

2018 MILITARY MEDICAL DISABILITY LAW AND VETERANS LAW OUTLINE

I. References

- a. AR 40-501, Standards of Medical Fitness, (14 June 2017)
- b. AR 40-400, Patient Administration, (8 July 2014)
- c. AR 635-40, Disability Evaluation for Retention, Retirement, or Separation, (19 January 2017)
- d. AR 40-58, Warrior Care and Transition Program (23 March 2015)
- e. AR 635-200, Active Duty Enlisted Administrative Separations (19 December 2016)
- f. Department of Defense Instruction 1332.18, Disability Evaluation Systems, (05 August 2014)
- g. IDES Guidebook With Reference Guide: An Overview of the Integrated Disability Evaluation System (IDES); Approved by Army G1, MEDCOM Publication (13 August 13)
- h. Veterans Benefits Administration Manual M-21 (Veterans Affairs Claims Manual, electronically available at: http://www.benefits.va.gov/warms/M21_1MR.asp)
- i. Title 38, United States Code, Section 5303 (statutory bars to Veterans Benefits).
- j. Title 38, Code of Federal Regulations, Section 3.12 (eligibility for Veterans Benefits)

II. Definitions

- a. DES – The Army Disability Evaluation System – Encompasses the entire medical evaluation, disability determination, and final disposition process. Includes the MEB, PEB, and appeals, and final disposition on whether Soldier is retired, separated with severance pay, or found “fit”. Established under 10 USC 61 and DODD 1332.18.
- b. IDES – Integrated Disability Evaluation System - The Joint Army-VA process to determine whether ill or injured Soldiers are fit for continued military Service and Army and VA determine appropriate benefits for Soldiers who are separated or retired for disability.
- c. MAR2 – Military Occupational Specialty Administrative Retention Review – Replaces MMRB. An Army pre-DES evaluation for Soldiers with P3/P4 profiles that are otherwise meet medical retention standards. Results in Soldiers being retained in current MOS, reclassified, or referred to DES.
- d. MEB – Medical Evaluation Board – Determines whether Soldier’s conditions meet medical retention standards under AR 40-501.
- e. MEB-ing / PEB-ing / In the MEB / Going through MEB – Colloquial terms used by Soldiers and even Commanders to refer to a Soldier in the DES.

Rarely an accurate statement of what stage the Soldier is actually at within the DES.

- f. MRDP – Medical Retention Determination Point - MRDP is when the Soldier’s progress appears to have medically stabilized; the course of further recovery is relatively predictable; and where it can be reasonably determined that the Soldier is most likely not capable of performing the duties required of his MOS, grade, or rank. The Soldier’s condition must be at the MRDP prior to receiving a P3 or P4 profile and being enrolled in IDES.
- g. MSC – VA military service coordinator – Receives the Soldier’s case from the PEBLO during the MEB phase.
- h. NARSUM – Narrative Summary – Contains a diagnosis and prognosis of the Soldier’s conditions and MRDP statement. This is the heart of the MEB.
- i. PEB – Physical Evaluation Board – Makes “fitness” determination. Determines if Soldier is to be retained, separated with severance pay, or medically retired.
- j. Veterans’ Administration Schedule for Rating Disabilities (VASRD).

III. Overview

a. Disability Evaluation System (DES) Overview

- i. Military Occupational Specialty Administrative Retention Review (MAR2) evaluation.
 - 1. If applicable, the MAR2 occurs prior to Soldiers enrolling in DES.
 - 2. MAR2 determines whether Soldiers will be retained in their primary MOS (PMOS), reclassified into another MOS, or referred to DES.
- ii. DES is DOD’s process for evaluating the nature and extent of disabilities affecting members of the Armed Forces.
 - 1. DES consists of MEBs, PEBs, counseling of Soldiers, and mechanisms for final disposition of disability evaluations. At the end of the DES, a Soldier is either returned to duty, separated with severance benefits, or medically retired.
- iii. Three evaluation systems exist under DES:
 - 1. Integrated Disability Evaluation System (IDES)
 - a. Most common
 - b. VA determines disability ratings used by both the VA and Army in the IDES process.
 - 2. Legacy Disability Evaluation System (LDES)
 - a. PEB determines the disability ratings using the same standards used by the VA in IDES, the Veterans’ Administration Schedule for Rating Disabilities (VASRD).
 - 3. Expedited Disability Evaluation System (EDES)

- a. Used in situations involving catastrophic injuries or diseases.
- iv. DES applies to active duty, Reserve, recalled retirees, Cadets of the United States Military Academy, and ROTC cadets (only when injured during training while in a RC Simultaneous Membership Program).

b. Military Occupational Specialty Administrative Retention Review

- i. MAR2 is an administrative process for Soldiers who meet the medical retention standards of AR 40-501, but who nonetheless may not be able to satisfactorily perform the duties of their PMOS in a worldwide field or austere environment because of medical limitations.
 - 1. MAR2 replaces the Military Occupational Specialty Medical Retention Board (MMRB)
- ii. MAR2 will determine whether the Soldier is to be:
 - 1. Retained in their MOS,
 - 2. Reclassified into another MOS or
 - 3. Referred into the DES.
- iii. Some Soldiers are required to be referred to MAR2, therefore, referral to MAR2 should be considered before referral to DES.
- iv. IOT be referred to MAR2, the Soldier must have all functional activities on their profile (DA form 3349) listed as “Yes”.

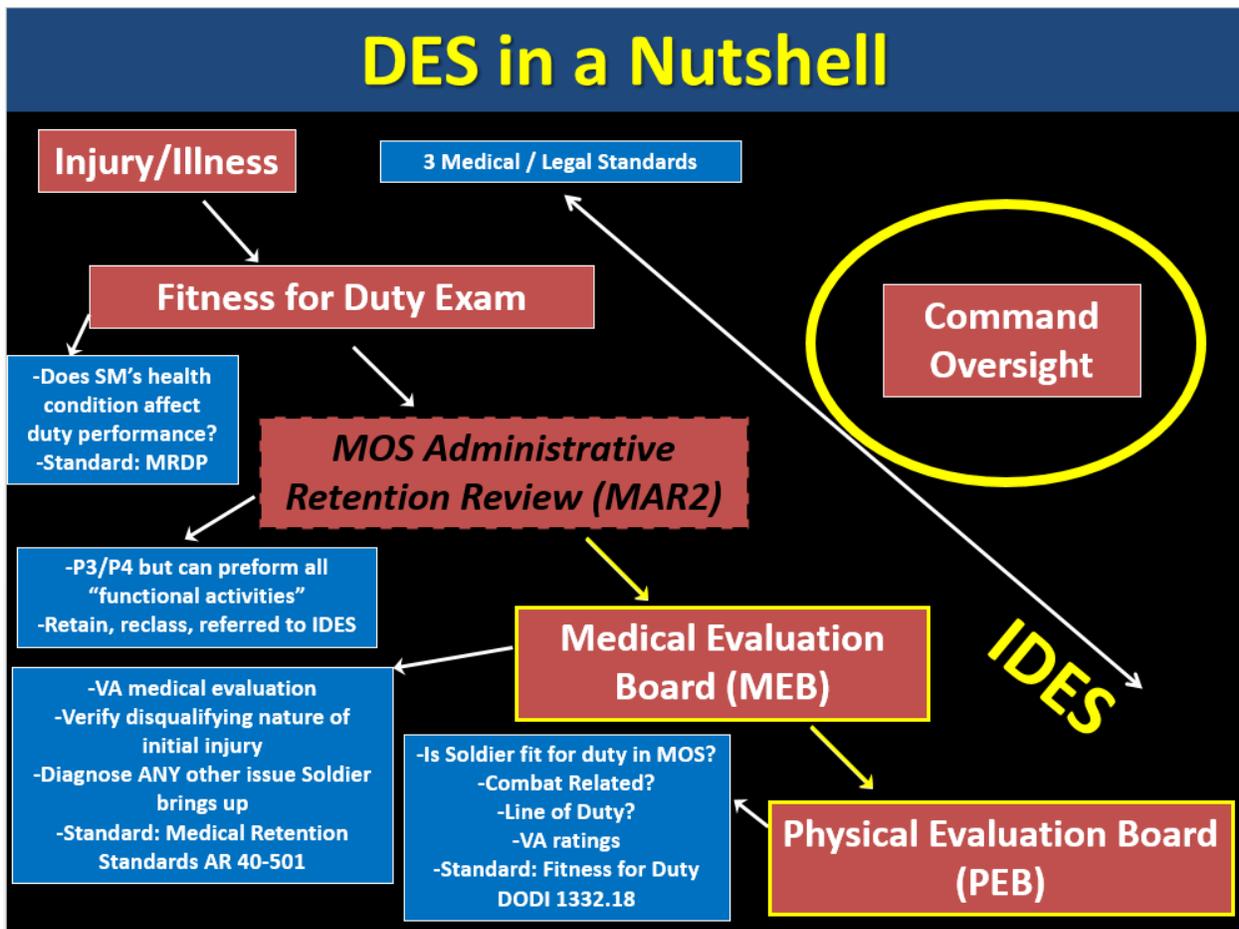
5. FUNCTIONAL ACTIVITIES THAT EVERY SOLDIER REGARDLESS OF MOS MUST BE ABLE TO PERFORM. IF SOLDIER CANNOT PERFORM ANY ONE OF THESE TASKS, THEN THE PULHES MUST CONTAIN AT LEAST ONE "3" AND SOLDIER MUST BE REFERRED TO A MEB. CAN THE SOLDIER:		
FUNCTIONAL ACTIVITY:	YES	NO
a. Carry and fire individual assigned weapon?	<input type="checkbox"/>	<input type="checkbox"/>
b. Evade direct and indirect fire?	<input type="checkbox"/>	<input type="checkbox"/>
c. Ride in a military vehicle for at least 12 hours per day?	<input type="checkbox"/>	<input type="checkbox"/>
d. Wear a helmet for at least 12 hours per day?	<input type="checkbox"/>	<input type="checkbox"/>
e. Wear body armor for at least 12 hours per day?	<input type="checkbox"/>	<input type="checkbox"/>
f. Wear load bearing equipment (LBE) for at least 12 hours per day?	<input type="checkbox"/>	<input type="checkbox"/>
g. Wear military boots and uniform for at least 12 hours per day?	<input type="checkbox"/>	<input type="checkbox"/>
h. Wear protective mask and MOPP 4 for at least 2 continuous hours per day?	<input type="checkbox"/>	<input type="checkbox"/>
i. Move 40lbs (for example, duffle bag) while wearing usual protective gear (helmet, weapon, body armor and LBE) at least 100 yards?	<input type="checkbox"/>	<input type="checkbox"/>
j. Live in an austere environment without worsening the medical condition?	<input type="checkbox"/>	<input type="checkbox"/>

- v. Soldiers are required to be referred to MAR2 in the following circumstances:
 - 1. Soldiers are issued a P3/P4 in at least one of the profile serial factors for a medical condition that meet the medical retention standards of AR 40-501.
 - a. Serial Profile Factors are the P-U-L-H-E-S (physical capacity/stamina, upper extremities, lower extremities, hearing and ears, eyes, and psychiatric) on the profile form (DA 3349).
 - 2. When MEB determined the Soldier meets medical retention standards and returns the Soldier to duty with a P3 or P4 profile.

3. A Soldier previously evaluated by MAR2 which resulted in retention in the MOS or reclassification to new MOS, or a Soldier determined fit by PEB, when one of the following occurs:
 - a. Soldier's initial conditions, which led to a prior referral to MAR2 or MEB, cause additional functional limitations.
 - b. Soldier receives a P3/P4 for condition that meets medical retention standards.
 - vi. Soldiers previously retained by MAR2 or DES, may be referred to MAR2 again for the same condition when the condition precludes the Soldier from satisfactorily performing their duties, when recommended by the first O-6 in the Soldier's chain of command, and occur NET 120 days from the Soldier's previous evaluation.
 - vii. Soldiers in the following circumstances will not be referred to MAR2:
 1. A Soldier issued a profile for a condition that does not meet medical retention standards and/or prevents the Soldier from performing all required functional activities (see IV.d. above).
 2. The Soldier with an approved retirement.
 3. An officer within 12 months of their mandatory retirement date.
 4. An enlisted Soldier within 12 months of their retention control point (RCP) and will be retirement eligible at RCP, or an RC enlisted Soldier within 12 months of their mandatory removal date and will be eligible for a 20-year letter on that date.
 5. A Soldier within 90 days of their ETS.
 6. A Soldier being processed for administrative separation.
 7. A Soldier that failed to complete basic training, advanced individual training, or Basic Officer Leaders Course
 - a. Except when a Soldier receives a P3 (not P4) and the condition meets medical retention standards, the Soldier will undergo MAR2 within six months of reporting to their new duty assignment. This includes conditions for which the Soldier was granted an accessions waiver.
 8. Retiree recalls.
 9. General officers.
- c. **Integrated Disability Evaluation System (IDES) (Formerly, Army Physical Disability Evaluation System (APDES) Overview**
- i. Directive-Type Memorandum (DTM) 11-015 – Integrated Disability Evaluation System (IDES) 19 December 2011
 1. Directed Department of Veterans Affairs (VA) to integrate into the Army DES early in the process, versus forcing Soldiers to report to the VA after leaving the service, and repeat many steps in the process

2. The resulting process is a single set of disability medical examinations and a single set of disability ratings that are used by both the Army and the VA in IDES.

ii. A (non-doctrinal) way to visualize IDES:



iii. Three Distinct Legal Standards in IDES

1. Medial Retention Determination Point (MRDP)
 - a. Entry into IDES
2. Medical Retention Standards of AR 40-501 (Ch. 3)
 - a. MEB Standard
3. Fitness for Duty, Department of Defense Instruction 1332.18
 - a. PEB Standard
- iv. A useful analogy for judge advocates explaining IDES to commanders is to speak in terms of procedural due process rights for the Soldier

IV. IDES: Step-by-Step (Detailed Explanation of Chart Above)

a. Injury/Illness

- i. Most Soldiers going through IDES (Wounded Warriors) are not combat-wounded
- ii. Commanders should mitigate risks in garrison, just as they do in combat
- iii. Illnesses account for entry into IDES as well; Periodic Health Assessments (PHA) are important in identifying health problems

b. Fitness for Duty Exam

- i. Commanders can order a Fitness for Duty Exam if they suspect health problems that affect duty performance
- ii. Depending on the medical condition, Soldiers will ordinarily be given an opportunity to recover before being enrolled in IDES.
 1. Medical personnel will attempt to return the Soldier to full duty conditions via physical therapy and surgery.
 2. Medical personnel might assign a temporary profile (T2) on DA form 3349 (profile form) which restricts the Soldier from performing certain physical activities for a short amount of time. This does not enroll the SM in IDES.
 3. Medical personnel might assign a permanent profile (P2) on DA form 3349 (profile form) which restricts the Soldier from performing certain physical activities. This does not enroll the SM in IDES.
- iii. Depending on the severity of the condition or the progress through recovery, the physician will determine if any potentially unfitting condition is at the MRDP. A condition is at the MRDP when:
 1. The condition is medically stabilized
 2. A physician can reasonably assume that the condition won't meet retention standards within one year
 3. The condition results in the issuance of a P3/P4 Profile.
 - a. Once a second Physician (Profiling Authority, appointed by Hospital Commander) signs the P3/P4 profile, Soldier has legally entered the IDES process.

- b. EXCEPT when Soldier has P3/P4 but can still perform all “functional activities” on profile in which case, they will be referred to MAR2
 - iv. If Soldier receives an approved P3/P4 Profile for one or more conditions that are at the MRDP, the Soldier is enrolled in the IDES. As the Soldier transitions into the IDES, the following actions occur:
 - 1. Soldiers receives VA Medical Claims Form (VA 21-0819)
 - 2. VA Military Service Coordinator (MSC) assists Soldier in identifying all medical conditions, and documenting them on the VA-21-0819
 - 3. The VA-21-0819 form serves as a template for a series of medical appointments for the Soldier to attend.
- c. **Medical Evaluation Board (MEB)**
 - i. The MEB consists of a comprehensive medical examination and a determination of whether any condition documented at the medical exam does not meet medical retention standards prescribed in AR 40-501.
 - 1. The medical exam is conducted by the Department of Veterans Affairs but the results are interpreted and used by DoD physicians (the MEB) to determine medical fitness for military service.
 - ii. Two Purposes
 - 1. Document medical status and duty limitations
 - 2. Determine if Soldier meets retention standards of AR 40-501
 - iii. Upon being referred to the MEB, a PEBLO will be assigned to the Soldier
 - 1. The PEBLO will explain the DES process, notify the Soldier of his/her rights, notify the Soldier’s Commander of the Soldier’s enrollment in DES, assemble the Soldier’s medical treatment records, and forward the case to a VA military service coordinator (MSC).
 - iv. Structure: 2+ Physicians, appointed by local hospital commander.
 - v. Informal operation, records review of comprehensive medical exam, and a Narrative Summary (NARSUM)
 - 1. The NARSUM is an important document in the DES process. The NARSUM contains diagnosis of all conditions that do not meet medical retention standards as well as a MRDP statement.
 - 2. In completing the NARSUM, the provider will rely on the VA examination and medical records.
 - vi. When the MEB determines one or more conditions do not meet medical retention standards, the MEB will forward the case to the PEB.
 - 1. MEB make this determination based on the Medical Retention Standards of AR 40-501(Ch. 3)

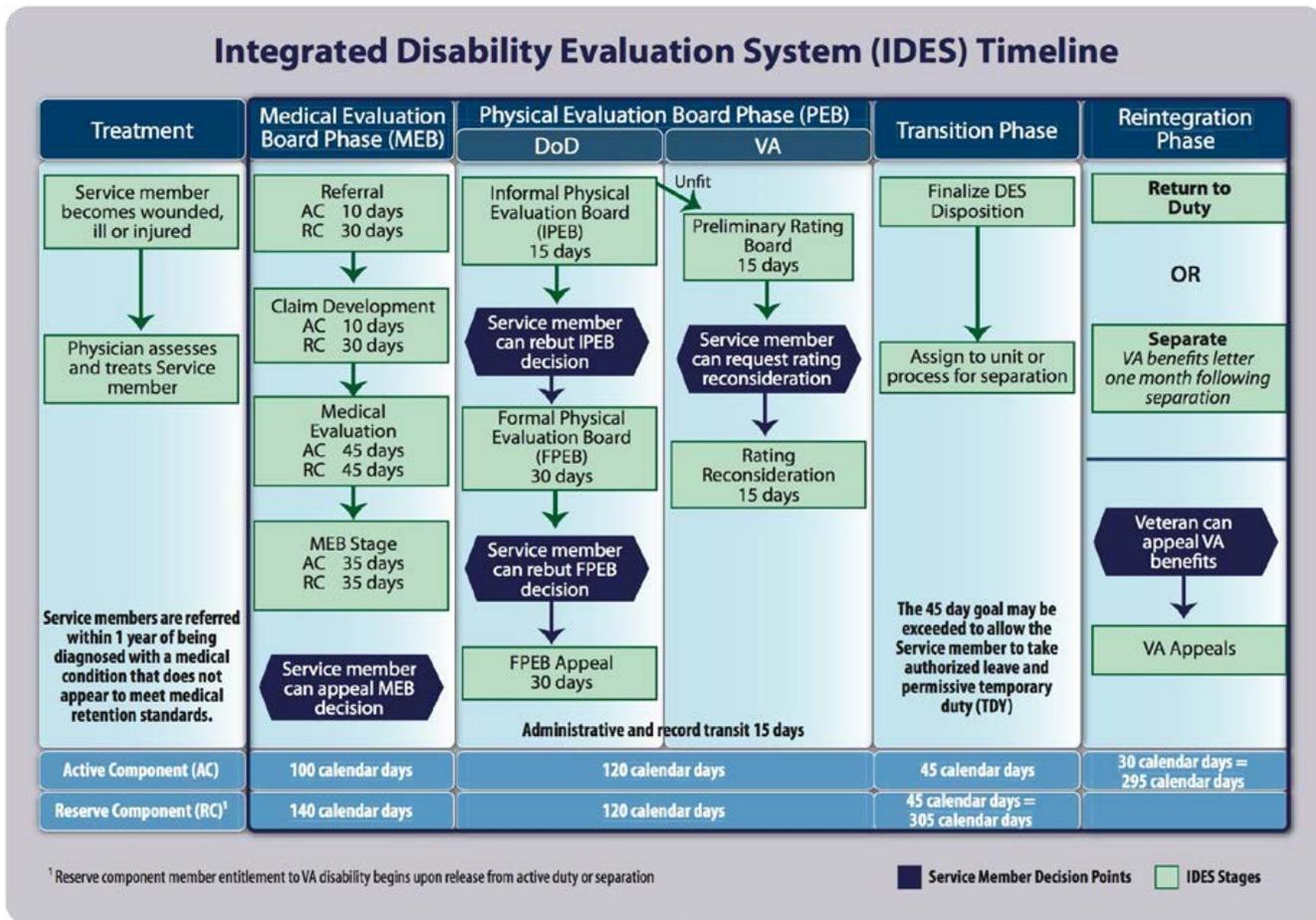
2. When the MEB determines that all conditions meet retention standards, the MEB will recommend the Soldier returns to duty with duty limitations.
- vii. Medical- and records-based determination
- viii. Soldier's Due Process in the MEB.
1. If the Soldier objects to the MEB Findings, the Soldier can request an impartial medical review (IMR) or submit a rebuttal of the MEB findings.
 2. Soldiers should seek legal advice from a MEB counsel in weighing these options.
 3. Within five days of receiving the MEB decision, the Soldier must:
 - a. Concur with the MEB decision,
 - b. Request an IMR, or
 - c. Not concur with the MEB decision and plan to submit a rebuttal. The Soldier has seven days to submit this rebuttal.
 4. If the Soldier requests an IMR, the Soldier may still submit a rebuttal to the MEB.
 - a. The Soldier must submit the MEB rebuttal within seven days of receiving the IMR results.
- ix. MEB impact on duty status:
1. Leave is permissible but discouraged during MEB.
 2. Soldier is ineligible to PCS except to a WTU, to home on permanent change of station leave (AR 600-8-10), or when required by Soldiers stationed OCONUS IOT complete DES. If a Soldier received PCS order before referral to DES, the DES process must be completed before the Soldier proceeds with the PCS.
 3. Soldier is ineligible to attend any TRADOC schools.
 4. Is eligible for awards and promotion consideration and selection.
 5. Is subject to the UCMJ and administrative actions or separations under AR 635-200.
- d. **Physical Evaluation Board (PEB)**
- i. If any condition is determined by MEB to be medically disqualifying, it is forwarded to the PEB.
 - ii. For Active Duty Soldiers, there are 3 PEB's located at Joint Base Lewis McChord, WA; Fort Sam Houston, TX; and Washington, D.C.
 - iii. PEB threshold Question: Is the Soldier "fit for duty?"
 1. The PEB will decide if the Soldier is retained, separated with severance pay, or medically retired.
- iv. Fitness for Duty
1. DoD Instruction 1332.18
 - a. Can the Soldier perform PMOS in a variety of conditions?

- b. Danger to the unit or other Soldiers?
 - c. Unreasonable burden on the unit?
- v. Informal PEB: (initial determination)
 1. IPEB is composed of 2 or 3 members O-4 and above or GS-13 and above. At least one member must not be a physician.
 2. IPEB conducts a documentary review of the case forwarded by the MEB without the Soldier present. If 2/3 agree the Soldier is unfit for duty, the file immediately is sent to the VA for a ratings determination (using the VA Schedule for Ratings Disabilities (VASRD))
 - a. VA Ratings Decision
 - i. VA Ratings are determined in increments of 10% by rounding up or down
 - ii. Separate (20% or below)
 - iii. Retire (30% or above)
 3. VA Makes Rating Decision at PEB phase for ALL compensable conditions so that Soldier exits the military with his/her disability rating.
 4. IPEB will determine:
 - a. Whether the Soldier's conditions cause him/her to be unfit for continued service.
 - b. Whether Soldier will be placed on TDRL or permanently retired.
 - c. For purposes of Federal Civil Service Law, whether unfit conditions were:
 - i. Incurred in combat
 - ii. Result of armed conflict
 - iii. Or caused by instrumentality of war
 - d. Whether disability compensation is excluded from Federal gross income.
 - e. If Soldier is separated with severance pay, whether unfitting disabilities were:
 - i. Incurred in combat zone or
 - ii. Incurred during performance of duty in combat-related operations
 5. PEBLO will provide the Soldier the results of IPEB including a benefits estimate letter.
 6. Soldier's Due Process in IPEB
 - a. Soldiers should seek legal advice from a MEB counsel, PEB counsel, or private counsel regarding their IPEB options.
 - b. After receiving IPEB findings, Soldiers have 10 days to make an election.
 - c. Soldiers may choose to:

- i. Accept IPEB decision (this waives the Soldier's rights to FPEB)
 - ii. Nonconcur with IPEB decision and request formal hearing with or without rebuttal matters
 - iii. Nonconcur with IPEB decision, not request formal hearing and
 - 1. Submit rebuttal matters (case reviewed by IPEB)
 - 2. Not submit rebuttal matters (case forwarded to USAPDA)
 - iv. Accept VA ratings or request reconsideration of VA ratings
- vi. Formal PEB:
 - 1. FPEB is composed of at least 3 members
 - a. President: Line Officer, O-5 or above, often with combat arms and deployment experience
 - b. Medical Officer
 - c. Personnel Management Officer (can be from any branch other than MC but must be familiar with duty assignments). Enlisted Soldiers in FPEB may have an E-9 serve in this role.
 - 2. Soldiers found "fit" by IPEB may request (not demand) a FPEB. Request should be based on:
 - a. New information or evidence not previously submitted to IPEB
 - b. Sufficient justification that IPEB did not properly consider evidence
 - 3. Soldier rights in FPEB
 - a. Soldiers have right to be represented Soldier's PEB Counsel (SPEBC).
 - b. Soldiers have several due process rights at FPEB (see AR 635-40, Ch. 4-23.f.)
 - c. Soldier can appear in person at the FPEB and receive travel funding
 - d. Soldier can call witnesses to testify before FPEB.
 - 4. FPEB conducts a *de novo* review of all IPEB determinations and can affirm or deny any IPEB determinations.
 - a. Practitioners should counsel their clients on the risks this *de novo* review presents to their clients.
 - b. Potentially, a FPEB could find a condition "fit" when the IPEB had determined that condition "unfit".
 - 5. Soldier's Due Process in FPEB
 - a. After receive FPEB findings, the Soldier has 10 days to make their election
 - b. Soldier may choose to:

- i. Accept FPEB decision (this waives the Soldier's rights to appeal to USAPDA)
 - ii. Nonconcur with FPEB decision submit rebuttal matters.
 - 1. FPEB will review then forward case to USAPDA.
 - iii. Nonconcur with FPEB decision and not submit rebuttal matters
 - 1. FPEB will forward case to USAPDA.
 - iv. Accept VA ratings or request reconsideration of VA ratings
 - 1. Typically, only allowed reconsideration of new conditions determine unfitting by FPEB.
- vii. Soldier's Due Process beyond the IPEB and FPEB
 - 1. In some circumstances, USAPDA will conduct a review of PEB cases (see AR 635-40, Ch. 4-25)
 - 2. If USAPDA makes revisions to PEB findings and recommendations, the Soldier has another appeal opportunity to the Army Physical Disability Appeal Board (APDAB). (see AR 635-40, Ch. 4-26)
- viii. IPEB and FPEB's Burden of Proof
 - 1. Preponderance of the evidence
 - 2. Findings based upon objective evidence—not personal opinion, speculation, or conjecture.
 - 3. Overcoming Presumptions of Soundness upon Entry into Service & Service Aggravation
 - a. Each party starts with the premise that, unless otherwise documented, the Soldier was physically and mentally sound upon entering service
 - b. To deny compensation, PEB must show by "**Clear and unmistakable evidence**" that the disability both: (1) existed before the member's entrance on active duty; and (2) was not aggravated by active military service. (NDAA 09)
 - 4. The Soldier has a one-time right to appeal to the VA the rating determined by the VA for any condition found unfitting by the PEB
- e. **Final Disposition**
 - i. USAPDA typically serves as the approval authority for disability cases and issues disability orders.
 - ii. Disposition options include:
 - 1. Permanent disability retirement
 - 2. Temporary disability retired list
 - 3. Separation with disability severance pay
 - 4. Separation without disability severance pay

5. Revert to retired status with disability benefits
6. Fit



V. LDES – Brief Overview

- a. Under the LDES system, the PEB determines fitness and the disability ratings percentages
 - i. The PEB uses the VASRD for rating percentages. Essentially, the PEB performs the role of the VA, using the same evaluation criteria, in the IDES.
 - ii. However, the PEB will only evaluate P3/P4 profile conditions and those found to not meet medical retention standards.
 - iii. Soldiers would need to enroll and be evaluated by the VA for all other service-connected conditions which do not fall below medical retention standards.
- b. LDES process may be used when Soldiers are eligible for IDES but the IDES process may have detrimental impact on the disability process, the Soldier, or the Army.
 - i. The Soldier or the command may request the LDES process in lieu of IDES.

- c. The LDES process will be used for Veterans referred to the DES by ABCMR.

VI. EDES – Brief Overview

- a. EDES is for Soldiers with catastrophic injuries or illnesses from combat or combat-related operations.
- b. EDES waives DES processing and requests immediate permanent retirement at 100 percent disability.
- c. Soldiers may request EDES when the conditions is:
 - i. Permanent
 - ii. Severely disabling injury, disorder, or disease
 - iii. Condition compromises ability to carry out activities of daily living
 - iv. Soldier requires mechanical assistance or constant supervision
- d. At any time, Soldiers may request to process through IDES

VII. Office of Soldiers Counsel (OSC)

- a. Soldiers MEB Counsel (SMEBC)
 - i. Civilian/USAR Legal Assistance Attorneys with dedicated paralegals
 - ii. Specially trained in the IDES
 - iii. SMEBCs are assigned to most major Army installations
 - iv. Assists clients with all legal issues
- b. Soldiers PEB Counsel (SPEBC)
 - i. Represents Soldiers at the Formal PEB
- c. <https://www.jagcnet.army.mil/otjagosc>
 - i. Website is a great source for topical papers on specific medical issues and updates to the process

VIII. United States Army Reserve (USAR) Practice Points

- a. In the Line of Duty, command funds Soldier appearance at formal PEB. Not in the Line of Duty, command will not fund Soldier appearance at formal PEB.
- b. Reserve Component on Active Duty
 - i. Full IDES process
- c. Reserve Component, Not on Active Duty
 - i. In the Line of Duty: IDES Process
 - ii. Not in the Line of Duty: PEB for fitness for duty only
 - 1. No MEB
 - 2. No referral to VA for disability ratings
- d. Do not rush through the medical evaluation process at a demobilization

IX. Wounded Warriors and Misconduct

- a. UCMJ actions – Soldiers under investigation or charged with offense that could result in dismissal, dishonorable discharge, or BCD
 - i. May be referred to and complete the MEB phase

- ii. Cannot proceed in the PEB until:
 1. Investigation ends without charges
 2. Court-Martial charges are dismissed.
 3. Officer submits resignation for good of the Service (AR 600-8-24) or resignation in lieu of Court-Martial
 4. The case is referred to a Summary Court-Martial
 5. The Court-Martial conviction does not include confinement and discharge or Soldier completes confinement without discharge
- b. Chapter 10
 - i. Soldiers are not eligible for referral to MEB or PED
 - ii. If Soldier is already in DES, their MEB or PEB will be terminated.
 - iii. Possible to preserve VA Benefits by including language in the Ch. 10 indicating that the GCMCA had no intention of referring the case to a General or Special Court-Martial.
- c. Administrative Separations for Enlisted
 - i. AR 635-200, Chapters 7 or 14 (fraudulent enlistment or misconduct)
 1. Both MEB and Administrative Separation Action continue until completion.
 2. After MEB is complete, GCMCA makes decision to continue to PEB or Administrative Separation. GCMCA analysis IAW AR 635-200:
 - a. Was Medical Condition a direct or substantial contributing cause of misconduct
 - b. Circumstances warrant disability processing
 3. For Enlisted Soldiers: After MEB is complete, GCMCA decides what takes precedence
 - ii. For other separations under AR 635-200 (i.e. 5-17), the DES process takes precedence over the administrative separation.
 - iii. **Soldier continue to be eligible for administrative separations action up until the day of their separation or retirement for disability even if their PEB is complete.**
- d. Administrative Separations for Officers
 - i. Generally, officers approved to resign for the good of the Service in lieu of trial by Court-Martial are ineligible for referral to MEB and PEB
 - ii. However, if officer was referred to MEB prior to approval of the resignation, the MEB and/or PEB must be completed and the case dual processed to the Deputy Assistant Secretary of the Army (Review Boards).
- e. AWOL
 - i. Soldiers AWOL are not eligible for referral or continuation in MEB, PEB, or final disposition
 - ii. Once a Soldier is dropped from rolls (DFR), their case is terminated

1. If the Soldier returns prior to DFR, their DES process may resume.
- f. RC Soldiers and Unexcused Absences
 - i. RC Soldiers with nine or more unexcused absences in one year cannot be referred to or continue in the DES process
 1. UNLESS Soldiers has a condition, which was a direct medical cause or significant contributing factor to the unexcused absences.
- g. Civilian Confinement
 - i. Soldiers confined by civilian authorities for misdemeanor or felony are ineligible for MEB or PEB UNLESS
 1. Present for duty on bail or
 2. After conviction, command declines in writing to separate the Soldier
- h. Suspended Sentences
 - i. If Soldiers may be referred to or proceed in DES if their military sentence of dismissal or punitive discharges is suspended.
 - ii. The Soldier may not be discharged through DES until the period of suspension has ended and punitive discharge/dismissal has been disapproved.
- i. Recommended Guidance to Convening Authorities
 - i. Wounded Warriors are still responsible for their actions
 - ii. Prior to taking action on a case or making a recommendation, leaders should have a sufficient understanding of:
 1. The Soldier's underlying medical and behavioral health conditions
 2. The potential impact on veteran's benefits, to include continued care of mental health issues
 - a. See Military Law Review Article, *Beyond "T.B.D.": Understanding VA's Evaluation of a Former Servicemember's Benefit Eligibility Following Involuntary or Punitive Discharge from the Armed Forces* by MAJ John Brooker, MAJ Evan Seamone & Ms. Leslie Rogall, [214 MIL. L. REV. 1 \(2012\)](#)

X. Warrior Transition Units (WTUs)

- a. AR 40-58, Warrior Care and Transition Program (23 March 2015) was recently updated, and judge advocates advising WTU commanders should review the regulation in its entirety
- b. For assignment/attachment to a WTU, the Soldier must need:
 - i. Six months of rehabilitative care
 - ii. Complex medical management
 - iii. Decision made by MTF Commander, WTU Commander, and Unit Commander
- c. Most Soldiers going through IDES are not assigned or attached to a WTU

- iv. Typically, the only significant VA benefit one loses with a General, Under Honorable Conditions Discharge is Education Benefits (GI Bill, etc.)
- v. Any previous period of service completed Honorably, may vest certain VA Benefits even if the Soldier's last term of service ended adversely.
- b. The Best Approach for analyzing the probability of receiving VA Benefits
 - i. Analyze "Veterans Status" as explained in Title 38.
 - ii. Veteran Status is the threshold issue the VA will look at before considering any filed VA claim (it's what gets you in the door).
 - iii. Three main factors for Veterans Status (Reference i at Part III)
 - a. Written Proof of Service (DD214 or equivalent).
 - b. Minimum active service requirements. (24 months or the entire period that the Soldier was called to Active Duty).
 - c. Discharged under conditions other than dishonorable (a term of art for the VA, does not mean anything but a Dishonorable Discharge).
 - d. Veterans Status Flow Chart. This chart, produced by the VA Office of General Counsel, can be used as a tool by Judge Advocates to determine likelihood (not definitive answers) of a Soldier receiving VA benefits after discharge.