrance into the service is not ascertainable in terms of the schedule, no deduction will be made.

11. Combined Ratings Table. When a member has more than one compensable disability, the percentages are combined rather than added (with the exception of when a "Note" in the VASRD indicates otherwise). This results from the consideration of the individual's efficiency as affected first 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 is 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 on pages 10 and 11 of the VA Schedule in accordance with 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, and combined values ending in 5 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 off to 70. If the combined value is 64.4, the decimal fraction is disregarded and the combined value of 64 rounded off to 60.)

12. Bilateral Factor. When a partial disability results from injury or disease of both arms, or both legs, or of paired skeletal muscles, the rating 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 (i.e., 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 use of the terms "arms" and "legs" is not intended to distinguish between the arm, forearm, and hand, or the thigh, leg, and foot, but relates 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 subparagraph *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 VA Schedule—Code 7114-7117, Code 8205-8412, etc. The bilateral factor is not applicable in skin disabilities rated under VASRD Code 7806.

13. Use of VA Code Numbers. The VA code numbers appearing opposite the listed ratable disabilities are arbitrary numbers for the purpose of showing the basis of the evaluation assigned and for statistical analysis. Great care will be exercised in the selection of the applicable code number and in its citation on the rating sheet. Each rated disability is assigned its VA code number unless a hyphenated code is expressly authorized. It is not proper to use additional VA codes as a means of further describing defects. The written diagnoses entered on the rating form should include any description considered necessary to indicate the extent, severity or etiology of the condition. In the selection of code numbers, injuries generally will be represented by the number assigned to the residual condition on the basis of which the rating is determined. With diseases, preference is to be given to the number assigned to the disease itself; if the rating is determined on the basis of residual conditions, the number 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 "5002-5289." 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 VA Schedule terminology which 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 only in these circumstances:

a. When the VA Schedule provides that a listed condition is to be rated as some other code, e.g., myocardial infarction rated as arteriosclerotic heart disease (7006-7005) or nephrolithiasis rated as hydronephrosis (7508-7509).

b. When the schedule provides a minimum rating and the disability is being rated on residuals, e.g., multiple sclerosis rated as incomplete paralysis of all radicular groups (8018-8513).

c. When an unlisted condition is rated by analogy, e.g., spondylolisthesis rated as sacroiliac injury and weakness (5299-5294). 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 that 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.

Section II. RATING PRINCIPLES

Modification of specific parts of the VA Schedule. Instructions and explanatory notes which follow are listed according to paragraphs and code numbers in the VASRD Only those portions which require special comment or those which have been the cause of misunderstanding in the past are included.

68. Amputation Rule. The rule generally provides that the permanent rating for disabilities of an extremity will not exceed the rating for elective amputation which would ablate the disabling parts and permit wearing a prosthesis. If the medical record is not sufficiently clear to establish the theoretical amputation level, an addendum should be obtained to establish the level. The amputation rule as set forth in paragraph 68, VASRD, provides that the aggregate of separate ratings in a single extremity may not total more than the rating assignable for amputation of the extremity. The only exceptions to the rule are those contained in note (1) following Diagnostic Code 5000 and the note following Diagnostic Code 7804. These Notes are intended as a liberalization of the amputation rule to the extent that a compensable rating may be assigned for active osteomyelitis or for a tender scar in those cases where the amputation rating for the affected part is zero percent.

5000. Osteomyelitis. a. Note (1) following Code 5000 in the VASRD may appear to be ambiguous in its instructions concerning application of the amputation rule. It means that in rating active osteomyelitis of any part, the amputation of which would be ratable at less than 20 percent (ordinarily the minimum rating for active osteomyelitis), a rating of 10 percent may be assigned. This constitutes disregard of the amputation rule in those instances where the rating for amputation would be 0 percent. *Example:* A case of active osteomyelitis of the little finger distal to the proximal interphalangeal joint may be rated at 10 percent even though amputation at that level is ratable at 0 percent (note (b), page 33R and VA Code 5227). However, a ratable disability exists only so long as the distal phalanx with its active osteomyelitis remains.

b. Osteomyelitis should not be considered cured simply because saucerization or sequestrectomy has been performed. Cures sometimes may be effected, however, by removal or radical resection of the bone.

c. Under note (2) a rating may be assigned only when the disease is active clinically or by X-ray.

d. Osteomyelitis extending into a major peripheral joint will not be rated higher than the elective amputation level that would ablate the involved joint.

5002 Rheumatoid Arthritis. A distinction is made between active disease and chronic residuals. VASRD Codes 5002, 5004 to 5009 and 5017 will be rated by the same criteria and the VASRD guidance on page 28–2R.

a. As an active process: Ratings assigned under these codes will be based primarily on clinical and laboratory evidence. X-ray changes are not required.

b. For chronic residuals: Ratings will be based on limitation of motion in accordance with the VASRD Code 5200 series. X-ray evidence, alone, will not support a rating in any of these conditions.

c. The bilateral factor will apply as appropriate.

d. These ratings under VASRD Code 5200 will not be combined with ratings for active process.

5003, Arthritis, Hypertrophic. a. This is one of the more frequently encountered conditions in the field of disability evaluation, and one of the more difficult to adjudicate. The difficulty stems from the fact that it occurs in some degree in all individuals beyond age 40, and from its wide variability in rate of progression and severity of manifestations. Symptomatology is frequently disproportionate to demonstrable pathology, and in this area the effect of such intangibles as motivation and other psychogenic components must be considered.

b. Ratings under this code can be assigned in either of the following situations: In the absence of limitation of motion with only X-ray evidence of involvement of two or more major joints or two or more minor joint groups; or, when there is objective evidence of some limitation of motion combined with x-ray findings of arthritis of one or more major joints or minor joint groups.

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 (the 5200 or 9905 series of codes of the VASRD).

d. 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. It should be emphasized that separate ratings of specific joints or joint groups are not intended for application to the fluctuating types of impairments which tend to improve or disappear.

5010, Arthritis Due to Direct Trauma. When an affected joint merits a rating higher than 10 percent, the analogy appropriate to the impairment must be used. Diagnosis alone is insufficient for the 10 percent rating. With an affected joint, the assignment of a 10 percent rating requires the presence of objective evidence of limitation of motion in addition to x-ray findings.

5012, Bones, new growths of, malignant..... 100.

NOTE:

a. An individual in whom a malignant tumor with metastasis was diagnosed will be permanently retired with a 100 percent rating.

b. An individual in whom a malignant tumor without metastasis was diagnosed within the preceding five years will, if found unfit, be placed on the TDRL as follows:

(1) If the member is placed on the TDRL within one year of completion of definitive treatment (surgical, radium, deep x-ray, or other therapeutic procedure), the rating will be 100 percent and the rating will be continued until one year after such treatment. At this point, if there has been a one year period without recurrence or metastasis, the member will be reevaluated. If found unfit and residual impairments are not stabilized, the member will be continued on TDRL; if stabilized, he will be rated on residuals. When a residual is the basis of a rating, it will be identified by the appropriate VA Code number.

(2) If the member is placed on the TDRL between one and five years after completion of definitive treatment, the member will be rated on the basis of residual impairments and retained on the TDRL until his condition stabilizes. When a residual is the basis of a rating, it will be identifed by the appropriate VA Code number.

c. An individual in whom a malignant tumor without metastasis was diagnosed more than five years after completion of definitive treatment will, if found unfit, be rated on the basis of residual impairments. When a residual is the basis of a rating, it will be identified by the appropriate VA Code number.

5099, Bones, Joints and Muscles, other diseases of. a. Malunion vs nonunion: A disability rating of malunion or nonunion should reflect an individual's ability in relation to both work and ordinary living requirements. A malunion is a fracture which has healed out of line, and a nonunion is a fracture which has not healed by bony union. A healing fracture and a nonunion are considered the same for rating purposes. An individual with a healing fracture which renders him unfit should be placed on the TDRL pending resolution of the fracture: healed, malunion or nonunion.

b. Malignant new growths of joints or muscles should be rated as 5299-5012 or 5399-5012, respectively. Upon expiration of the 1-year period specified in the note following Code 5012, rate residuals as otherwise provided for joint or muscle injuries.

5126-5151, Multiple Finger Disabilities. The difficulty frequently encountered in rating

multiple finger disabilities has been simplified by a convenient method of computation. By the assignment of graded values for each finger according to the level at which it was amputated, or for the severity of its ankylosis, it is possible to calculate an "average amputation level" for the fingers involved. The disability may then be rated in accordance with the notes of instruction in the VASRD. The method is as follows:

Step One: Determine the grade value of each of the affected fingers from the chart below.

Defect of individual finger	*Rated as*	*Grade value*
Amputation through distal phalanx or distal joint. (Other than negligible tip losses.)	Favorable ankylosis (Note c, page 33-R, VASRD).	Grade 1
Amputation through middle phalanx.	Unfavorable ankylosis (Note b).	Grade 2
Amputation through proximal phalanx or proximal I-P Joint.	Amputation (Note a).	Grade 3
Amputation of entire digit, with amputation or resection of more than one-half of the metacarpal.	Single finger amputation with metacarpal resection (Codes 5152-5156).	Grade 4

Step Two: Find the average grade value by dividing the total of values for the individual fingers by the number of fingers involved. Round off fractions to the nearest whole number.

Step Three: From the second and third columns of the chart above, determine the appropriate category of the defects (favorable ankylosis, unfavorable ankylosis, amputation, etc.) 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. *Example:* An evaluee has had his thumb amputated through the distal phalanx, the index and little finger through the middle phalanges, and the entire ring finger, including more than one half of the metacarpal.

Grade value for the thumb	1
Grade value for the index finger	2
Grade value for the little finger	2
Grade value for the ring and metacarpal	4
Total value	9

$$\frac{\text{Total value}}{\text{Number of fingers involved}} = \text{Ratable value}$$

$$\frac{9}{4} = 2^1/_4 = 2$$

Referring to the chart above, Grade 2 is ratable as unfavorable ankylosis.

Unfavorable ankylosis of four fingers—thumb, index, ring and little—is ratable under VA Code Number 5127 at 60 percent (for major hand) or 50 percent (for minor hand).

5171, Amputation of Great Toe. Must be through the proximal phalanx to warrant a 10 percent rating.

5200-5295, Ratings Involving Joint Motion. a. In the measurement and assessment of joint motion it is incumbent upon the medical examiner to utilize the standardized descriptions portrayed in plates I and II (pages 26R and 27-2R) of the VASRD and TM 8-640. As a general rule the total for any one joint will not exceed the rating for the optimal salvage procedure/surgical/i.e., fusion in optimal position.

b. 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.

c. 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 (Code 5209 or 5257) is to be avoided 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.

d. In some cases of limitation or of other abnormal joint motion, the basic cause is injury to muscle or tendon rather than to bone or joint. The distinction must be carefully made for appropriate rating. (See the VASRD for principles on the "Musculo-skele-

tal System" in connection with rating problems resulting from injuries to extremities.)

5205-5208, Absence or Limitation of Motion of Elbow and Forearm. a. 5205. Where a rating for unfavorable ankylosis is not based upon the additional finding of complete loss of supination or pronation, it may be combined with 5213 subject to the amputation rule. If there is less than complete loss of supination or pronation, 5205 may be combined with 5213 but not to exceed the rating for unfavorable ankylosis under 5205.

b. 5206-5208. These will combine with 5213 but not to exceed the rate for unfavorable ankylosis under 5205.

5209-5212, Other Impairments of Elbow, Radius, and Ulna. These codes are not to be combined with Code 5213.

5213, Impairment of Pronation and Supination. a. Limitation of either pronation or supination may be rated, but never both in the same arm. 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. There is an inconsistency in the schedule for the ratings for the major arm, where "hand fixed near the middle of the arc or moderate pronation" is rated 20 percent, while limitation of pronation with "motion lost beyond middle of arc" is rated 30 percent. Cases in which this conflict arises should be resolved in the member's favor.

c. "Motion lost beyond last quarter of arc" means that the forearm can be pronated from 0° through 45°, but no further. (See para. 71 and the illustration of forearm pronation, Plate 1, page 26R of the VA Schedule.)

5214, Wrist, ankylosis of. Ankylosis of the wrist in 10 degrees to 30 degrees of dorsiflexion will be considered favorable and rated accordingly.

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 appropriate ratings may be selected from VA Code 5250 (hip, ankylosis of), VA Code 5255 (femur, impairment of, with hip disability) or VA Code 5294 (sacroiliac injury). (See para. 67 of the VA Schedule for comments on pelvic skeletal fractures.)

5255-5262, Defects of Long Bones of the Lower Extremity. Apply these codes (malunion with adjacent joint disability) when appropriate to avoid multiple codes and ratings, but, when both a proximal and a distal major joint are affected, 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.

5272, Subastragalar or Tarsal Joint Ankylosis. The assignment of a rating under this code is proper only in the absence of motion of the subtalar joint which is manifested by the lack of inversion or eversion of the foot.

5285-5295, The Spine. a. The joints of the cervical, dorsal and lumbar segments of the spine and the combination of sacroiliac and lumbosacral joints are each regarded as a group of minor joints. Each is ratable as one major joint only when separate ratings are justified by X-ray evidence of pathology in addition to limitation of motion or muscle spasm or other evidence of painful motion of the individual segments involved. Otherwise, rate as for osteoarthritis.

b. Arthritic impingement on nerve roots which produces degeneration of the nerve function or frequent, prolonged attacks of neuralgia, as distinguished from brief episodes of radiating pain, should be rated as one entity under codes for neurological conditions, unless limitation of spinal motion justifies an additional rating.

5285, Residuals of Fracture of Vertebra. a. The need for a member to wear some type of brace for the restriction of lumbar or dorsolumbar movement is not analogous to the requirement for a jury mast type of neck brace for abnormal mobility following cervi-

cal fracture. Where there is no cord involvement, the disability should be rated in accordance with the degree of limited motion with brace in place.

b. When there is significant demonstrable deformity (*c* below) of one or more vertebral bodies 10 percent is to be added to, not combined with, the rating for each spinal segment in which such deformity appears. Instructions contained in the italicized note under Code 5285 (VASRD) pertaining to ratings for ankylosis and limited motion apply also to the addition of 10 percent for demonstrable deformity of a vertebral body. The 10 percent is to be added to the rating for the segment before that rating is combined with the others.

Example: If, as residuals of vertebral fractures, a member were to have moderate limitation of motion in cervical and lumbar segments, and substantial deformities of the bodies of C5, D12, and L1 the rating would be:

Line:	1. Code 5285–5290	20%
	2. Demonstrable deformity of C5	+10
	3.	30
	4. Code 5285–5292	20%
	5. Demonstrable deformity of L1	+10
	6.	30
	7. Combining lines 3 and 6	51%

(Since there is no associated findings, there can be no addition because of deformity in D12.)

c. The addition to the rating of 10 percent for demonstrable deformity of a vertebral body is intended only for a substantial degree of deformity. It should not be added in those instances of insignificant deformity such as slight shortening of the anterior vertical dimension of the body. Where a successful spinal fusion has been performed because of the deformity of a vertebral body, the potential of the deformity for increasing the degree of stability has usually been removed or so far reduced that the addition of 10 per cent to the rating is not justified.

5287–5289, 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 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 segments 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.

5296, The Skull. a. Diagnostic burr holes and other bony defects are ratable only when there is loss of both inner and outer tables of bone. Where there are more than one, the areas of each should be added, and the total rated. The following may be helpful as a reference in determining appropriate ratings:

1 centimeter—0.3937 inch
1 inch—2.54 centimeters
1 square centimeter = 0.1550 square inch
2 square centimeter = 0.3100 square inch
3 square centimeters = 0.4650 square inch

Diameter of circle	Area of circle	
	Square centimeter	Square inches
1 Centimeter	0.7854	0.1216
2 Centimeters	3.1416	0.4869
3 Centimeters	7.0686	1.0956
4 Centimeters	12.5664	1.9478
1/2 Inch*		0.19635
1 Inch		0.7854
1 1/2 Inches		1.76715
2 Inches		3.1416

*Size of the average diagnostic burr hole.

b. 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 5 years.

c. Loss of part of the skull is ratable whether or not the defect has been repaired with a prosthetic plate, provided the member is physically unfit for other reasons.

d. 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.

e. 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 inch) should be resolved in favor of the member.

5297, Removal of Ribs. a. The VASRD, for removal of ribs, requires the complete removal from the vertebral angle to the costocartilaginous 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 Code 5297; exceptions are allowed in specific situations. Notes (1) and (2) under this Code in VASRD provide pertinent guidance.

5299–5255, Hip, Arthroplasty and Prostheses. Total hip replacement will be rated at 60 percent, using VA Code 5255. A member who has undergone total hip replacement will ordinarily be permanently retired unless some other condition requires placement on the TDRL.

5299–52xx, Dupuytren's Contracture. Rate on the basis of limitation of motion of finger movement.

5299–5294, Spondylolisthesis and Arthritis of Lumbosacral Spone. These defects will be rated by analogy to Code 5294 only when the degree of severity meets criteria of ratings in excess of 10 percent under this code.

5301–5326, Muscle Injuries. a. There are specific limits to the permissible combinations of ratings of muscle injuries in the same anatomical segment, and of muscle injuries in which the movements of a single joint are affected. (See para. 55 (page 20–R) and 72 (page 45–3R), VASRD.)

b. When a joint is ankylosed, the muscles acting on that joint may not be additionally rated.

6000–6092, Diseases of the Eye. a. The adjudication of disabilities of the visual apparatus is often extremely difficult. In some cases involving a combination of defects it may be impossible to arrive at an equitable percentage rating through literal application of the terms of the VA Schedule. The complexity of these conditions does not permit the construction of a schedule that is adequate for the infinite 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 VA Schedule as a means of determining degree of disability, it is useful only to help create a mental image of the evaluee's real handicap, so that an equitable rating in terms of the schedule may be recommended.

b. The VA Schedule makes several references to the effect that the combined rating for disabilities of the same eye is not to exceed the amount 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 Code 7800 to be combined with the rating for the visual loss or rating for enucleation.

c. It is mandatory that visual field defects be examined and reported in accordance with the method prescribed in paragraph 76 of the VA Schedule. Copies of the records showing visual field defects should be attached to the narrative summary. Muscle

function examinations will be made and reported in accordance with paragraph 77 of the VA Schedule.

6000–6009, Conditions Involving Structures of the Globe. Disabilities resulting from these conditions should be rated as follows:

Step One:

(1) Rate impairment of visual acuity.

(2) Rate impairment of field of vision.

(3) Rate active pathology, if present, at 10 percent.

(4) Combine the rating in (1) or (2) above, whichever is higher, with (3).

Step Two: Rate pain, rest requirements 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 whichever one of the codes covers the basic condition (i.e., Code 6000 through Code 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.

Step Three: Award the higher of the two ratings resulting from Steps One and Two above.

FOREIGN BODIES. Rate as active pathology under Step One if in a critical area or not stabilized or rate for residuals under Step Two.

6013, Glaucoma, Simple, Primary, Noncongestive. The minimum rating is applicable if the diagnosis is satisfactorily established, whether or not visual acuity or field of vision has been affected. The rating is for the disease rather than for functional impairment of an individual organ and applies whether the disease process involves one or both eyes.

6014. New growth, malignant (eyeball only). Pending completion of operation or other indicated treatment—100. Healed; rate on residuals.

Note: See note under 5012.

6029, Aphakia. The expression "one step less" used in the note under this code in the VASRD refers to less vision, not to percentage evaluation.

6081, Scotoma, Pathological. The rating is 10 percent whether unilateral or bilateral. It is, of course, to be combined 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.

6090–6092, Diplopia. To determine rating substitute the 6090 reading for the visual acuity of the poorer eye and read percentage in the 6070–6079 series. If vision is same in both eyes pick one as an arbitrary choice. *Example:* Member has 20/50 vision bilaterally with diplopia in 20 of 20 rectangles; rate as 5/200 one eye and 20/50 other eye under 6073 at 40 percent.

6200, Otitis Media, Suppurative, Chronic. The 10 percent rating during the continuance of the suppurative process is intended as compensation for the existence of active pathology rather than for additional impairment of the individual sense organ. This rating is therefore limited to 10 percent, whether the pathological process is unilateral or bilateral.

6207, Deformity of Auricle. If associated with disfiguring scars of face or head, Code 7800 may be appropriate. The rule against pyramiding should be applied.

6208, New growths, malignant, ear, other than of skin only. Rate on impairment of function, plus 10 percent.

Note: See note under 5012.

6277–6297, Impairment of Auditory Acuity. a. The evaluations for deafness derived from the VASRD are intended to make proper allowance for improvement by hearing aids.

Examination to determine this improvement is therefore unnecessary.

b. Evaluation of this impairment can be through the use of either of the following in VASRD: Table I, page 62-R (Speech Reception and Discrimination tests), or table II, para 63-3R (pure tone audiometry).

c. AR 40-3 establishes the requirements relative to the evaluation and disposition of individuals with deafness. Included is the requirement for pure tone audiometry as well as speech reception threshold and discrimination testing.

d. For adjudicative purposes, it is necessary that the concerned boards and review agencies be provided with conclusions from audiology specialists relative to which of the two methods of testing best depicts the severity of the organic hearing loss.

e. Most audiometric examinations now being performed use as reference-zero level the one recommended by The American Standards Institute (ANSI), which is essentially identical, for rating purposes, to the International Standards Organization (ISO) levels. Table II, page 63-3R, VASRD, is based on the The American Standards Association reference standards. When pure tone audiometric tests based on the ANSI or ISO standards are noted in the clinical records, table II of the VASRD cannot be utilized for rating until the hearing levels are converted to the ASA standards. The ANSI or ISO levels are numerically greater than, and may be converted to the ASA levels, by subtracting the difference in decibels at each frequency in the normal range of hearing as follows:

At Frequency (CPS)	500	1000	2000
Convert ANSI or ISO to ASA by Subtracting	15	10	10

Note: For Table I (VASRD) subtract 10 decibels from ANSI or ISO to convert to ASA, SRT decibel loss; in order to enter the abscissa of the table.

f. Uniformity in analyzing data obtained by audiometric examination for adjudication and review is essential. Reference standards must be clearly indicated as ANSI, ISO or ASA. No individual should be considered for rating unless he has been evaluated by an otorhinolaryngologist, MOS 3126, or an Audiologist, MOS 3360 (or Civil Service Occupational Code 665) in accordance with AR 40-3.

6300-6317, Systemic Conditions. Convalescent ratings of 6 or 12 months provided under certain of these codes are not to be applied by the Military Departments.

6309, Rheumatic Fever. Residual impairments will be rated under the appropriate code. When a member is determined to be unfit due to recurrence of disease, and there is no residual functional impairment, consideration should be given to use of the zero percent rating.

6350, Lupus Erythematosus, systemic. Connective tissue diseases will be rated under this code.

6519, Alphonia, 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, the highest applicable rating will be awarded. This instruction does not apply to speech impairment due to loss of whole or part of the tongue, which is to be rated under Code 7202.

6600-6602, Asthma. Appropriate ventilatory function studies must be included in clinical records to support the diagnosis and degree of severity in these pulmonary diseases.

6725-6728, Inactive Pulmonary Tuberculosis. a. Determining Inactivity. Pulmonary tuberculosis is considered to be inactive:

(1) When these criteria are met: No symptoms of tuberculous origin. Serial roentgenograms must be stable or show very slow shrinkage of the tuberculous lesion. No evidence of cavity. Sputum or gastric washings negative on culture on guinea pig inoculation. These conditions shall have existed not less than 6 months.

(2) On a date of inactivity established by evaluation. This is usually, but not always, at the time the patient is declared to have

received the maximum benefits of hospitalization.

(3) Six months after surgical excision of of an active lesion, during which time there shall have been no evidence of tuberculous activity in any body system, or upon discharge from the MTF, whichever is later.

b. Chemotherapy. Treatment by medication is frequently continued beyond the date when the disease becomes inactive according to the above criteria. The ending date of such treatment schedule should not be confused with that of the beginning of the inactive status.

c. Rating Residuals. A rating of 100 percent for one year after the date of attaining inactivity will not be used. After the condition becomes inactive, residuals (e.g., impairment of pulmonary function, surgical removal or resection of a part, etc.) will be rated under the appropriate VA Code, subject to the limitations contained in paragraph 96a, of the VA Schedule, except for the reference to Public Law 90-493.

6800-6801, 6802, 6811, 6812, and 6818, Non-Tuberculous Diseases. Appropriate pulmonary function studies must be included in clinical records to support the diagnosis and degree of severity of any of these pulmonary diseases, or consider rating resultant dyspnea by analogy to the bronchitis.

6814. Pneumothorax. Do not apply the "100 percent for 6 months" rating. Rate the underlying condition, if known, or consider rating by analogy to asthma.

6815, Pneumonectomy. The 60 percent rating is applied 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, the rating for pneumonectomy will be combined with a rating for removal of ribs. Note (2) which follows Code 5297 in VASRD provides rating guidance in a case of this type.

6816, Lobectomy. An entire lobe other than the right middle lobe must be removed for the defect to be ratable. Excision of the right middle lobe, segmental resection or lingulectomies are not ratable.

6819, New growths of, malignant, any specified part of respiratory system exclusive of skin growths.

Note: The 100% rating will be continued two years after surgical, radium, deep x-ray, or other therapeutic procedure. At this point, if two years have elapsed without recurrence or metastasis, the rating will be made on residuals. See note under 5012; however, the two year time frame applies.

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 coccidioidomycosis (Code 6821) or pneumoconiosis (Code 6802) when the predominant manifestation 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 the disability Code 6399 and rating under Code 6316 may be appropriate.

6899, Emphysema. Rate by the closest analogy, such as Codes 6600, 6601, 6602, 6802.

7000 series, Cardiovascular Disease. a. To avoid pyramiding, only one rating should be given for all manifestations of cardiovascular-renal disease when, according to accepted medical principles, the conditions are etiologically related. 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. Occasionally the related manifestations in another body system will be so severe as to increase the member's overall impairment to the point that the next higher percentage under the selected code will be justified. The note in the VASRD under code 7507 is pertinent in this respect.

b. Valvular heart disease not of arteriosclerotic or hypertensive origin should be rated as rheumatic heart disease, Code 7000.

7000, Rheumatic Heart Disease. a. 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, of course, would depend 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.

b. A "definitely" enlarged heart is one in which there is positive evidence of enlargement beyond the doubtful or borderline enlargement that is sometimes reported when the presence of enlargement is uncertain. Voltage criteria alone are not acceptable as electrocardiographic evidence of definite enlargement.

c. The 100 percent rating for active rheumatic heart disease for 6 months is not applicable.

d. Following valvulotomy or other corrective cardiovascular procedure, the rating should be assigned on the basis of the residual functional impairment.

7005-7006, Arteriosclerotic Heart Disease, Myocardial Infarction. a. A rating for arteriosclerotic heart disease is not to be combined with one for hypertensive heart or hypertensive vascular disease (Codes 7007 or 7101).

b. A rating of 100 percent under this code solely on the basis of the acute attack occurring within a 6-month period will not be applied.

c. In assigning percentages under these codes the criteria are as follows:

(1) *The 100 percent rating.* Following a myocardial infarction in which complications are so severe (i.e., intractable angina or intractable congestive heart failure) as to generally confine the individual to his home or comparable environment.

(2) *The 80 percent rating.* Following a myocardial infarction complicated by persistent or frequent episodes of congestive heart failure or other significant complications requiring continued active therapy such as use of digitalis, diuretics and/or other supportive measures. More than strictly sedentary employment precluded.

(3) *The 60 percent rating.* Following a myocardial infarction with substantiated repeated attacks of angina pectoris at rest or with normal activity. Also, substantiated repeated attacks of angina pectoris without antecedent myocardial infarction. More than light manual labor is precluded.

Note. The term "Substantiated" as it is used with respect to the 60 percent rating means the existence of a clinical and/or medical history, or other documentation, which tends to support the diagnosis. Cases forwarded with such diagnosis which do not contain supporting documentation, and which are marginal with respect to disability, will be returned by the adjudicative or review agencies to the appropriate medical authority for inclusion or preparation of such documentation.

(4) *The 30 percent rating.* Following a myocardial infarction manifested by a definite clinical history and expected laboratory evidence and/or characteristic electrocardiographic changes; or electrocardiographic evidence which is diagnostic of a previous myocardial infarction *without* continuing symptoms indicative of complications of arteriosclerotic heart disease. Also, angina pectoris where ordinary activity does not cause frequent pain, but where strenuous activity is precluded.

d. When an infarction or other acute condition evaluated under these codes has occurred within approximately 6 months preceding evaluation or when the member's condition does not appear to have stabilized sufficiently to permit evaluation, place on the Temporary Disability Retired List.

e. Injuries, surgical procedures, pacemakers.

(1) Wounds, retained fragments or surgical procedures that disrupt the integrity of the myocardium or the conduction system, are rated for residual impairments raised to the next higher level.

(2) Ratings for heart injuries may be assigned in conjunction with disabilities rated as residuals of pleural injuries under VASRD Code 6818. Since these ratings are for separate injuries, ratings under both codes will not be considered pyramiding.

(3) Coronary bypass procedures, valve reconstruction or prosthesis, pacemakers and other significant procedures must be individually evaluated as the case merits. A member who is found unfit following one of these procedures should be placed on the TDRL with a minimum rating of 60% if retired within 6 months of surgery. On removal from the TDRL, if still considered unfit because of physical disability, the rating assigned will be for residual impairment raised to the next higher level with the exception of coronary bypass procedures, which ordinarily will be rated on residuals alone. In all such conditions, the minimum residual impairment will be rated as 30%.

f. Definition of terms as used in VASRD.

(1) "ordinary manual labor" includes work not involving sustained heavy energy expenditures and includes most skilled laborers, mechanics, and drivers.

(2) "strictly sedentary employment" involves low energy expenditure and minimal body movement.

7007–7101, Hypertensive Heart Disease and Hypertensive Vascular Disease. a. Blood pressure reading to be used in determining disability rating percentages should be obtained under normal circumstances and during usual activities. When antihypertensive medication is required for control, the rating is based on the pressures obtained during usual activities while under medication. It should be emphasized that hypertension brought under control through optimum conditions, that is, during hospitalization under a regimen of medication and enforced rest, will not be used as a basis for evaluation unless it is established that such control continues upon resumption of normal activity. Similarly, readings obtained during periods when indicated medication is withheld for purposes of medical observation, diagnostic study, etc., are not used as the basis for evaluation. A minimum of 10 readings taken on at least 5 days, on treatment, and under conditions as close as possible to normal duty performance, will be necessary. Blood pressure levels should also be correlated with other evidence of end organ change, such as eyeground, neurologic, etc. It should be appreciated that the member, while in a hospital status, may be engaged in activities which for adjudicative purposes are considered as unrestricted, and comparable to "outside of the hospital environment." For example, he is ambulatory to the mess hall, receives weekend passes, engages in ward housekeeping duties. The level of hypertension is not to be determined by an average of all readings, but rather the predominant readings will be the basis for determination of the level of hypertension.

b. When a combination of 7007 or 7101 exists with 7005, rate the individual under the code that most accurately reflects the disability. The presence of stigmata of hypertensive disease does not warrant rating at a higher level unless there is clinically significant secondary organ involvement, such as renal impairment. When significant changes are present consideration should be given to raising the rating one step.

c. Careful evaluation is necessary in making the frequently tenuous distinction between hypertensive heart disease and hypertensive vascular disease, especially for the minor degrees of severity. Generally, to justify the 30-percent rating for hypertensive heart disease, all of the criteria mentioned in the VASRD for that rating should be met. "Definite enlargement of the heart" means certain left ventricular hypertrophy by ECG criteria, other than voltage alone, with allowance for T-wave changes which may reflect medication more than pressure. The X-ray appearance of the heart is deceptive in concentric hypertrophy, but must at least be consistent with that diagnosis.

7099, Aortic Grafts. Although relatively few symptoms may exist following the graft, the procedure usually warrants a 30-percent rating under VA Codes 7099–7005 on the basis of latent impairment. If symptomatology still exists following the grafting procedure, it should be rated according to the VA Schedule for the underlying condition.

7100, Arteriosclerosis, General. The 20 percent rating under this code is rarely appro-

priate. Manifestations of the disease preferably should be rated for impairment of the body system involved to the greatest degree.

7114–7117, Peripheral Vascular Disease. a. The symptoms and signs of each of these conditions are to be considered 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, the percentage of disability is to be based upon the most severely affected extremity. The rating of that extremity is to be used 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, the above procedure will be applied 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. The bilateral factor should be applied in all cases of an amputation of one extremity with any compensable degree of disability of the other extremity.

d. A peripheral vascular disease rating of 20 percent or less will not be combined with any other peripheral vascular disease rating.

e. Peripheral vascular disease rating chart for Codes 7114 through 7117:

	Combined rating
One extremity involved:	
20	20
40	40
60	60
Two extremities, 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)	50
60 and 20	60
60 and 40 (60 + 10)	70
60 and 60 (60 + 10)	70

Three extremities involved: paired extremities:	*Other*	*Combined rating*
20 and 20	20	20
20 and 20	40	40
20 and 20	60	60
40 and 20	20	40
40 and 20	40	60
40 and 20	60	80
40 and 40	20	50
40 and 40	40	70
40 and 40	60	80
60 and 40	20	70
60 and 40	40	80
60 and 40	60	90
60 and 60	20	70
60 and 60	40	80
60 and 60	60	90

All extremities involved: Paired extremities:	*Paired extremities*	*Combined rating*
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 60	90

7307, Gastritis, hypertrophic. Identification by gastroscopic examination is required to establish this diagnosis.

7308, Postgastrectomy Syndrome. In evaluating and rating, care must be taken to differentiate between nondisabling symptoms or minor discomfort 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 such as a need for rest regularly after meals are indicative of disability which may be a basis for rating.

7328-7329, Intestinal Resections. Where portions of both intestines have been removed, rating should be made under the code which is most representative of the clinical manifestations.

7332-7336, Ano-Rectal Conditions. Pilonidal cyst or sinus is primarily a disorder of ectoderm and should be rated as a skin condition except when an active process is present when it should be rated by analogy to Code 5000.

7338, Hernia, Inguinal. If correctible, hernia is not ratable even though operation is refused, unless complicated by circumstances contraindicating surgery, such as poor muscular or fascial structure, senility, psychosis, or serious disease which would interfere with healing or be aggravated by surgery, and the presence of other disabilities so serious or advanced that herniorrhaphy would serve no useful purpose.

7343, New growths, malignant, exclusive of skin growth. Note: The 100 percent rating will be contined one year after surgical, radium, deep x-ray, or other therapeutic procedure. At this point, if there has been a one-year cure without recurrence or metastasis, the rating will be made on residuals. See note under 5012.

7345, Hepatitis, Infectious (Viral). a. Acute infectious hepatitis is most commonly associated with the still undefined type "A" infectious agent, but may be associated with type "B" antigen. "Classic" acute hepatitis due to either antigen does not progress to chronic liver disease and will not be rated for residuals when there has been a prompt return of liver function tests to normal.

b. Chronic persistent hepatitis is a condition with minimally disturbed histology and enzyme levels. There is no, or minimal, persistent disability or progression, and rating for residuals is seldom justified.

c. Chronic aggressive (active) hepatitis is a serious, frequently progressive, condition that may or may not readily be associated with a demonstrable antigen. Since the outcome is difficult to predict, placement on the TDRL with an appropriate rating according to the VASRD is often required.

d. Other forms of inflammatory liver disease will be rated by analogy to infectious hepatitis or to specific primary VASRD codes if applicable.

7399, Pancreatitis. This disease is to be rated by analogy to Code 7314 (cholecystitis) or Code 7306 (ulcer, marginal), whichever is more appropriate according to the type and severity of signs and symptoms. Diabetes mellitus, if present, is to be rated separately.

7500-7529, The Genito-Urinary System. Sterility and impotence are not ratable entities.

7528, New growths, malignant, any specified part of genito-urinary system.

Note: The 100 percent rating will be contined one year after surgical, radium, deep x-ray, or other therapeutic procedure. At this point, if one year has elapsed without recurrence or metastasis, and the member is unfit, the rating will be made on residuals, minimum—10. See note under 5012. An exception to note under 5012 will be made for those testicular tumors with metastasis to regional lymph nodes that are subject to radical cure. In such cases, the member will be placed on the TDRL for a period of two years from the time of definitive treatment at a rating of 100 percent. If subsequently found unfit, rate for residuals.

7627, New growths, malignant, gynecological system or mammary glands.

Note: The 100 percent rating will be continued one year after surgical radium, deep x-ray, or other therapeutic procedure. At this point, if one year has elapsed without recurrence or metastasis, the rating will be made on residuals, minimum—10. See note under 5012.

7703, Leukemia requiring the use of chemotherapeutic agents is rated analogous to leukemia requiring irradiation or transfusion.

7706, Splenectomy performed for diagnosis or management of diseases is not rated separately. Rate the residuals of the basis condition.

7709, Lymphogranulomatosis (Hodgkin's Disease). a. The unpredictable course that this disease may take frequently presents difficulty in assigning an equitable percentage rating. With an established diagnosis and accurate clinical staging, members in Stages I and IIA should be assigned the 30 percent

rating. Members in Stage IIB should be rated not lower than 60 percent. Members in Stage III are normally rated at 100 percent.

b. When the condition is less than Stage III and the member is found unfit, he will be placed on the TDRL. Upon removal from the TDRL, if found unfit, the condition will be rated on the basis of residuals. Splenectomy, if performed in the course of diagnosis, staging or treatment, will not be rated separately, since it is generally performed incident to the direct management of the condition, and a separate rating constitutes pyramiding.

Note: A member who was placed on the TDRL *prior* to 29 January 1974 and assigned a rating of 30 percent because of splenectomy performed incident to diagnosis or treatment will retain that rating when removed from the TDRL.

7801, Scars, Burn, Third Degree. The following instructions will supplement the criteria under Code 7801 in the Veterans Administration Schedule for Rating Disabilities to permit a realistic rating of actual impairment of function:

a. Third degree burn scars which cause limitation of function of underlying structures should be rated by analogy to other codes which reflect the functional impairment.

b. Rate unsuccessfully healed or grafted areas according to Code 7801. Footnotes in the VASRD apply.

c. Rate successfully grafted third degree burn areas as second degree burns under Code 7802. The footnote in the VASRD applies.

d. In calculating burn area, the following may be of assistance:

Average 70 kgm (150 lb) male body surface = $1.7M^2$

$2636\ in^2 = 18.3\ ft^2$

1 meter = 39.37 inches

$1\ meter^2 = 1550.6\ inches^2$

7802, Scars, Burns, Second Degree. VA Code 7802 limits rating to 10 percent for second degree burns affecting an area or areas approximately 1 square foot. Where there are widely separated areas and each area is approximately 1 square foot or more, 10 percent may be assigned for each scar.

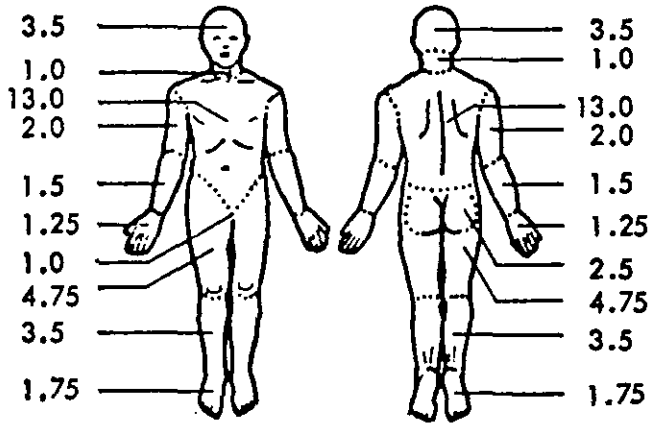
7804, Scars, Superficial, Tender and Painful. The 10 percent rating will be assigned whenever the requirements are met in an area of limited involvement (as a toe or finger) even though this 10 percent may exceed the amputation rating in other anatomical areas. A 10 percent rating will be combined with the rating for other impairments (e.g., ankylosis, malunion, or limitation of motion), but not to exceed the amputation rating for that portion of the affected extremity.

7809, Lupus, Erythematosus. This applies to the localized (discoid) type involving only the skin. Systemic lupus erythematosus, and the other so-called collagen diseases, should be rated under VA Code 6350.

7818, New growths, malignant, skin. Minor new growths, malignant, will be rated as scars, disfigurement, or physical impairment resulting from the primary condition or as residuals of treatment. Malignant melanomas will be rated as major malignancies under this code. See note under 5012.

7913, Diabetes Mellitus. a. The severity of each case is to be individualized, taking into consideration complications, age of the member, and ease or difficulty in the control of blood sugar levels. By established practice, "large" insulin dosage has come to be regarded as "more than 40 units daily." This may be used as a general guide, but not as the determining factor in assigning percentage ratings. It is quite possible for a member whose average insulin dosage is 30 or 35 units, but with unstable control requiring frequent hospital observation to be more disabled in fact that one on 45 units with steady blood sugar levels on a regimen of normal activity.

b. Diabetes which is controlled by diet in combination with oral medication, without insulin, and is without impairment of health or vigor, or limitation of activity, is considered to be "mild," ratable at 10 percent.



The diagram at the left provides the basic scheme for estimation of body surface area. The table below is for convenient conversion to actual surface area measurement, based upon application to the "average 70 kgm. man" with a body surface area of 2,636 sq. in. (18.3 sq. ft.).

Body surface	Percent of body surface	Area	
		Square inches	Square feet
Anterior *or* posterior head	3.5	92	0.64
Anterior *or* posterior neck	1.0	26	.18
Anterior *or* posterior trunk	13.0	343	2.38
Anterior *or* posterior arm	2.0	53	.37
Anterior *or* posterior forearm	1.5	40	.27
Dorsal *or* palmar hand & fingers	1.25	33	.23
Buttock	2.5	66	.46
Genitalia	1.0	26	.18
Anterior *or* posterior thigh	4.75	125	.87
Anterior *or* posterior calf	3.5	92	.64
Dorsal foot *or* sole, incl. toes	1.75	46	.32

FIGURE B-1

★ESTIMATION OF BODY SURFACE AREA

(Berkow)

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, pruritis and neuropathies rated separately. The presence of early or questionable complications in otherwise less than severe diabetes mellitus does not automatically warrant a higher rating.

7914, New growths, malignant, any specified part of endocrine system. Note: The 100 percent rating will be continued one year after surgical, radium, x-ray, or other therapeutic procedure. At this point, if one year has elapsed without recurrence or metastosis, the rating will be made on residuals. See note under 5012. Exception to note under 5012 will be made for those malignancies of endocrine glands, with metastosis to regional lymph nodes, that are subject to radical cure, such as follicular carcinoma of the thyroid. In such cases the member will be placed on the TDRL for two years from the time of definitive treatment at a rating of 100 percent. If subsequently found unfit rate for residuals.

8000–8046, Organic Diseases of the Central Nervous System. Careful correlation of the note under Code 8046 in the VASRD with the italicized introduction to Codes 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, the condition should be ratable at 0 percent.

8002, Malignant. New growths, malignant, brain.

Note: See note under 5012.

8007–8009, Brain Vessels. Do not apply the 6-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.

8021, Malignant. New growths, malignant, spinal cord.

Note: See note under 5012.

8023–8025, Progressive muscular Atrophy and Myasthenia Gravis. Combined ratings may be assigned under these codes with the bilateral factor added.

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.

8510–8730, Diseases of the Peripheral Nerves. In cases where 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 VA Code 8518. In many cases, however, abduction of the arm when the circumflex nerve is paralyzed occurs by virtue of other muscles taking over the function of the paralyzed muscles. To warrant the 50 percent rating, the member's residual loss of function must actually include all the defects listed under VA Code 8518. When other muscles have, in fact, taken over the function of the circumflex-innervated deltoid, the residual loss of function is properly ratable under VA Code 5201, Limitation of Arm Motion or 5303, muscle injury, Group III, whichever best reflects the predominant impairment. Cases of paralysis of the common peroneal nerve with foot drop, VA Code 8521, will be rated in terms of loss of function, rather than topographically. Amputation below the knee, VA Code 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.

8599, Scalenus Anticus Syndrome. This syndrome should be rated by analogy with the lower radicular group (VA Code 8512), or less commonly with either erythromelagia (VA Code 7119) or Raynaud's Disease (VA Code 7117), depending upon predominant symptoms and overall functional impairment.

8910–8914, The Epilepsies. Attacks following omission of prescribed medication or the ingestion of alcoholic beverages are not indicative of the controllability of the disease, and should not be included in the determination of the disability percentage; when a member requires continuous anticonvulsive medication for control of epilepsy, the minimum rating of 10 percent is appropriate, even though an actual seizure has not been experienced, if the diagnosis is established.

9200–9210, Psychotic Disorders. Social integration is one of the best evidences of mental health and reflects the ability to establish (together with the desire to establish) healthy and effective interpersonal relationships. Poor contact with other human beings may be an index of emotional illness. However, in evaluating impairment resulting from psychiatric disorders, social inadaptability is to be evaluated only as it affects industrial adaptability. The principle of social and industrial inadaptability as the basic criterion for rating disability from the mental disorders contemplates those abnormalities of conduct, judgment, and emotional reactions which affect economic adjustment, i.e., which produce impairment of earning capacity. When considering the level of disability for rating purposes, the discussions of social and industrial adaptability provided by the medical board and other documented authorities must be given careful consideration. Usually, these are the only or principal sources of evidence available for rating purposes and should not be lightly discounted. When information of record appears to be conflicting, such matters must be resolved, not discarded or ignored, before arriving at a rating decision.

a. Complete. Members receiving this rating on either a temporary or permanent basis will most often be declared incompetent and, if not transferred to a Veterans Administration Hospital, be discharged to the care of a relative or guardian. However, infrequent cases, though not declared incompetent, may still be entitled to this rating for complete social and industrial adaptability.

b. Severe. This rating is rarely used because members fulfilling its criteria generally require hospitalization which, to give the member the benefit of any doubt, warrants a 100 percent rating. However, 70 percent may be appropriate for members discharged to their own care or the care of relatives when manifesting marked degrees of mental deterioration, emotional impairment, permanent disintegration and poor judgment, not completely impairing social and industrial adaptability.

c. Considerable. This category should be reserved for members who exhibit extensive job instability. In order to maintain employment, he may be in need of close direct supervision. Frequent outpatient care or its equivalent is anticipated.

d. Definite. The member requires continual medication or medical supervision. His illness interferes with his advancement. There is often a degree of job instability in this group. In those cases likely to have further remissions or exacerbations, this rating should be assigned when none of the foregoing are applicable.

e. Slight. The "slight" degree of impairment will be appropriate subsequent to psychotic episodes, with or without residuals, when none of the foregoing are applicable.

f. Zero percentage. The zero percentage will be used when a psychosis is in full remission and has not had any permanent defect on the member's personality. The member will not be in need of any medications, follow up or medical supervision, and from every indication, the psychosis will never reoccur.

9400–9504, Psychoneurotic Disorder. In the adjudication of psychoneuroses, the instruction set forth in paragraph 2-9, AR 600-33, applies: "In the military setting apparent psychoneurotic symptoms are often seen in individuals with a basic personality defect

and disappear with the removal of situational pressures." These individuals are not suffering from a disease but a character and behavior disorder (para 127, VASRD).

APPENDIX C

COUNSELING

Section I. GENERAL

1. Purpose. To outline the responsibilities and duties of the PEBLO and, as indicated, t'.e PEB Legal Counsel, and to provide a guide for counseling members being processed through the physical disability system.

2. Scope. Each member (next-of-kin or legal guardian in deleterious type cases or when the member is mentally incompetent) will be counseled by the PEBLO throughout the course of physical disability processing. In cases where the member is unable to converse verbally, the member and his next-of-kin or legal guardian, if available, will be counseled jointly. Counseling will be based on the circumstances of the case, and designed to serve the member's best interests. Members who are under treatment for conditions which may result in disability separation or retirement often are most concerned over their eventual disposition. They will often have questions about medical board and PEB procedures, what the possibilities are for remaining on active duty in spite of their disabilities and similar questions, the answers to which are frequently not readily available at the moment. Such questions should be answered so far as available information permits. Generally the answer to such a question will be to describe procedures used in handling disability cases. In these circumstances, members will be reassured that they will be counseled from time to time as their cases progress and should be encouraged to ask questions whenever they wish.

3. Stages of Counseling. Counseling will be provided at the following stages of the physical evaluation process:

a. When the attending medical officer managing a patient determines that the member's case will be referred to a medical board. At this stage, a member may frequently have questions and problems which require advice by the PEBLO. If appropriate, action should be taken to obtain documents from the member's commander and/or rater reflecting his physical ability or inability to perform duty, as outlined in paragraph 4*d* below.

b. When the approved findings and recommendations of the medical board are made known to the member or his next-of-kin, the member will be afforded an opportunity to read the medical report and narrative summary, and instructed in how additional evidence may be presented for consideration by the medical board. When appropriate, the PEBLO will advise the member on procedures for requesting expeditious discharge under the provisions of chapter 5, or continuance on active duty under chapter 6, and the probable effects of each.

c. When the findings and recommendations of an informal PEB are made known to the member or his next-of-kin.

d. When the member's case is to be considered by a formal PEB, the PEBLO will notify the PEB Counsel of the member's demand for a formal hearing, and during this stage, the PEB Counsel is responsible for counseling the member.

e. When the findings and recommendations of a formal PEB are announced.

f. When the Commander, USAPDA, informs the member or his next-of-kin of a proposed modification to the findings and recommendations of the PEB.

g. When the results of the APDAB's consideration of his appeal are made known to the member or his next-of-kin.

4. PEBLO. The PEBLO, in executing his responsibilities, must:

a. Have a thorough knowledge of the policies, operating regulations and directives which apply to the physical disability evaluation system. To be of assistance, section II contains guidance for counseling purposes.

b. Include each of the matters outlined below in relation to the findings and recommendations of the adjudicative elements of the disability evaluation system, even though the scope of counseling may vary with the circumstances of the member's case.

(1) *Legal rights.* The member will be advised that no member of the Army may be retired or separated for physical disability without a full and fair hearing. If the member is a Reservist, he will be advised that he has the right to at least one reserve voting member on a PEB panel, if available, unless he waives that right. Signature of the member on DA Form 199 signifies waiver of this right, if applicable. When the member indicates dissatisfaction with the findings and recommendations, or at any time requests advice as to the proper course of action, he will be informed of the legal and factual issues, and the merits of the case. He will also be provided required assistance in the preparation and submission of written comments on, and/or rebuttals to, the findings and recommendations.

(2) *Findings and recommendations.* Each of the findings and recommendations will be explained in language understandable to the member, together with the effect the recommended disposition will have on his status.

(3) *Pay.* With the assistance of the local finance officer, an estimate will be furnished the member of the retired or severance pay which he may receive under the several formulas which may be utilized. With the advice of a legal assistance officer, as required, the member will be informed of the income tax exemptions which may be applicable. He will also be reminded that any election he has made under the Survivor Benefit Plan may result in a deduction from retired pay.

(4) *Grade determination.* The member will be notified that the grade in which he will be retired will be based on the provisions of sections 1372 and 1373, title 10, US Code, and that determination of the highest grade satisfactorily held will be made by the Secretary of the Army.

(5) *Veterans Administration.*

(*a*) Whenever possible, arrangements should be made for a member being retired or separated because of physical disability to have a personal interview with the Veterans Administration representative serving the MTF or installation concerning the member's entitlement to VA benefits. If for any reason this is not feasible, the member will be counseled in accordance with (*b*) below.

(*b*) The member will be advised of his right to apply to the Veterans Administration for disability benefits before separation, or subsequent thereto, or not at all, as he elects. Notwithstanding an election to the contrary, however, he should be strongly urged to file a claim before separation whether or not he finally decides to avail himself of the VA benefits. It must be pointed out that greater benefits may be available from the VA and, although there is no assurance that VA benefits will be greater, the member is not bound in any case to accept them. All members should be especially urged to initiate a claim with the Veterans Administration, for the likelihood that the VA benefits may be greater is often substantial, depending on the member's grade, severity of the disability, and his dependency status. The member will be shown how disability compensation paid by the VA relates to retired or severance pay. Other potential benefits such as postservice life insurance, survivor benefits, medical care and hospitalization will be pointed out. However, it will be emphasized in all cases that the VA makes its own determinations with respect to entitlements and administration of rights and benefits arising out of laws it administers, and that the VA is not bound by determinations made by the Army.

(6) *Social security.* The PEBLO will maintain close liaison with managers of social security district offices to insure that members who are being processed through the disability system, or those for whom processing is contemplated, are properly advised of the social security laws and regulations. When a person may be eligible for social security benefits, the PEBLO will assist the member in preparing DA Form 2783-R (AR 608-13) to insure contact is established between the member and the social security agency.

(7) *Temporary Disability Retired List.* If placement of the member on the Temporary Disability Retired List (TDRL) has been recommended, he will be advised of the effects of such disposition. He (or his next-of-kin) will be counseled that he must undergo periodic medical evaluation when so directed, or forfeit his right to retired pay. He will be informed that he must notify HQDA (DAPC-PAS-RD), 200 Stovall Street, Alexandria, VA 22332, of any change in residence. He will be informed that the maximum time he may be retained on the TDRL is 5 years, but that final disposition may be made at an earlier date whenever a periodic examination discloses that his condition has sufficiently stabilized. He will be informed that changes in the degree of severity of his disability will not affect his retired pay while he is on the TDRL, but that his final disposition may result in permanent retirement with the same, a greater, or lesser percentage of disability; separation with or without severance pay; or an opportunity to be reappointed or reenlisted. If he is a Reservist, the member will be informed that reappointment or reenlistment will not necessarily be followed by a recall to active duty.

(8) *Review Procedures.* Every member will be informed of the review procedures that take place. He will be apprised of the fact that the Commander, USAPDA, and the Army Physical Disability Appeal Board (if the case is referred to it) are authorized to recommend changes or modifications of PEB findings and recommendations, and advised of the rights and elections available to him in such event.

c. Assist the member in obtaining answers to questions which may arise, in such a manner as to clarify and resolve problems related to disability evaluation.

d. Counsel the member on the advisability of obtaining documents such as letters, supervisor evaluations, or efficiency reports reflecting physical ability or inability to perform military duties. If the member desires to obtain such documents, the PEBLO will assist in identifying and obtaining them. The MTF commander will insure that they are attached to the case file as supporting evidence.

(1) Special letter of evaluation describing the member's most recent performance of duty prepared by the member's commander or rater, or both. The letter should emphasize the member's limited duty assignment and ability or inability to perform duties normally expected of an individual in the member's office, grade, rank, or rating, including factors such as current duty assignment, anticipated duty assignments, branch, age and career specialties.

(2) Copies of applicable efficiency reports for officer personnel may be obtained from the Records Branch, HQDA (DAPC-PAR), 200 Stovall Street, Alexandria, VA 22332, and for enlisted personnel from the US Army Enlited Records Center, Fort Benjamin Harrison, IN 46249.

(3) The member may obtain other documentation such as letters or statements from knowledgeable individuals, as desired. An efficiency report prepared by his current rater reflecting performance of duty since the last required rating may be significant.

(4) In TDRL re-evaluations, the PEBLO will ascertain whether the member has been treated by a VA hospital, other military hospital, civilian hospital or a physician since his last medical evaluation. If the member indicates he was seen recently for a service-connected disability, the PEBLO will make every effort, with the assistance of the member, to obtain copies of such records of treatment and evaluation.

e. Maintain close coordination with the physical evluation board in the processing of

cases, and on all other matters affecting the efficient and expeditious handling of disability evaluation cases.

f. Provide counseling and assistance to TDRL members undergoing periodic examinations and related evaluations.

Section II. COUNSELING GUIDE

5. General. In addition to this regulation, several other references are frequently applicable and should be available to the PEBLO for counseling purposes. As a minimum, the following should be available:

a. AR 37-104-1 series.

b. AR 40-3 (Medical, Dental and Veterinary Care).

c. AR 40-501 (Standards of Medical Fitness).

d. AR 600-33 (Line of Duty Investigations).

e. AR 608-13 (Social Security Disability Benefits).

f. DA Pam 600-5 (Handbook on Retirement Services).

g. DA Pam 608-2 (Your Personal Affairs).

h. Veterans Administration Schedule for Rating Disabilities.

i. Physicians Guide: Disability Evaluation Examinations; Department of Medicine and Surgery, Veterans Administration.

6. Rights of Member. No member may be separated from the Army because of disability without a full and fair hearing. His rights are enumerated below:

a. Medical Board, (This board can find a member not qualified for retention and refer him to a PEB. Recommendations of the Medical Board are not binding on the PEB.)

(1) Right to disagree with Medical Board findings and appeal.

(2) Right to PEBLO assistance following Medical Board and during subsequent disability evaluation, to include where advisable, assistance in obtaining documents such as letters, supervisors evaluations, or efficiency reports reflecting physical ability or inability to perform duties.

b. Physical Evaluation Board—Informal. (The member does not appear or participate in an informal PEB hearing.)

(1) Right to be advised by PEBLO about findings of the informal PEB, to include an explanation of all rights and elections, and clarification of effects and benefits.

(2) Right to 3 working days in which to decide whether or not to accept PEB findings.

(3) Right to a formal hearing—discuss composition of formal panel—that the board members may be the same as those who made the informal finding consider what the member may wish to present to the PEB. Emphasize that new or additional material must generally be presented to have an information finding changed.

c. Physical Evaluation Board—Formal.

(1) Right to appear personally before the PEB.

(2) Right to be represented by an appointed JAGC OFFICER (lawyer), a JAGC officer of his choice if reasonably available, or by a civilian attorney at no expense to the Government, or by a representative (counselor) of an accredited veterans service organization.

(3) Right to cross-examine any witnesses called by the board or to call witnesses in his own behalf.

(4) Right to have excluded any statement signed by the member against his interest concering the origin, incurrence, or aggravation of a disease or injury that he has.

(5) Right to obtain a statement of the case (explaining or clarifying otherwise unclear rationale for PEB's findings and recommendations) following a formal hearing.

(6) Right to submit a written rebuttal to the findings of a formal PEB.

d. The US Army Physical Disability Agency. This agency reviews all PEB cases

and where there is a reduction in the percentage of disability, a change of disposition, or any change which may affect the member adversely the following rights apply:

(1) Right to be informed of the proposed modification and the reasons therefor.

(2) Right to a formal PEB hearing (if the member has not already had one) with rights as outlined in subparagraph *c* above.

(3) Right, in every case, to submit a rebuttal to modified findings of Cmdr, USAPDA.

(4) Right to be counseled by PEBLO (or PEB counsel in formal case) as to the meaning and effect of the proposed change.

(5) Right to be assisted by the PEBLO (or PEB counsel in formal cases) in preparing his rebuttal if the member elects to submit one.

c. US Army Physical Disability Appeal Board. This board reviews cases where the member has elected to rebut a proposed modification and the Cmdr, USAPDA did not agree with the rebuttal. If the USAPDAB arrives at findings and recommendations different from either the PEB or USAPDA, the member has the right to:

(1) Be informed of the revised findings of the USAPDAB.

(2) Submit a rebuttal to the findings.

(3) Counseling on the meaning and effect of these new findings.

(4) The assistance of the PEBLO or PEB counsel in preparing his rebuttal if he elects to submit one. (Rebuttals are sent to the Appeal Board for reconsideration.)

7. PEB Findings and Recommendations. *a.* The PEB must make findings, based on medical records, the medical board, and all other relevant evidence such as evalution of performance of duty, as to the following:

(1) Whether the member is unfit.

(2) If unfit whether the disability causing unfitness was incurred while entitled to basic pay and in line of duty. Members ordered to active duty for 30 days or less or inactive duty for training must have an unfitting disability resulting from an injury incurred under proper conditions.

(3) Percentage of disability if the member is otherwise qualified.

(4) Whether the member's retirement was based on disability (1) resulting from injury or disease received in line of duty as a direct result of armed conflict, or (2) caused by an instrumentality of war and incurred in line of duty in a period of war.

b. Main guidelines for explaining each disability percentage (VA Schedule for Rating Disabilities).

(1) Guidance in interpreting VASRD found in appendix B, AR 635-40.

(2) Method for computing the combined rating for more than one disability is not simple addition but by a mathematical formula (para 11, sec 1, app B).

(3) There are often various means of rating a disability, for example, a joint injury may involve nerve or muscle damage and limitation of motion. Check each to ensure the member has been rated the most advantageous way; however, attention should be given the amputation rule (para 68, app B, AR 635-40) and the prohibition of pyramiding (para 4, sec I, app B, AR 635-40).

c. Retirement or separation determined by percent of disability or years of service.

(1) Combined rating at 30 percent or more, member is either placed on TDRL or permanently retired; if member has been retired once and then recalled, he will revert to retired status when released from active duty and may be entitled to recomputation of retired pay.

(2) Combined rating less than 30 percent, member separated from the service with severance pay unless he has over 20 years' service in which case he would be retired. (See tables 4-3, 4-4 and 4-5.)

d. Rights available *only* to retired members (TDRL or permanent)—Explain this to all members, same rights and privileges as those for members retired for years of service, some of which are:

(1) Right to PX and commissary privileges for member, wife and children, if children are not too old and other similar military benefits as appropriate.

(2) Right, generally, to medical care for himself and his dependents as reasonably available at any service installation.

(3) Right to participate in CHAMPUS—basically a health policy where the Army pays up to 75 percent of "reasonable" hospital expenses for inpatient care, and 75 percent of outpatient care per fiscal year after the first $50 dollars per person or $100 dollars per family spent by member. (See DA Pam 360-505, "Uniform Services Health Benefits Program.")

(4) Right to receive treatment at VA hospital.

(5) Possession of valid identification card (DD Form 2-A Gray for retiree and DD form 1173 for dependents) is all that is needed for most privileges.

8. Temporary Disability Retired List. *a.* Minimum payment is 50 percent of basic pay even if disability percentage is less than that.

b. Periodic examinations required at least every 18 months. Member receives orders telling him when and where to report.

(1) If member does not respond, his Army retired pay may be stopped.

(2) If an emergency comes up and the member is unable to meet date assigned, then contact the MTF commander who will arrange a new examination date and obtain new orders if necessary.

(3) Each periodic examination report is referred to a PEB for determination as to whether the member is to be retained on or removed from the TDRL.

c. Maximum TDRL period—5 years.

(1) In no case will a member be removed from the TDRL without another PEB.

(2) No changes will be made in the percentage of disability while on the TDRL even if it gets materially better or worse, without procedure as outlined above.

(3) Retired pay will be stopped if final action is not completed within 5 years.

d. Finding of Fit for Duty upon completion of TDRL.

(1) Disability pay stops.

(2) Member may elect to return to AD (or former Reserve status) or be discharged.

(3) If the member elects AD, time spent on TDRL will count for pay purposes.

(4) If the member does not elect AD, the finding of fit does not necessarily affect his standing with VA or his entitlement to VA compensation.

9. Pay and Grade. *a.* Pay computation is based on highest grade "satisfactorily" held *OR* current grade, whichever is higher. Final grade determination is made by DA.

b. Computation of pay for those with less than 20 years active service and a disability percentage less than 30 percent (Separation with severance)—2 months base pay for every year of active duty with a maximum of 12 years service—6 months or more is considered as a whole year for computing years of service as a multiplier, but does not increase basic pay rate. A member with less than six months service cannot receive severance pay, but may apply to the VA for disability compensation.

c. Computation of pay for members with a disability rating of 30% or with 20 or more years active service.

(*Note:* 19 years and 6 months is *not* considered 20 years of active service.)

(1) Compute either on percent of disability as a fraction of basic pay, *OR*, as $2^1/_2$ percent of basic pay for each year of service, whichever is higher.

(2) All pay computed on disability percentage is tax free.

(3) In no case may pay exceed 75 percent of basic pay.

(4) If the member would receive a greater percentage of basic pay on years of service, the portion equal to the amount he would receive due to disability percentage is tax free. *Example:* Member with 24 years service and disability rating of 30 percent can receive 60 percent of base on years of service ($24 \times 2^1/_2$) with the amount equal to 30 percent of his basic pay tax free as disability pay.

(5) A member may also use the "Sick Pay Exclusion" (See DA Pam 600-5, "Retired Army Personnel Handbook," for details) if his retirement pay on years of service exceeds the tax benefit on disability percentage. This exclusion is not provided for on the W-2 Form, but must be claimed in the member's tax return. This exclusion has a time limit dependent on rank and/or years of service.

d. Tax benefits for members with less than 50 percent disability and TDRL are as follows:

(1) If the member has less than 20 years all pay is tax free.

(2) If the member has 20 years or more active service, only the amount equal to his disability percentage is tax free.

e. Retired members are automatically covered under the Survivor Benefit Plan (SBP) unless they elect not to participate.

f. Regular Army officers may come within the limitations of "dual compensation" if they come back to work for the Federal Government unless they have a disability declared a direct result of armed conflict or instrumentality of war.

g. Special benefits accrue if disability is direct result of armed conflict or instrumentality of war, and member seeks Federal employment—

(1) Preference employee.

(2) Leave credit at highest rate.

10. Veterans Administration. The VA's program for disability benefits is based on VA's own determination. Some examples of the VA's program currently are as follows:

a. Member may receive benefits from both VA and the Army, but not more than the higher amount of the two; i.e., if he were to get $300 per month from VA and $150 monthly from the Army, he could take a combination not exceeding $300 per month. (The same is true with severance pay in that if he were to get $500 severance pay from the Army and $50 monthly from VA, he could not collect from VA until the $500 had been recovered.)

b. The member loses no rights from either the VA or the Army by taking pay from one rather than the other.

c. If retired, the member may switch back and forth from the Army to VA in order to secure maximum benefits. (VA representative will assist in this.)

d. No matter how the member is separated, he should always file a claim with VA.

e. Contact a VA representative for information concerning other available benefits. If no VA representative is available, the following should be explained to the member:

(1) *Example 1:* A PFC, married, with 50 percent disability rating from both the Army and VA, would be able to receive about $188 from the Army (less than 2 years service); VA would pay $149 plus $16 for wife, making Army retired pay more advantageous.

(2) *Example 2:* A SFC (E-7), married, with 50 percent disability rating from the Army and VA, would be able to receive about $343 from the Army (over 10 years service): VA would pay $149 plus $16 for wife, as above, making Army retired pay more advantageous.

f. VA has an excellent rehabilitation program under which tuition, fees and books are paid for by VA plus a monthly subsistence sum, for certain qualified members.

g. VA offers a life insurance program whereby a member who does not already have NSLI (National Service Life Insurance) can obtain up to $10,000 insurance at low rates in addition to his current convertible SGLI (Serviceman's Group Life Insurance).

h. None of the VA benefits are automatic; the Veteran must apply and do so before expiration of the appropriate time limit in which to qualify.

11. Social Security. *a.* Members who become disabled may be entitled to social security benefits if qualified.

b. Every member should file a claim if there is any possibility of collection since social security is payable in addition to, and

without deduction from Army or VA disability compensation.

c. PEB Liaison Officers are directed by paragraph 9, AR 608-13 to establish liaison with social security officers, supply information concerning social security, and to counsel patients about the social security disability program.

12. Counseling Procedure and Checklist for Medical Boards. *a.* Review and become familiar with the findings of the medical board.

(1) Be sure that the medical terminology can be explained in terms that the member can understand.

(2) Check all entries on the DA Form 3947 for completeness.

b. Promptly contact the member and make arrangements to discuss the findings.

(1) Give the member an opportunity to read the medical board report and the narrative summary.

(2) Inquire whether all medical conditions and physical defects appear and that they have been described adequately. If not, consider submitting an appeal, or contacting physician as to possibly obtaining an addendum.

(3) Inform the member of the procedures for requesting expeditious discharge (chap. 5) or continuance on active duty (chap. 6).

c. When the member indicates he wishes to appeal the findings of the medical board:

(1) Explain how additional evidence may be presented for consideration by the medical board.

(2) Explain the options of the appointing authority which are to approve the findings and recommendations, or return the proceedings to the medical board for reconsideration.

(3) Have the member sign the medical board indicating whether or not he desires to appeal.

(4) Assist in writing an appeal, if desired by the member and furnish clerical assistance.

d. Outline generally the course of physical disability processing through the Physical Evaluation Board and the US Army Physical Disability Agency.

(1) Inform the member that he will be contacted when the PEB makes an informal finding and will be advised concerning the PEB's recommendations.

(2) Furnish the member with a copy of all pertinent publications which may answer many of his questions; however, if they do not, he should come back.

e. Suggest that he sees a VA representative to find out what benefits are available from the Veterans Administration.

f. DO NOT INFORM THE MEMBER:

(1) That he has been found physically fit or unfit.

(2) That he will be discharged or retired from the service.

(3) What percentage of disability he may receive.

(4) Of the line of duty determination unless a final, approved LOD determination is available.

13. Counseling Procedure and Checklist for Findings of the PEB. *a.* Review and become familiar with the findings and recommendations of the PEB.

(1) Compare PEB findings with the member's medical board, the VASRD and appendix B. (If the member had been found fit, consult chap. 3, AR 40-501 and chap. 4, AR 635-40). Check that PEB has not overlooked any condition which may substantially alter the member's benefits.

(2) Compute and prepare an estimate of retirement or severance pay, tax benefits, and VA compensation. Consider length of service, sick pay exclusion and other benefits. See disability Counseling Worksheet, figure C-1.

b. Contact the member and make arrangements to discuss the findings.

(1) Inform the member of the findings and the benefits which accrue in his case (using the prepared estimates) and his possible courses of action.

(2) Advise the member that he has three days (7 days plus mail time for members on TDRL), excluding weekends and holidays, in which to accept or decline the findings of the PEB. If no election is made within that time, it will be assumed he concurs.

(3) Clarify the possible elections the member might make and his legal rights, then request that he check the appropriate item(s) on DA Form 199. If the member wishes to nonconcur he may elect to have a formal hearing at which he is or is not present. Advise member he may be represented by appointed PEB counsel, other military counsel if available, representation by a veterans organization counselor, or civilian counsel at his own expense.

c. Obtain residence phone number where member may be reached by PEB.

d. Should the member be recommended for TDRL, be sure to explain that:

(1) Such status is for a maximum of five years, but that final disposition may be at an earlier date.

(2) He will undergo periodic medical evaluations (usually at 12 to 18 month intervals) when so directed by MILPERCEN.

(3) No change in the degree of severity of his disability (percentage) will be made as long as he is on TDRL and until a final disposition is made.

(4) Final disposition may result in permanent retirement with the same, a greater, or lesser percentage of disability; separation with severance pay (if less than 20 years); or a finding of physical fitness.

(5) Members placed on TDRL never receive less than 50 percent of base pay while on TDRL.

(6) He must notify MILPERCEN: ATTN: DAPC-PAS-RD of any change of address.

e. In the event the member indicates he wishes to nonconcur:

(1) Determine that the member's nonconcurrence is not due to a misunderstanding of benefits.

(2) If the member indicates that such action is based upon the fact that the PEB did not rate a certain condition; recheck medical board (contact physician if necessary) to ensure that the condition has been recorded and properly described. (An addendum can often resolve the problem). Compare symptomatology related by the member and contained in his medical board with the requirements of the VASRD and appendix B, AR 635-40, and advise member on the merits of his contention.

f. Following this discussion, if the member still wants a formal hearing:

(1) Notify the PEB so that arrangements can be made for the member to consult with PEB counsel.

(2) Prepare a short summary of the member's reasons for nonconcurring and forward with the member's election.

g. Every member should be informed that:

(1) Pay computations are merely estimates.

(2) Findings and recommendations are not final. In the event of a modification or change he should contact his counselor.

(3) He should read DA Pam 600-5, "Retired Army Personnel Handbook."

(4) He should file a VA claim and contact a VA representative, (same for Social Security).

(*a*) VA compensation is payable as an alternative to Army payments.

(*b*) Social Security is payable in addition to the Army or VA compensation for qualified veterans.

(5) He should determine if disability insurance exists on any outstanding indebtedness which might relieve him from further payments.

(6) He should be advised that as a disabled veteran he has a 10-point job preference in federal employment. (Under some circumstances this can be claimed by wife.) In addition, veterans preference provides waiver of age and physical requirements, and gives retention preference (except those retired on 20 years or more service.)

14. Counseling Checklist for Review Modifications. *a.* Review and become familiar with

the USAPDA action and the rationale for that action.

(1) Compare the proposed change with the findings of the PEB, the member's medical board, the VASRD, and appendix B, AR 635-40.

(2) Compute and prepare an estimate of benefits resulting from the modification as compared to the earlier PEB findings.

b. Contact the member by phone or registered mail informing him of—

(1) The proposed change and the effects it would have in terms of retirement or severance pay and tax benefits.

(2) That he may elect to concur, have a formal hearing if he has not already had one, or submit a rebuttal. If the member has had a formal hearing he may elect to concur or submit a rebuttal.

(3) The reasons for the proposed change.

(4) That you will be available to assist him in making his election and pursuing the course of action he elects.

(5) The advantages and disadvantages of both a rebuttal to the Cdr USAPDA, and a demand for a formal PEB hearing if he has not already had one (i.e., submission of a rebuttal ensures that the case will be forwarded to USAPDAB if the Cdr, USAPDA, does not agree with the member). A formal PEB hearing may in some cases provide a better vehicle for submitting evidence, but PEB may agree with the Cdr, USAPDA, in which case the file will not be forwarded to APDAB for review.

c. If the member wishes to nonconcur and request a formal hearing, advise him that—

(1) The PEB counsel will contact him to make arrangements for preparing his case.

(2) The PEB recorder will notify him of the date and time of his hearing.

d. If the member wishes to nonconcur and submit a rebuttal advise him that:

(1) You will be available to assist him in preparing his rebuttal. (If the member has gone home PCS, it may be more convenient to work with a JAG officer, PEBLO, or PEB counsel near his home.)

(2) His rebuttal should be directed through the appropriate PEB to the Cdr, USAPDA, WRAMC, FG Section, Washington, DC 20012.

(3) The rebuttal should state clearly and completely why he does not agree with the modified findings.

[Note: The right of rebuttal is the member's and he should sign the rebuttal statement.]

e. Inform the member that he has seven (7) days from date of receipt to make an election but may request an extension for good reasons.

f. After counseling the member on the modification or sending him a letter, complete the statement on the copy of the modification letter and send it to the Cdr, USAPDA.

DISABILITY COUNSELING WORKSHEET	Date
1. Member's Name	4. Monthly Base Pay
2. Length of Service	5. Disability Percentage
3. Rank or Grade	6. Disposition

7. Estimated Retired Pay

a. Length of Service: 2-1/2% X yrs of svc X base pay =

% X (base) =

b. Disability: Disability Percentage X Base Pay =

% X (base) = =

(Note: Members on TDRL with less than 20 yrs service receive all tax free; Members on TDRL with 20 yrs or more receive amt equal to disability percentage tax free.)

c. Retired Pay less Amt. Tax Free

d. Sick Pay Exclusion (if amt on length of svc exceeds disability)

8. Estimated Disability Severance Pay

2 X (yrs of svc with max. 12 yrs) X Base =

9. Notes:

Figure C-1.

APPENDIX D

INSTRUCTIONS FOR DA FORM 199
(Physical Evaluation Board Proceedings)

1. All board proceedings are informal boards unless stamped "Formal". A ½-inch high letter outline stamp will be used diagonally across the center face of DA Form 199 to indicate a Formal Board.

2. *Item 3.* Complete active service from DA Forms 2 and 2-1. If less than 20, enter years and months. If 20 or more, enter "over 20 YOS".

3. *Item 6.* If the member is on the TDRL, enter TDRL.

4. *Item 8.* Entries for each column will be determined by the recommended disposition. Entries will not be made for a member found to be fit. See chapter 6 for procedures in processing applications for continuance on active duty.

a. Column A. Use the VASRD code numbers.

b. Column B. Terminology to describe each disability should be chosen from the VASRD, AR 635-40, the medical board, narrative summary, or a combination of these, whichever will assist in providing a succinct and complete disability picture. Include limitations, controls, and severity. A description of the limitation and qualifying phrases should not be arbitrarily selected from VASRD merely to justify a particular rating. Cross reference each disability to the source in the medical records, e.g., Medical Board, narrative summary, present condition, photographs.

(1) In LOD-NO or EPTS diagnoses, the reason should be stated or source indicated (Health Record entry, LOD investigation, etc.). In EPTS conditions involving service aggravation, except when the rating is 100 percent, computation of a net rating will be indicated after the disability entry to include reasons therefor. For example:

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 10%
(Induction Physical, SF 88, dtd 14 Mar 70).
NET Rating ---------- 50%

The net rating will be entered in column G also.

(2) Where paired extremities or paired skeletal muscles are involved resulting in the application of bilateral factors, those disabilities will be listed consecutively followed by computation of the bilateral factor. *Example:*

1. Foot, right; loss of use of
   (Medical Board Diagnosis 1).
2. Ankle, left, limited motion; marked
   (Medical Board Diagnosis 3)
   Bilateral Factor: No 1 = 40%, No 2 = 20%
   Combined Rating: 52% + 5.2 = 57.2 = 57%
3. Scars, disfiguring, face; severe
   (Medical Board Diagnosis 4, photographs).

The combined net rating for the bilateral elements will be entered in column G and will determine the order of significance when listing with other disabilities as indicated above.

(3) For members falling under the provisions of table 4-5, a statement will be en-

tered in column B for each disability listed indicating whether or not the disability was the proximate result of performing active duty for training.

(4) If the member is on the TDRL, the following will apply:

(*a*) *Retention on the TDRL.* The disability description as required in *b* above, will be updated following each periodic examination to describe the severity of the member's current physical condition. Additional ratable disabilities will be entered when there is an etiologic relationship to an active service condition. A disability incurred while the member was on the TDRL will be listed only if it is unfitting, with appropriate entries in columns D and E. Appropriate remarks in item 16, DA Form 199, will be made to explain the new entries.

(*b*) *Removal from the TDRL.* At the time of final adjudication, entries will reflect the current status of all physical disabilities.

c. Column C. Enter "YES" or "NO" as appropriate. An unfavorable entry (YES) may be used only when an approved DD Form 261 contains an entry in item 9d that the member was absent without authority and the entry in item 10 is, "Not in Line of Duty—Not Due to Own Misconduct" or the entry in item 9e states that intentional misconduct or neglect was the proximate cause and the entry in item 10 is, "Not in Line of Duty—Due to Own Misconduct". Make no entry if member is on the TDRL.

d. Columns D, E. Enter "YES" or "NO" as appropriate for each disability including disabilities added while the member is on the TDRL. If a member is retained on the TDRL without a change, make no entry. Leave column F blank.

e. Column G. Enter appropriate 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 member is retained on the TDRL.

5. *Item 9.*

a. Recommendations for disposition of the member will be selected from the following:

(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 therefrom."

(4) "Separated from the service with severance pay."

(5) "Considered for continuance on active duty in accordance with chapter 6, AR 635-40."

(6) "Retained on the TDRL with reexamination during _____ ."
(Month and Year)

(7) "Revert to retired status."

(8) Other (specify).

b. If a member who has completed less than 20 years of service has applied for retirement contingent on completion of 20 years active service and PEB processing results in a recommendation for placement on the TDRL or separation with severance pay, the PEB will make an appropriate entry from *a* above, and add "See item 16." A statement will be placed in item 16 to the effect that permanent retirement or placement on the TDRL would be recommended if the member had completed 20 years of active military service.

6. *Item 10.* The entry will be made in accordance with the provisions of paragraph 4-13k, and will be made in all cases (although pertinent only to members who will be retired). For a member on the TDRL, make an entry only if DA Form 199 placing him on TDRL did not indicate a finding.

7. *Item 11. a.* The sequence of exhibits should follow the order of table 4-2.

b. The Medical Board Proceedings (DA Form 3947) should be examined to determine whether the member has indicated a desire to remain on active duty under chapter 6. Application for continuance on active duty

should be indicated under item 11 as an exhibit.

8. *Item 12.* This item will be completed only for informal cases.

9. *Item 13.* The member indicates his selection and signs.

10. *Item 14.* The legal counsel or PEBLO who informs the member of the PEB's findings and recommendations will sign this item.

11. *Item 15.* When a formal hearing is held, complete entries as appropriate. The signatures of the president and counsel will verify the accuracy and completeness of the record. Failure of either to sign will be explained on a separate sheet and treated as an exhibit.

12. *Item 16. Remarks and Continuations.* Enter rationale for finding made in item 9. Also see D-5*b*. Upon removal from the TDRL any variation between the findings, recommendations, and ratings of the original action placing the member on the TDRL and present action removing him from the TDRL will be explained in a brief summary understandable to the member.

13. These are special instructions for items 8, 9, 10 and 16 which apply to cases of retired members who are serving on active duty.

a. Previously retired other than for physical disability—

(1) *Item 8.* Complete the section listing all current disabilities. Recomputation of retired pay for a member previously retired other than for disability is contingent on incurrence of physical disability while on active duty after retirement of at least 30 percent for which the member would otherwise be eligible for disability retirement. When more than one disability exists, a footnote after the last disability will identify those which were incurred while on post-retirement active duty and the combined rating for those alone. The footnote will credit only the percentage representing aggravation of a disability present before retirement. Aggravation will be determined by subtracting the pre-retirement rating from the current rating, the remainder being 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, the rating for each disability incurred in line of duty while entitled to receive basic pay will be entered in item 8*g* regardless of when the disability was incurred. The combined rating resulting from 8*g* will be entered in item 9.

(2) *Item 9.* Complete all entries; however, disposition will be "Revert to retired status."

(3) *Item 10.* No entry will be made.

(4) *Item 16.* Enter a brief statement explaining—

(*a*) That the member was recalled to active duty while in a retired status, citing the reason for retirement.

(*b*) The date of recall and period for which recalled.

b. Previously permanently retired because of physical disability.

(1) *Item 8.* The current disability will be described and the rating will be entered in column *G*.

(2) *Item 9.* No entry will be made as to fitness. The disposition will be "Revert to retired status."

(3) *Item 10.* No entry will be made.

(4) *Item 16.* Enter a brief statement explaining—

(*a*) That the member was recalled to active duty from permanent disability retirement.

(*b*) The date recalled

(*c*) Whether the evaluation is the result of a new disablity or aggravation of a previous disability or a combination of both.

c. When the member was on the TDRL at the time of recall to active duty and upon evaluation is still on the TDRL, complete all items as provided in instructions 4, 5, and 6 above. Item 16 should relate the member's status, the date of recall, and the period for which recalled.

APPENDIX E

PERSONNEL PROCESSING ACTIONS

1. General. This appendix prescribes personnel processing actions peculiar to members undergoing physical evaluation under the provisions of this regulation.

2. Physical evaluation. When it is determined that a member will be processed for physical evaluation under this regulation, he will be placed under the administrative control of the commander of the medical treatment facility to the degree necessary to facilitate evaluation processing. The decision as to whether the member will be assigned to the medical holding unit of the medical treatment facility will be made on the basis of whether the individual may render productive service to his parent unit while undergoing disability processing. Members will be processed on an outpatient basis from their parent organization whenever feasible. The MTF commander concerned is responsible for initiating all appropriate actions expeditiously which relate to disability processing, to include initiating appropriate action for necessary movement of the patient to other hospitals, as required, or to the Physical Evaluation Board, if a personal appearance of the member is to be made. See AR 135-200 concerning orders for ARNGUS and Army Reserve personnel.

3. Individual records and property. *a.* Personnel records of members attached to a medical holding unit will be retained in the organization to which the member is assigned. Records required by the medical treatment facility commander in conjunction with the study and evaluation of the member will be furnished the medical treatment facility on a loan basis, when requested by him.

b. Upon receipt of an order reassigning a member of his organization to a medical holding unit, the organization commander will forward the member's personnel and pay records to the MTF commander concerned within 48 hours.

c. Individual clothing of the member will be forwarded in accordance with the provisions of AR 735-5.

4. Administrative control of members prior to Final PEB action. *a.* Members processed as outpatients. A member for whom disability processing has been initiated will remain available to the MTF commander or President of the PEB until action in his case has been completed by the PEB.

b. Member processed by MTFs in attached status. When referral of his case to a Physical Evaluation Board is indicated, a member attached to a medical holding unit of a MTF will normally be retained at the MTF until PEB processing is completed. He may, however, be authorized to subsist elsewhere.

c. Members processed by MTFs in assigned status. Following referral of a case to a Physical Evaluation Board, an assigned patient normally will remain at the MTF until PEB action is completed. He may, however, be authorized to subsist elsewhere, pending completion of PEB action.

5. Administrative control of members after PEB action. After PEB proceedings have been completed, the member's disposition will be in accordance with the recommended findings of the board as indicated in *a* and *b* below. The member will not be separated from the service for any reason before notification is received of the final determination in his case by the Secretary of the Army.

a. Physically fit. A member who is found physically fit for duty by a PEB and concurs in the finding will be processed by the medical treatment facility commander in accordance with AR 40-3. If the member does not concur with the PEB's finding of fit, or if he is being processed in connection with mandatory or voluntary retirement, he will be retained under control of the medical treatment facility commander pending final action on his case at Headquarters, Department of the Army. If he is an inpatient, he may be placed on duty within the MTF or with a nearby organization pending final action on his case. If he is an outpatient, he will remain assigned to his parent organization pending final action on his case.

b. Physically unfit. A member who is found unfit because of physical disability by the PEB will be retained under control of the medical treatment facility commander pending final review and approval of his case.

c. Inpatient processing. A member who is an inpatient in a MTF when his case was referred to a PEB may be—

(1) Retained as an inpatient 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 condition permits. DA Form 3349 (Medical Condition-Physical Profile Record) will be furnished to the member.

(3) Authorized to subsist elsewhere pending completion of PEB action.

(4) Ordered home on a permanent change of station (PCSH) on his request if assigned to the medical holding unit, while awaiting final action on his case and further orders. The member's request for PCSH will follow the format of figure E-1. He will be carefully counseled regarding his entitlements and obligations incurred as a result of his request. All separation actions and forms will be completed, insofar as practical, prior to departure of the member on PCSH, to include final action by the PEB and the member on PEB actions.

(5) Ordered to a Veterans Administration hospital on a permanent change of station (PCSVA) as set forth in AR 40-3.

d. Change in status.

(1) If the member is rehospitalized before final disposition, orders will be amended to show the place and date(s) of rehospitalization, authorization for travel between his home and the MTF, and whether he is entitled to BAQ and subsistence during hospitalization. The member will not be charged leave during hospitalization and travel connected therewith. If rehospitalization is completed prior to final disposition of his case, he may again be placed on a PCSH status if he so desires.

(2) A copy of the member's request and orders directing PCSH will be furnished the PEB for attachment to the case records. If the records have already been sent to the CG, USAPDA, the PEB will send the request and orders to HQDA (DAPC-PAS-RD). If the orders are later amended as described in (1) above, a copy of each amendment will be furnished CG, MILPERCEN, at the same address without delay.

6. Members located in oversea command. A member assigned in an oversea command, or who is on the TDRL and residing (not visiting) in the command, will be processed as follows:

a. Active duty. Upon completion of the medical board proceedings by the responsible oversea MTF, the medical records and allied papers will be forwarded to the PEB prescribed in table 4-1 for evaluation. Should the member 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, and initiate a request to the oversea MTF commander for the member's travel orders. The member will be authorized 5 days TDY at the Physical Evaluation Board and will return immediately to his assignment overseas following his appearance before the board unless otherwise directed by proper authority.

b. TDRL. When a TDRL member who resides in the oversea command demands a

formal hearing and elects personal appearance, he will perform necessary travel on the orders by the PEB as prescribed in chapter 7. The member will be authorized 5 days TDY at the Physical Evaluation Board.

7. Continuance of disabled members. Disabled members who request continuance on active duty will be processed pursuant to chapter 6.

8. Army members hospitalized in non-Army MTFs. CG, Health Services Command, is responsible for the administration of Army members who are hospitalized in other than Army MTFs. This responsibility is exercised through Army administrative units at certain Federal MTFs, or through Army MTF designated by the commander of the Health Services Command to assume responsibility for such members as provided for in AR 40-3.

a. Unless otherwise directed by the commander concerned, the commander of an Army administrative unit at a Federal MTF will exercise the functions and responsibilities described in this regulation to insure the prompt processing of members when medical boards recommend referrals to PEB's.

b. In all other instances of disabled members hospitalized in non-Army MTF's, if transfer to an Army MTF is not contemplated or is contraindicated, commanders of Army MTF's designated to assume administrative control will exercise the functions and responsibilities necessary for the prompt processing of such members. If transfer of a member to an Army MTF is planned, disability processing will be deferred until the member has been moved.

c. Medical board proceedings prepared by Navy and Air Force MTF's on Army members in those MTF's will be used for disability processing whenever feasible. Members hospitalized in nonservice MTF's who require disability evaluation will be evaluated by medical boards appointed by Army MTF commanders having administrative responsibility for such members.

9. Final disposition instructions. After final determination within the Office of the Secretary of the Army, DA Orders or other disposition instructions will be forwarded to the appropriate commander for final disposition, AR 635-10 establishes procedures for processing members for retirement or discharge. The following instructions supplement those in AR 635-10 when members who are unfit because of physical disability are processed for retirement or discharge:

a. Discharge. Discharge will be accomplished within 3 working days after receipt of disposition instruction from CG, MILPERCEN.

b. Retirement. Retirement processing must be completed by the effective date established in Department of the Army orders. Retirement dates will be established as follows:

(1) *General officers.* Date of retirement will be established on an individual basis.

(2) *Individuals processed for mandatory retirement.* Date of retirement will be the date originally requested or as soon thereafter as feasible as provided in (4) below, or an earlier date if subsequently requested. A member with between 19 and 20 years of service who has applied for voluntary retirement will not be separated or placed on the TDRL prior to completion of 20 years of service, without approval of the Secretary of the Army.

(4) *All others.*

(*a*) Date of retirement will be 7 days from the date orders are issued for individuals in CONUS at home on PCSH or in a VA hospital awaiting retirement.

(*b*) Date of retirement will be 15 days from the date retirement orders are issued, or earlier upon request, for members not covered by (*a*) above who are in CONUS with home of record in CONUS.

(*c*) Date of retirement will be 30 days from the date orders are issued, or earlier upon request, for members in CONUS whose home of record is outside CONUS and for members whose home of record is in CONUS, but are stationed outside CONUS when retirement orders are issued.

c. Release from active duty of recalled retired member. Processing required will be completed and the member released from active duty on the effective date established in Department of the Army orders.

d. Requests for exception to established discharge or retirement date. Requests for deviation from established discharge date or amendment or revocation of retirement orders for other than medical reasons will be submitted with justification to HQDA (DAPC-PAS-RD). If the member is rehospitalized and the presence of substantial new evidence or other medical conditions indicate that the initial disability determination or percentage of disability should be changed, the MTF commander will notify the Physical Evaluation Board which adjudicated the case. The servicing PEB will be promptly informed. A decision as to whether the case should be reconsidered by the Physical Evaluation Board will be made by the CG, USAPDA, who may request the CG, MILPERCEN, to cancel discharge instructions, amend or revoke retirement orders.

e. Responsibility of MTF commanders. MTF commanders will be responsible for final disposition of members for physical disability separation within their area of responsibility.

10. Preparation and distribution of orders. Orders separating members for physical disability will be prepared and distributed in accordance with the provisions of AR 301-10. If applicable, an appropriate statement will be made regarding termination of appointment.

11. AR 635-5 (Separation Documents). See AR 635-5 for instructions on completion of DD Form 214 (Armed Forces of the United States—Report of Transfer or Discharge).

12. Type discharge certificate issued. *a. Officers.* Officers discharged by reason of physical disability will be honorably discharged and issued an honorable discharge certificate (DD Form 256A) unless the disability upon which discharge is predicated 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 the latter circumstances, the officer will be discharged under honorable conditions and will be issued a General Discharge Certificate (DD Form 257A).

b. Enlisted personnel. Enlisted members discharged by reason of physical disability will be honorably discharged and issued an Honorable Discharge Certificate (DD Form 256A), unless the character of service (see AR 635-200) has been such as to warrant issuance of a General Discharge Certificate (DD Form 257A).

13. Delivery of separation forms. Separation forms will be delivered to the member in accordance with AR 635-5. If the member has been moved to a Veterans Administration hospital before the date of separation or retirement, and is mentally incompetent, the separation forms will be mailed to him through the director of the VA hospital.

14. Retirement honors. Appropriate retirement honors will be extended to members retired for physical disability in accordance with AR 635-10.

(Date)

SUBJECT: Request for Permanent Change of Station
TO: (Cdr of appropriate MTF)

1. I (do)(do not) desire to be placed on permanent change of station at ---------- to await further orders.

2. I understand that, if I am ordered on a permanent change of station, I will be in an "awaiting orders" status and I am entitled to pay, allowances and mileage for myself. I am entitled to basic allowances for quarters, provided Government quarters are not available. If an enlisted member. I am entitled to basic allowances for subsistence at rates prescribed where rations in kind are not available. I am entitled to temporary storage of household goods. I may request an advance of travel allowances.

3. Leave will be charged while I am on permanent change of station, to the extent leave is available. Any unused accrued leave remaining to my credit on the day preceding the effective date of retirement, separation or placement on the Temporary Disability Retired List will be computed and payment made with final pay, if proper.

4. I further understand that I remain subject to military control, and in the event the Secretary of the Army determines that I should be returned to duty, undergo further medical treatment, or that some other circumstances preclude my retirement or separation, I will be subject to orders to such station as may be determined by the Secretary of the Army.

5. I may accept transportation for dependents and shipment of household goods to the place where I await further orders. Transportation of dependents and shipment of household goods to such place do not preclude entitlement to transportation of dependents and shipment of household goods to home of selection or the new duty station when retirement orders are issued, or return to duty is directed, as determined by the Secretary of the Army. I understand that if I accept transportation of dependents and shipment of household goods to both the place where I await orders and to home of selection (or new duty station), such entitlement is subject to adjustment. Entitlement may not exceed that payable for the distance from the place where I received orders directing me to proceed in an awaiting orders status to the home of selection or the new duty station, whichever is appropriate.

Signature of the member

Name, Grade

SSAN

The proponent agency of this regulation is the US Army Physical Disability Agency. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to Cdr, USAPDA, ATTN: Plans & Programs Office, Walter Reed Army Medical Center, Forest Glen Section, Washington, DC 20012.

By Order of the Secretary of the Army:

FRED C. WEYAND
General, United States Army
Chief of Staff

Official:

VERNE L. BOWERS
Major General, United States Army
The Adjutant General

DISTRIBUTION:

Active Army, ARNG, USAR: To be distributed in accordance with DA Form 12-9A requirements for AR, Personnel Separations — B (Qty rqr block no. 461).

0001157971