



Army Legal Assistance





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Wounded Warrior and the Physical Disability Evaluation System

LTC Martha Foss
Branch Chief, Mobilization/Deployment
Office of The Judge Advocate General
Legal Assistance Policy Division



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Army JAGC Initiatives



TJAG Sends
A Message from The Judge Advocate General



Reaching Out to Wounded Soldiers

"We are here for Soldiers. That's our job."
- CSM Althea Dixon, Walter Reed Army Medical Center

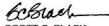
The JAG Corps exists to serve commanders and Soldiers. No Soldier is more deserving of our best efforts than a Soldier wounded in combat. Recently, we have become more aware of the red tape and other problems facing wounded Soldiers and their Families. These difficulties prolong recovery and frustrate the heroes who have sacrificed so much for our Nation.

I encourage every JAG Corps member, military and civilian alike, to reach out to our wounded Soldiers and their Families in every way possible. If you see wounded Soldiers in the PX, thank them for their service and offer to help them schedule legal assistance appointments. I need your help to establish formal, aggressive outreach programs that touch every wounded Soldier in your community. Specifically, I expect SJAs – and just as importantly, legal assistance personnel, and our "tip of the spear" battalion paralegals and brigade judge advocates – to:

- Reevaluate your legal assistance programs and ensure that they are adequately focused on wounded Soldiers and their Families;
- Network with other staff sections and installation agencies to ensure all wounded Soldiers are fully aware of the legal assistance services available, and how to obtain them;
- Coordinate with hospital and medical clinic commanders to emphasize your readiness to assist Soldiers and help the facilities accomplish their challenging missions; and
- Ensure that wounded Soldiers in treatment facilities are personally offered assistance, and that, to the extent practicable, past Purple Heart recipients are also made aware of the available legal assistance services.

The other JAG Corps General Officers and I will ask about your outreach programs for wounded Soldiers during Article 6 inspections. I expect SJAs to track these efforts, and I have asked the Legal Assistance Policy Division to post tools and other relevant information for your use on JAGCNet's Legal Assistance Forum.

Soldiers are making enormous contributions and sacrifices in the Global War on Terror. Wounded Soldiers, in particular, have demonstrated unquestionable courage in their service to our Nation. We help honor their sacrifice by proactively offering them our high-quality legal services. I appreciate your efforts in all that you do.

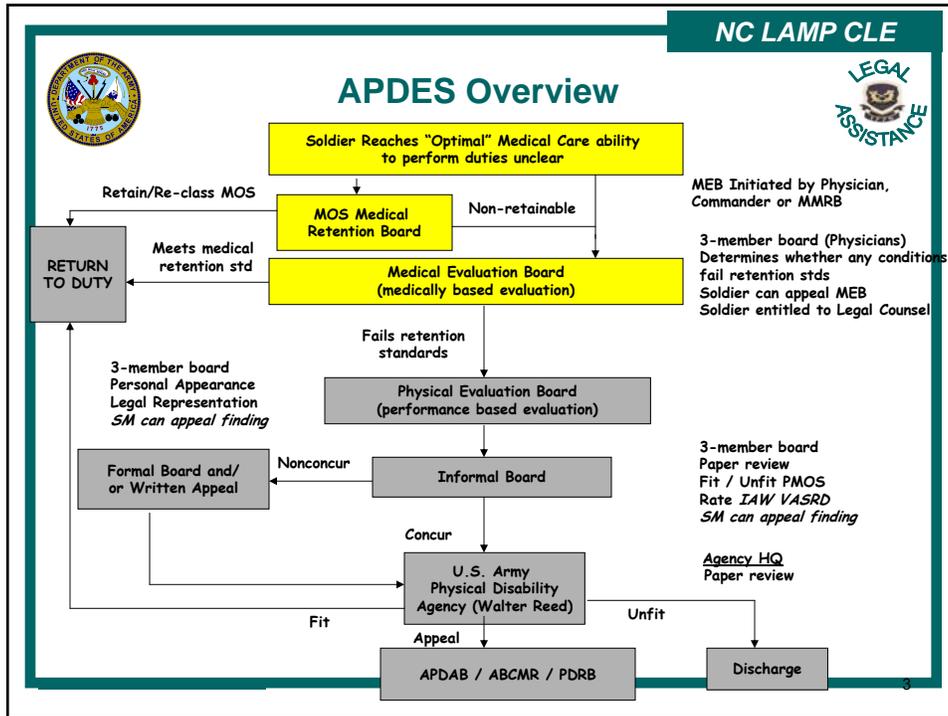

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 Major General, USA
 The Judge Advocate General

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The Army Physical Disability Evaluation System Legal Support

	Legal Assistance Consultation available thru CLO	Legal Assistance consultation and/or referral to Soldiers' Counsel. MEB Outreach Counsel at WTUs soon!	Counsel "assigned" at request for Formal PEB. Private Attys & NGO Reps allowed (no cost to US)			
	MMRB	MEB "Medical Evaluation" 3 MDs	PEB "Performance Evaluation" 3 Members – Only 1 MD			
	RTD Surgery, PT, trial of duty, etc. Rehab Complete Or Physician issues P3/P4 Meets Medical Retention Standards (MRS): No → Yes ↓ MMRB Re-class, 6 mos probation status. Retain, MEB	Exams / Labs / Consults Physician/ Soldier Appt Review clinical data "NARSUM" Meets MRS: No → Yes →	Informal PEB PEBLO assembles record PEB Record Review "Fit" = RTD "Unfit" => VASRD % Request Formal PEB within 10 days	Formal PEB Personal Appearance Legal Counsel "Fit" = RTD "Unfit" => VASRD % 10 days to appeal	Appeals APDAB	Transition to VA
	60 days	30 days	40 days			
Annual Rate:	30,000 +/-	15,000 +/-	2,000 +/- requested < 1,000 held			
<div style="display: flex; gap: 5px;"> <div style="width: 10px; height: 10px; background-color: #e67e22; border: 1px solid black;"></div> MEDCOM Actions </div> <div style="display: flex; gap: 5px; margin-top: 5px;"> <div style="width: 10px; height: 10px; background-color: #3498db; border: 1px solid black;"></div> HRC Actions </div> <div style="display: flex; gap: 5px; margin-top: 5px;"> <div style="width: 10px; height: 10px; background-color: #27ae60; border: 1px solid black;"></div> Installation Actions </div>						

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Provision of Legal Services



- Legal counsel available in 2 stages
 - MEB Outreach Counsel for MEB Process
 - Soldiers' Counsel for PEB Process
- MEB Outreach Counsel & paralegal assigned to each Warrior Transition Battalions and Brigades
 - Civilian hiring actions now underway and counsel should be in-place by December 2008
- MEB Counseling at the WTU Company will be coordinated between nearest MEB Outreach Counsel and servicing Office of Soldiers' Counsel

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MOS/Medical Reclassification Board



- Neither the MEB nor the PEB is a MMRB!
- Only Soldiers with a permanent P3 or higher on their physical profile and who meet medical retention standards can be referred to the MMRB
- PEBs cannot reclassify a Soldier's MOS or consider a SMOS
- Soldiers who are not retainable in their PMOS and are ineligible to reclassify through the MMRB are referred back into the APDES
- Soldier has right to consult legal counsel prior to MMRB but no legal representation at MMRB

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MOS Medical Retention Board (MMRB)



- Governed by AR 600-60
- P3 / P4 Profile = Trigger
- Refer to MMRB, Unless SM Fails to Meet Retention Standards (Then Directly to MEB)
- Bypass MMRB (Straight to MEB / PEB) If:
 Inability to Wear Protective Mask, Protective Helmet, Fire Individual Weapon, Wear Load Carrying Eq., Take APFT
- Structure
 - Convening Authority = GCMCA
 - Five-Person Board
 - Spokesperson, but No Counsel
- MMRB Recommendations (4 Options)
 - 1) Retention (Fwd to Career Branch / OMPF)
 - 2) Probation (Further Treatment Beneficial)
 - 3) Reclassify (Fwd to HQDA)
 - 4) Refer to PDES

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Medical Evaluation Board (MEB)



- Trigger: optimum medical care
- Informal “Board”
 - At least 2 physicians determine if SM meets Medical Retention Standards of AR 40-501
- PEBLOs
- Objecting to MEB findings



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MEB Overview



- The MEB is an informal process before a board comprised of at least three physicians, who compile, assess, and evaluate a Soldier's medical history and current condition.
- The MEB Process begins when a Soldier's optimum medical care has been reached or when a Soldier's physician determines that, even with further treatment, a Soldier is unable to return to duty
 - P3 (Permanent 3) or higher PULHES Score on their Physical Profile

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Purpose of an MEB



- The MEB's purpose is to determine if a Soldier's medical condition(s) **meets or does not meet Army Medical Retention Standards IAW AR 40-501, Chapter 3**
 - Findings listed on a DA Form 3947
- The MEB refers a Soldier to the Physical Evaluation Board (PEB) if **at least one medical condition does not meet retention standards**

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MEB Election Period

- Independent Physician Review: NDAA 08 provides Soldiers, **upon request**, a physician who is independent of the MEB to review their MEB records and counsel them on the MEB findings and recommendations
- Soldiers may disagree with the MEB's findings and submit a rebuttal statement, which the Deputy Commander for Clinical Services (DCCS) must consider
 - Seven day review/rebuttal period, extendable upon request
 - Deadline begins upon the later of the completion of independent medical review or receipt of MEB findings
 - MTF has 7 days to consider and respond

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Implications of MEB

- “Medically acceptable” conditions will generally not be found unfitting by the PEB
 - i.e., conditions that meet retention standards
- “Medically unacceptable” conditions may be rated by the PEB only they are unfitting
 - i.e., condition(s) do not meet retention standards
- A MEB cannot refer to an MMRB a Soldier who has a medically unacceptable condition
 - consider MMRB before MEB is completed

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 **Medical Evaluation Board (MEB)** 

MEB Products:

- **Permanent Physical Profile**
 - **DA Form 3947, Report of MEB Proceedings**
 - **Narrative Summary (NARSUM)**
 - **Commander's Letters on Performance**

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 **MEB vs. PEB** 

- MEB makes a medically-based determination
- PEB makes a performance-based analysis to determine if a medically unacceptable condition is fitting or unfitting
- MEB findings are not appealable to the PEB, as the PEB does not have the authority to change MEB findings
 - Soldiers should ensure MEB is correct before it goes forward to PEB
 - PEB may send case back to MEB for further evaluation

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Physical Evaluation Board (PEB)

INFORMAL/FORMAL BOARD:

- 3 members – President, Medical Officer, Personnel Officer

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PEB Process

- The PEB must answer four main questions
 - 1: Fit or unfit for each condition
 - 2: Compensability (service connection)
 - 3: Level of compensation
 - 4: Whether the Soldier's condition is combat-related or was it incurred in the combat-zone?
- Burden of proof is by preponderance of evidence
- Exception for compensability: for which there must be "clear and unmistakable evidence" that condition is not service connected

f1

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Slide 16

f1 Is this standard for all service connection issues or just EPTS?
fioreul, 10/24/2008



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 **Physical Evaluation Board (PEB)** 

Factors Affecting Compensability:

- Line of Duty
- EPTS
- Caused by Soldier's Misconduct
- Non-compliance with prescribed treatment
- Certain Conditions

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 **Physical Evaluation Board (PEB)** 

Rating Disabilities:

- Veterans Administration Schedule for Rating Disabilities (VASRD)
- DoD and Service Regulations
- Interplay of Several Unfitting Conditions (PEB Math)
- Only unfitting conditions rated at PEB; VA rates all service connected disabilities



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PEB vs. VA Comparison

<p>◆ Physical Evaluation Board</p> <ul style="list-style-type: none"> - Rates: ONLY conditions found to be unfitting - Rating: Permanent (snapshot in time) - Compensation: ONLY for loss of military career - Compensation Amount: depends on basic pay and length of service 	<p>◆ Veterans Affairs</p> <ul style="list-style-type: none"> - Rates: ANY impairment that is service-connected (even if NOT unfitting) - Rating: can change (increase / decrease) if Veteran's condition improves or worsens - Compensation: for loss of civilian employability - Compensation Amount: based on rating percentage (w/o regard to rank/TIS)
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Physical Evaluation Board (PEB)

Severance Pay

• 20% or <

↓

(2)
x
(Monthly Basic Pay)
x
(Years of Service)

Benefits of Retirement Including Medical Coverage

↑

Disability Retirement

• 30% or >



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 **Physical Evaluation Board (PEB)** 

TDRL/PDRL :

- Temporary vs. Permanent Disability Retirement
- 30% and stability of disability
- TDRL – maximum 5 years and re-evaluation at least every 18 months
- No guarantee to retirement

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 **COAD/COAR** 

- Soldiers found unfit can request to continue on Active Duty (COAD) or in the Reserves (COAR) if:
 - COAD: Active duty with at least 15 or more years;
 - COAR: Reservists with at least 15 or more “good” years toward reserve retirement;
 - Combat injured Soldiers; or
 - Soldiers in a critical/shortage MOS.
- Note: HRC will consider all applications even if they do not meet above criteria.

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Combat Related Criteria



- **Tax Free Severance pay or disability retirement if injuries are direct result of:**
 - Armed conflict;
 - Instrumentality of war;
 - Direct result of hazardous service; or
 - Under conditions simulating war
- **Tax Free Severance pay if condition(s) were incurred in tax-free combat zone (NDAA 08)**
 - CZ provision only applies to severance, not retirement
 - No VA offset/recoupment for CZ conditions
- Taxes withheld in all cases may be refunded upon receipt of VA rating – see PDA Info Sheet

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Joint DoD/DVA DES Pilot

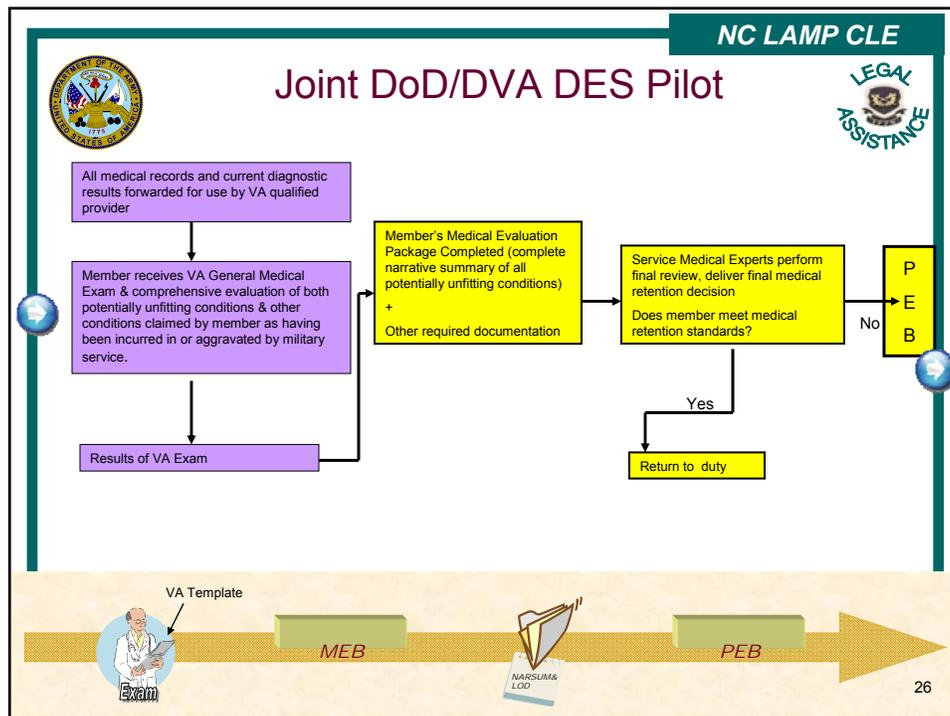
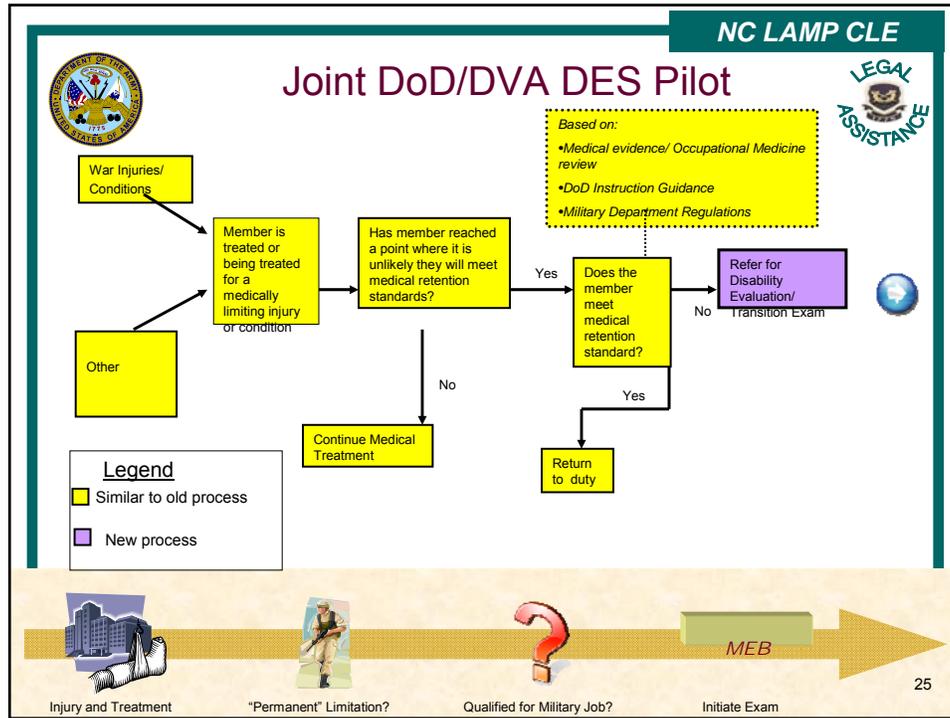


- Single comprehensive medical exam to include general & specialty exams performed to dual DoD and DVA specifications.
- MEB evaluates comprehensive exams to determine if condition(s) meets or does not meet Army retention standards
- Army PEB determines fit/unfit & military compensability
 - PEB does not consider DVA compensability
- DVA rates all service-connected conditions
- Army adopts DVA rating for all **unfitting** conditions

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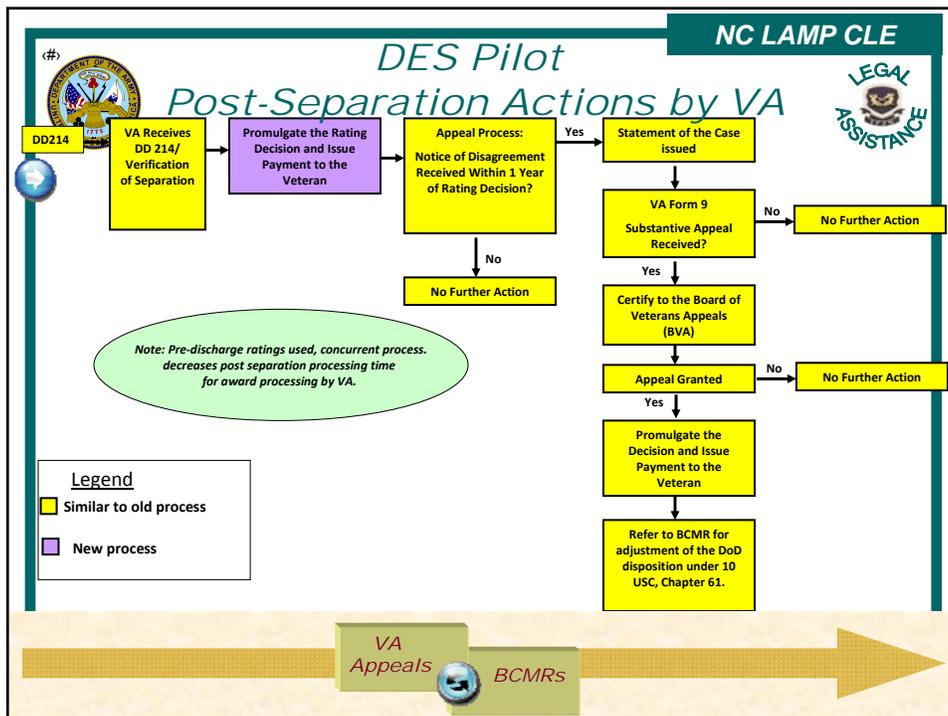
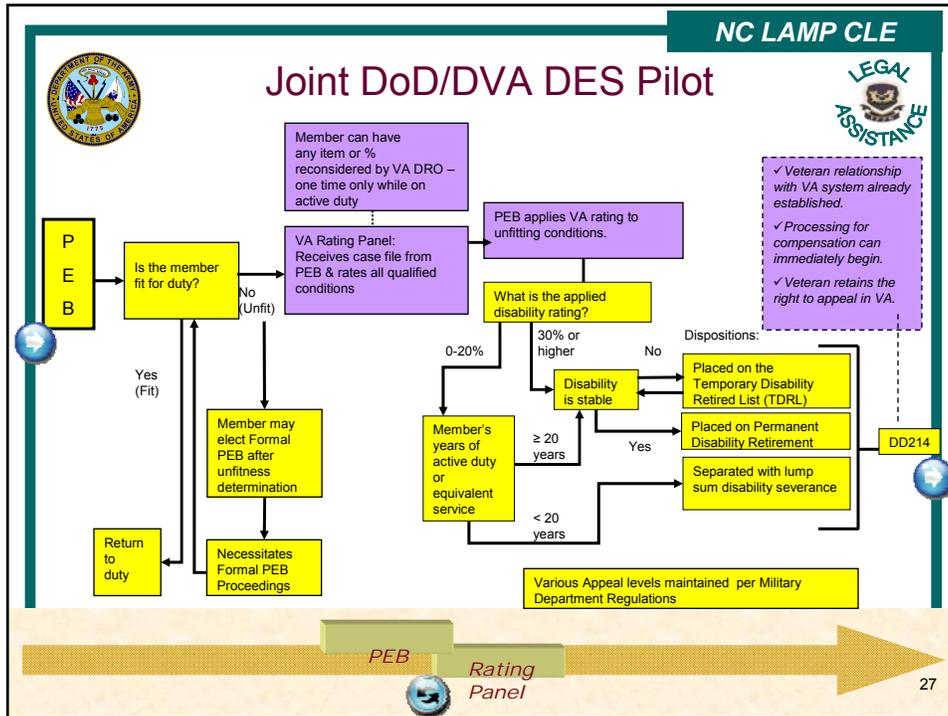


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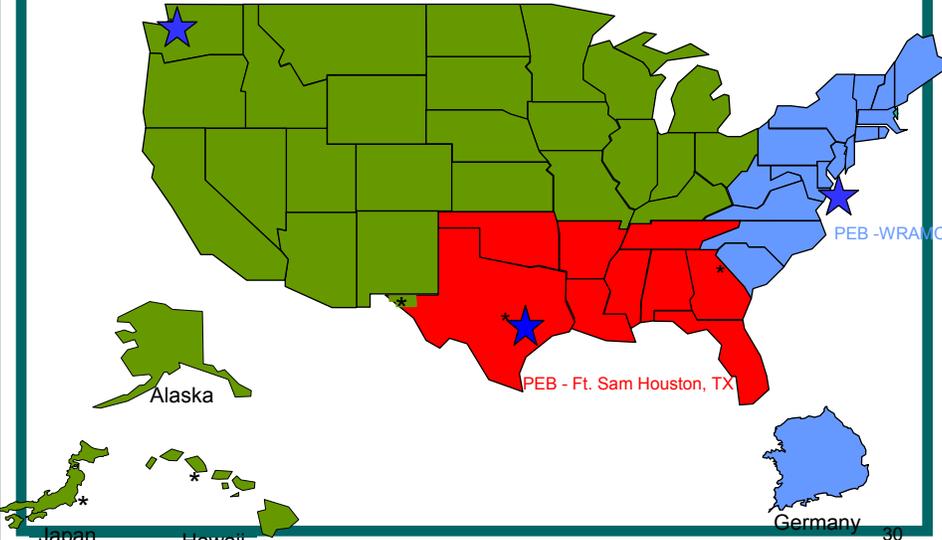
(#)  **Soldiers Counsel** 

- **Mission:** support, advise and represent Soldiers throughout the Army Physical Disability Evaluation System. Maximize clients' chances of success in attaining their goals of either being found fit for duty or maximizing their disability rating.

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(#)  **Physical Disability Agency MEB/PEB - MTF Alignment** 

PEB - Ft. Lewis, WA



Alaska

Japan

Hawaii

Germany

PEB - Ft. Sam Houston, TX

PEB - WRAMC

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Office of Soldiers Counsel



- **Walter Reed Army Medical Center**
(202) 782-5812 or (202) 782-1676
- **Fort Sam Houston**
(210) 221-9392 or (210) 295-0432
- **Fort Lewis**
(253) 968-4441/4442
 - **Fort Carson**
(719) 526-5572
 - **Tripler Army Medical Center**
(719) 526-5572

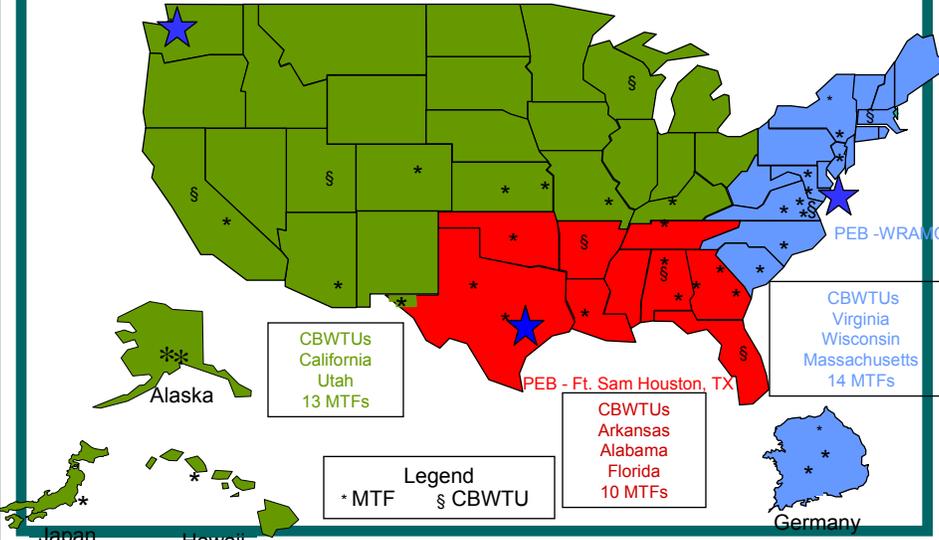
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Community Based WTU, MTF & PEB Alignment

PEB - Ft. Lewis, WA





CBWTUs
California
Utah
13 MTFs

PEB - Ft. Sam Houston, TX

CBWTUs
Arkansas
Alabama
Florida
10 MTFs

PEB - WRAMC

CBWTUs
Virginia
Wisconsin
Massachusetts
14 MTFs

Legend

* MTF § CBWTU



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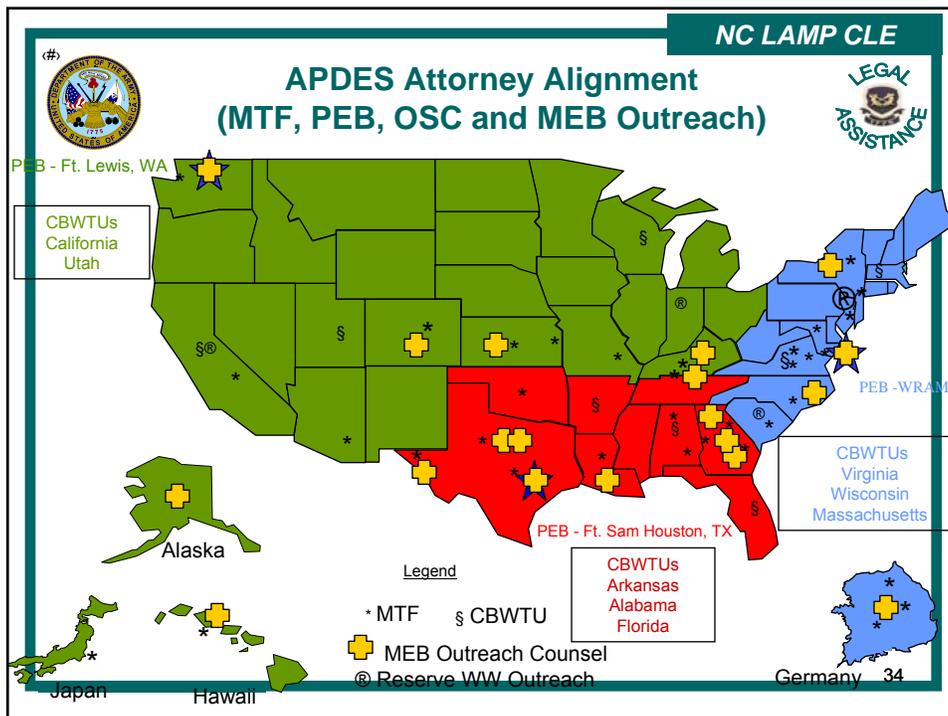
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MEB Outreach Counsel



- Organic Legal Support at 19 WTUs (Bde/Bn)
 - MEB Outreach Counsel (1 per WTU)
 - Paralegal Support (1 per WTU)
- MEDCOM Assets on WTU TDAs
- MOA between TSG & TJAG
 - Duties
 - Support
 - Supervision





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MEB Outreach Counsel



Co-located at 18 Brigade & Battalion Sized WTUs

- Walter Reed AMC
- Ft. Polk
- Tripler AMC
- Ft. Gordon
- Ft. Benning
- Ft. Stewart
- Ft. Riley
- Ft. Campbell
- Ft. Knox
- Ft. Drum
- Ft. Bragg
- Ft. Sam Houston
- Ft. Hood (2)
- Ft. Bliss
- Ft. Lewis
- Heidelberg
- Ft. Richardson

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MEB Outreach Counsel & Soldiers Counsel



- Information Soldier provides to MEB Outreach Counsel and Soldiers' Counsel is confidential under the attorney-client privilege.
- MEB Outreach Counsel and Soldiers' Counsel advise, counsel and represent Soldiers and -- DO NOT advise or represent commanders or members of the MEB/PEB

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Soldier's Rights

- **Upon initiation of MEB**
 - Right to consult with legal counsel (e.g., MEB Outreach Counsel, private attorney, other representative such as DAV)
- **During MEB**
 - Right to consult with legal counsel
 - Right to non-concur with MEB findings and to submit a written rebuttal
 - Right to independent medical review upon request
- **Soldier Rights during PEB**
 - Right to consult with legal counsel before requesting Formal Hearing
 - Right to personal appearance before PEB (may be by VTC – discuss with counsel)
 - Right to representation (appointed counsel, private counsel, DAV, *pro se*)
 - Right to testify (under oath, unsworn, or not at all)
 - Right to review and present evidence (Testimony, Documents & Witnesses)
 - Right to request female or minority membership on Formal Board
 - Right to recording of hearing
 - Right to appeal with assistance of counsel (in writing)

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Key Stages for Soldier to Consult Counsel

- **Receipt of P3 Profile & Initiation of MEB**
 - MEB Outreach Counsel will provide general advice on process & rights
 - Counsel will render advice and assist Soldier in establishing goals
 - Counsel work with PEBLOs, Case Managers, the Triad, Ombudsmen, and health care professionals to advance Soldier's interests
 - Assistance is non-adversarial
- **MEB Completed/Issued (DA Form 3947)**
 - Soldier has 7 calendar days to review and prepare rebuttal
 - **NEW (14 Oct 08 DTM, para. E3.P1.2.6.1.3)**
 - Counsel will advise on whether Soldier should request an independent medical review of MEB and assist with request
 - **NEW (14 Oct 08 DTM, para. E3.P1.2.6.1.1)**
 - Soldier & MEB Counsel will carefully review DA 3947, NARSUM, Profile, Cdr's Memo, etc.
 - Counsel will provide case-specific advice and explain options
 - Counsel will assist with drafting MEB rebuttal when requested

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Key Stages for Soldier to Consult Counsel



- **Informal PEB Decision (DA Form 199)**
 - Soldier has 10-days to review and make election for Formal hearing
 - When requested, MEB Counsel & Soldiers' Counsel, working together, will review results with Soldier, explain legal basis of decision, & advise about rights
 - Counsel and Soldier will discuss potential benefits and/or risks of proceeding to a Formal PEB hearing
 - Counsel will advise Soldier of regarding whether to elect or waive Formal hearing and assist with election or waiver as Soldier decides
- **Formal PEB Hearing**
 - Soldier will have a minimum of 10 days advance notice of Formal hearing
 - **NEW (14 Oct 08 DTM, para. E8.4.2)**
 - Soldier & Soldiers' Counsel review entire file and discuss options
 - Counsel will provide candid advice and help identify & obtain supporting evidence
 - Counsel will zealously advocate the case before the PEB

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Key Stages for Soldier to Consult Counsel



- **Appeals**
 - Counsel will evaluate and advise on possible theories and likelihood of success
 - Counsel will assist with gathering evidence and writing the Appeal

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Governing Law, Regs & Policies



-  **Title 10 U.S.C., Chapter 61** (Retirement or Separation for Physical Disability) (Secs. 1201–1222)
-  **Department of Defense Directive 1332.18** (Separation or Retirement for Physical Disability, 11/4/96)
-  **DOD Instruction 1332.38** (Separation or Retirement for Physical Disability, 11/4/96)
-  **DOD Instruction 1332.39** (Application of the Veterans Administration Schedule for Rating Disabilities, 11/14/96) - **RESCINDED**
-  **DTM (Directive Type Memoranda)**
 - 3 May 2007. Policy Guidance for the Disability Evaluation System and Establishment of Recurring Directive-Type Memoranda
 - 21 Nov 2007. Disability Evaluation System (DES) Pilot Program
 - 19 Dec 2007. Standards for Determining Unfitness Due to Medical Impairment (Deployability)
 - 13 Mar 2008. Implementing Disability-Related Provisions of the National Defense Authorization Act of 2008 (Pub L. 110-181)
 - 14 Oct 2008. Policy on Implementing Disability-Related Provisions of the National Defense Authorization Act of 2008 (Pub L. 110-181)

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Governing Law, Regs & Policies



-  **Army Regulation 40-501** (Standards of Medical Fitness, 9/10/08)
-  **Army Regulation 40-400** (Patient Administration, 2/8/08)
-  **Army Regulation 635-40** (Physical Evaluation for Retention, Retirement, or Separation, 2/8/06)
-  **Army Regulation 600-60** (Physical Performance Evaluation System, 2/28/08)
-  **Veterans Administration Schedule for Rating Disabilities (VASRD)**, 38 CFR Part 4

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Questions?

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TJAG Sends

A Message from The Judge Advocate General



Reaching Out to Wounded Soldiers

"We are here for Soldiers. That's our job."
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SCOTT C. BLACK
Major General, USA
The Judge Advocate General