

FOIA MARKER

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Folder Title:
Gays in the Military - Benefits: Disability Evaluation - DOD [Department of Defense]

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DISABILITY EVALUATION SYSTEM PROCESS

DoD
disability
Eval.
Process

Step 1: Referral to Disability Evaluation System.

- o Generally based on apparent failure to meet medical retention standards. These standards, established by the medical system, are a listing of medical conditions that might render a member unfit for duty.
- o Current retention standard on AIDS triggers referral for HIV-positive members "who manifest evidence of progressive clinical illness or immunological deficiency."¹ Referral is not now based on HIV positive status alone.

Step 2: Medical Evaluation Board (MEB).

- o This is a detailed medical assessment performed by the health care system. It documents the condition, severity, prognosis, etc. The MEB does not make a determination of "fitness for duty."

Step 3: Physical Evaluation Board (PEB).

- o This is a personnel system determination of whether the member should be retired or separated because of physical disability. The standard is: "unfitness to perform the duties of office, grade, rank, or rating because of disease or injury incurred while entitled to basic pay."² The determination of fitness is based on evaluation of the MEB report in conjunction with the personnel requirements applicable to the member's circumstances.

o "Inability to perform the duties of his or her office, grade, rank, or rating in every geographical location and under every conceivable circumstance will not be the sole basis for a finding of unfitness. Where feasible, consideration should be given to reclassifying the service member to an office or military specialty for which he or she would be fit. . . ."³

Booklet -
H120

o Regarding AIDS: "Individuals with serologic evidence of HIV-1 infection who are fit for duty shall not be retired or separated solely on the basis of serologic evidence of HIV infection."⁴ Such members "shall be assigned within the United States, including Alaska, Hawaii, and Puerto Rico,

need
to
change

due to the high priority assigned to the continued medical evaluation of military personnel" and may be the subject of other duty limitations.⁵

- o If a member is found unfit, the PEB then assesses a degree of disability, which is determined based on the Veterans Administration Schedule for Rating Disabilities (VASRD). If at least 30% the member receives disability retirement (temporary list or permanent list). If less than 30%, the member is separated with severance pay (and can later apply to the VA for disability compensation if the condition becomes more severe).
- o Procedurally, PEBs work in two stages: a) in informal PEB, based on a review of the file; and b) upon the demand of a member, a formal PEB, where the member is entitled to a due process hearing.

Step 4: Disposition.

- o The PEB results are reported to the personnel system authorities of the service. If a member is found fit for duty, the member is returned to duty. (There may be a separate issue of assignment limitation, but this is not decided through the PEB process.) If unfit, the member is generally retired or separated.

Endnotes.

1. DoD Directive 1332.18, "Separation from the Military Service by Reason of Physical Disability," February 25, 1986, encl. 4, para. R.1.
2. *Id.*, para. D.2.
3. *Id.*, para. D.3.a.
4. DoD Directive 6485.1, "Human Immunodeficiency Virus-1 (HIV-1)," March 19, 1991, para. D.3.
5. *Id.*, para. F.16.

need Pang memo.

2/15/96

1) implem. statute

2) lit.

1) Implementation

need modified couple of steps

GG - evd. of constant

Cascio: fitness / unfit → cd. be unfit
disability but not disabled

Peters -

1) issue paperwork change

~~2)~~

memo - D. Sec.

[full med. exam - record of phys. condit.]

do we want to lit. now / Sept?

2) policy - do not permit cfr. to stay
separation

discharge

DoD concerns: ① time - wd. prefer to start medical part

②

VA -

medical exam - mpt. may have other condits.

[→ HIV positive litigant]

? [dec. judgment / p.i.]?

timing
ripeness

(Qden) DOJ - ^{best position -} no position - p.i.

DOJ - delay -

[rational study] -

does lit. hurt repeal?

1) allow earlier separation

2) (final note or discharge) - Aug. 1
window -

3/

Conclusion:

1) legis. process to percolate

2) DoD obligations - written opinion

?? 3) litigation:

rep. Secretary, deponents

discovery

not defend - statute on merits

DoD - don't take active role in TIS case.