

## Information for Soldiers in the MEB and PEB Systems

### Being Found “Fit” for Duty

This information paper is provided as general information only. It is provided as a service to Soldiers in the MEB/PEB process. Soldiers Counsel can provide specific legal advice to Soldiers involved in the MEB process only after the Soldier receives a DA Form 3947 from a PEBLO for review and signature.

The Physical Evaluation Board (PEB) is responsible for determining whether physical conditions identified by the Medical Evaluation Board (MEB) prevent the Soldier from performing military duties. The PEB must determine whether the Soldier can perform the Soldier’s primary military occupational specialty (PMOS) duties and basic Soldier skills (ie. carrying and firing a weapon, carrying a rucksack, etc.), and take and pass an Army Physical Fitness Test (APFT). DODI 1332.38 identifies the analysis used by the PEB. In general, the PEB considers whether the Soldier’s condition: 1) prevents the Soldier from performing these duties under a variety of conditions; 2) will create a danger to the Soldier or other Soldiers if the Soldier is found Fit and returned to duty; and 3) will create an unreasonable burden on the unit if the Soldier is found Fit and returned to duty.

The evidence the PEB reviews in determining whether a condition is “unfitting” includes the following:

- a. MEB physician’s narrative summary of the Soldier’s condition(s) (NARSUM), and DA Form 3947. These documents describe the Soldier’s condition and provide the PEB with an opinion from three MEB physicians regarding whether the Soldier’s condition is “medically acceptable” or “medically unacceptable”;
- b. DA Form 3349, Physical Profile, identifying the Soldier’s condition(s) and the duty restrictions recommended by two physicians because of the Soldier’s condition(s);
- c. Commander’s statement from the Soldier’s unit commander, indicating whether the unit commander believes the Soldier should be found Fit or Unfit. This opinion will be based on the performance of the Soldier. The commander’s statement will most likely indicate what duties the Soldier has been performing while the Soldier has had the condition. If a Soldier is in a Warrior Transition Unit (WTU) then the Soldier should try to get a note from a previous commander indicating that the Soldier performed duties despite their condition;
- d. Most Recent APFT card. The PEB reviews APFT cards to help determine whether the Soldier has been taking and passing an APFT while the Soldier has had the condition(s);
- e. NCOERs and OERs. The PEB review process places great importance on performance. Evaluations indicating that the Soldier has performed military duties despite a physical condition are very helpful. Evaluations indicating that the Soldier has not performed military duties because of a condition (or because of their profile) are very damaging.

A Soldier in the MEB/PEB process who wants to be found “Fit” and returned to duty can benefit from gathering useful evidence for the PEB. Soldiers should gather the following in order to show that they are “Fit”:

a. A DA Form 3349, Physical Profile, with as few physical restrictions as possible. Soldiers should review with the chain of command and a physician, a copy of the Soldier’s most recent physical profile. If the Soldier believes that the profile is too restrictive then the Soldier should request that it be made less restrictive. If the Commander agrees that the profile is overly restrictive he can request a review of the overly restrictive conditions. If the doctor will not provide a less restrictive profile then the Soldier’s unit commander can write “Profile does not prevent Soldier from performing duties.” in block 20 of DA Form 3349, sign, and date;

b. A Commander’s Statement supporting a finding of “Fit.” The Soldier should discuss his desire to be found “Fit” with the Soldier’s chain of command. Many times, unit commanders presume that an injured Soldier wants to be found “unfit” and the Commander’s statement reflects this belief. The soldier who wants to be found Fit should also do as many PMOS duties and basic Soldier skills as possible, in order to show the chain of command that the Soldier is Fit. A Commander’s Statement indicating that the Soldier has been performing military duties regularly, despite a physical condition, is generally very helpful for a finding of Fit;

c. An APFT scorecard indicating that the Soldier recently passed an APFT, despite the Soldier’s physical condition. The Soldier should take and pass the APFT in order to show the Soldier can do it. The APFT should be conducted to standard under the supervision of the Soldier’s chain of command. The APFT card should be completed and signed by the Soldier’s Training NCO, NCOIC, 1SG, or unit commander;

d. Most recent NCOERs and OERs. The Soldier should provide the Board with recent OERs and NCOERs, if the evaluations indicate that the Soldier has performed military duties despite a physical condition.

e. Letters to the PEB from the Soldier’s military supervisors stating that the Soldier can perform PMOS duties, Basic Soldier Skills, and pass an APFT. These statements should also address the Soldier’s motivation, duty performance, and potential. Photos of the Soldier performing these duties are effective tools for supplementing written statements.

f. Letters to the PEB from the Soldier’s supervisor at their civilian job. Reservists and Soldiers on the TDRL with civilian employers should submit letters from current or recent employers stating that the Soldier’s duty performance is not limited by the Soldier’s physical condition. This is especially helpful when the Soldier’s civilian occupation is similar to the Soldier’s military occupation.

g. Letter to the PEB from a doctor, stating that the Soldier can perform military duties despite a condition. The Soldier’s treating physician may believe that the Soldier can perform military duties despite a physical condition, even if the MEB NARSUM and DA Form 3947 say the Soldier cannot. If so, then the Soldier should get a note from the doctor providing that opinion and the reason for it. The Soldier should look to other health care providers as well.

Physical therapists, chiropractors, counselors, and others who have been working with the Soldier for a long time may know the Soldier's condition very well and may provide valuable information to the Board.

h. Letters to the PEB from people who share physically demanding hobbies with the Soldier. Soldiers should gather letters from friends who perform with the Soldier in the church choir, the office softball team, the friendly bowling league, etc. Showing the PEB that the Soldier is involved in physically demanding hobbies may provide support to a finding that the Soldier can perform physically demanding military duties.

The foregoing general information is provided to assist Soldiers in the MEB/PEB process. If you would like to make an appointment with an MEB Attorney, please contact the Fort Sill MEB Outreach Office at 580-442-5058.