

CRS Report for Congress

Disability Evaluation of Military Servicemembers

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Summary

On February 18, 2007, the *Washington Post* published the first in a series of articles describing problems with outpatient medical care and other services provided at the Walter Reed Army Medical Center (WRAMC). The series noted, among other things, concerns about the processes used to evaluate disability in injured military servicemembers. Both the Department of Defense (DOD) and the Department of Veterans Affairs (VA) conduct disability evaluations and assign disability ratings to servicemembers or veterans under their respective authorities. An individual's disability rating, from either department, affects the scope of pay and benefits for which he or she is eligible, and the cost to the respective department of providing such benefits.

There are significant differences between the disability evaluations performed by DOD and VA, as well as civilian disability evaluations conducted by the Social Security Administration (SSA) and workers' compensation programs. Most notably, the DOD disability evaluation is focused on the effect of any disabling condition on the performance of the servicemember's duties in the military, while the other three systems evaluate an individual's prospects for gainful employment in the civilian economy.

Congress has followed recent news reports with interest, and several legislative initiatives are under consideration. For example, H.R. 1538, the Wounded Warrior Assistance Act of 2007, passed unanimously in the House on March 28, 2007. The bill includes numerous provisions to improve or streamline medical care and benefits processing for returning injured servicemembers.

This report is intended as a primer to describe disability evaluation in general, including evaluations used by DOD and VA, as well as civilian evaluations used by the SSA and by workers' compensation programs. Next, the DOD and VA disability rating processes are described, respectively, in greater detail. Finally, recent congressional and executive actions and recommendations regarding DOD and VA disability evaluations are described. This report emphasizes the disability evaluation systems at DOD and VA, with illustrative comparisons made to civilian systems when appropriate. It will be updated as warranted.

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Disability Evaluation of Military Servicemembers

Background

On February 18, 2007, the *Washington Post* published the first in a series of articles describing problems with outpatient medical care and other services provided at the Walter Reed Army Medical Center (WRAMC).¹ WRAMC, a Department of Defense (DOD) facility in Washington, DC, is one of several Military Treatment Facilities (MTFs) providing medical care to injured servicemembers returning from combat theaters in Iraq and Afghanistan in support of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF).

Intense media scrutiny followed the *Washington Post* series. News reports have, in general, observed that medical care provided to returning servicemembers is good or excellent, but noted evidence of problems with infrastructure and cleanliness in both DOD and Department of Veterans Affairs (VA) facilities. In addition, reported problems have included complex administrative systems, delays and errors in DOD's processing of retirement and other benefits for those servicemembers who separate from the armed forces, the transitioning of eligible servicemembers to veteran status, and VA's processing of veterans' benefits. Reports have also mentioned understaffing and inadequate training of case workers who assist servicemembers and veterans with benefits processing and other aspects of their return to civilian life. Some reports have, however, been problematic in their descriptions of the respective roles of DOD and VA in providing health care and other benefits to injured servicemembers, or in their descriptions of the health care and other benefits systems in the two departments.²

Recent reports have spotlighted problems faced by some returning injured OEF/OIF servicemembers. However, DOD and VA do not apply their disability evaluations differently to OEF/OIF servicemembers than to other servicemembers and veterans. Also, less than half of each department's disability evaluation caseloads involve OEF/OIF personnel. Nonetheless, the added number of OEF/OIF cases and,

¹ Dana Priest and Anne Hull, "Soldiers Face Neglect, Frustration at Army's Top Medical Facility," *Washington Post*, February 18, 2007.

² Among other discrepancies, several news reports mistakenly referred to soldiers at WRAMC as "veterans." For example, on February 20, 2007, *The Seattle Times* reprinted the second article in *The Washington Post* series, describing conditions at Mologne House on the WRAMC campus, under the headline "Injured Vets Now Battle for Benefits." See the first of two text boxes in this report for a definition of "veteran."

in particular, their complexity, do appear to have strained the capacity of the disability evaluation systems in the two departments.³

When Is a Discharged Servicemember Classified as a “Veteran” for the Purposes of VA Benefits?

Not all discharged servicemembers are considered “veterans” for the purposes of Veterans Administration (VA) benefits and programs. In order to be eligible for most VA benefits, it is necessary for the discharged servicemember to be classified as a “veteran,” or in some circumstances, the survivor of a veteran.

Federal statutes define “veteran” as a “person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.” [38 U.S.C. § 101(2); 38 C.F.R. § 3.1(d)]. The VA largely bases its determination of veteran status upon military department service records. In addition to the member’s service records, other factors affect his or her classification as a “veteran” and may affect future benefits. These factors include:

Discharge criteria: (38 U.S.C. § 101(2); 38 C.F.R. § 3.1(d)).

Active military, naval or air service: (38 U.S.C. § 101(2); 38 C.F.R. § 3.1(d)).

Whether the service was during “time of war:” (38 U.S.C. § 101(6)-(11); 38 C.F.R. § 3.2).

Length of duty requirement: (38 U.S.C. § 101(6)-(11); 38 C.F.R. § 3.2).

After it has been proved that the discharged servicemember meets these criteria, he or she is considered to be a “veteran,” and may be eligible for certain benefits relating to health care, education, and other services provided by the VA.

See the **Appendix** for definitions of U.S. military servicemembers and veterans.

(Information provided by Douglas Reid Weimer, Legislative Attorney, American Law Division, CRS.)

³ In the DOD, 11% of disability evaluations involve personnel injured in war, while 89% are career servicemembers transitioning to retirement. See the testimony of Gordon R. England, Deputy Secretary of Defense, before a joint hearing of the Senate Committees on Armed Forces and Veterans’ Affairs on the DOD and VA disability rating systems and the transition of servicemembers from the DOD to veteran status, April 12, 2007, at [http://armed-services.senate.gov/e_witnesslist.cfm?id=2690]. In the VA, 54% of all claims are claims reopened for worsening of chronic conditions. See the testimony of Ronald R. Aument, Deputy Under Secretary for Benefits, Department of Veterans Affairs, U.S. Congress, House Committee on Veterans Affairs, Hearing on the Impact of OEF/OIF on the VA Claims Process, Statement, March 13, 2007, at [<http://www.va.gov/OCA/testimony/hvac/sdama/070313RA.asp>].

Some news reports and other sources have asserted that the DOD underrates disability. In both the DOD and VA systems, disability ratings range from zero (least severe) to 100% (most severe), in increments of 10%. Generally, if an injured servicemember has served in the military less than 20 years, a DOD disability rating of 20% or less entitles the servicemember to a single lump-sum severance payment and no additional military benefits, while a rating of 30% or greater may, subject to certain other conditions, make the individual eligible for certain lifelong military benefits such as retirement pay and health insurance for the servicemember and his or her family. Hence, in most cases, a disability rating of 30% or greater yields a more favorable benefits package for the servicemember, and a higher and longer-term cost for the department. For veterans under the VA system, in comparison, a service-connected disability rating of 20% or greater provides eligibility for vocational rehabilitation benefits, and of 30% or greater, eligibility for additional disability compensation for spouse and dependents. (The amount depends on the disability percentage.) Unlike the DOD disability evaluation, VA ratings may be subject to periodic reevaluation.

This report describes disability evaluation in general, including evaluations used by DOD and VA, as well as civilian evaluations used by the Social Security Administration and by workers' compensation programs. Next, the DOD and VA disability rating processes are described, respectively, in greater detail. Finally, recent congressional and executive branch actions and recommendations regarding military disability evaluation are described. This report emphasizes the disability evaluation systems at DOD and VA, with illustrative comparisons made to civilian systems when appropriate.

Overview of Disability Evaluation

There are significant differences between the disability evaluations performed by the DOD, the VA, the Social Security Administration (SSA), and workers' compensation programs (WC). There are differences in process and, more importantly, fundamental differences in the basis for evaluation in each of the systems. This may result in different rating outcomes from each system, which can affect the financial condition of the disabled applicant and the future costs incurred by the benefits provider. A brief overview and comparison of the four systems is provided below. More detailed descriptions of the DOD and VA systems are presented later in this report.

Some have proposed combining or linking different disability evaluation programs to improve outcomes or other problems with program performance. (For example, proposals to consolidate the DOD and VA disability systems, or to have the VA conduct disability evaluations of DOD personnel, are discussed in the final section of this report, "Recent Congressional and Executive Actions.") However, attempts to combine or link existing disability evaluation systems may be difficult and may not be desirable, given the different purposes of each system.

The Government Accountability Office (GAO) has designated as *high-risk* the federal disability programs at SSA and VA, which rate disability based on civilian employability. GAO says that these systems are based upon outmoded concepts of disability, and fail to optimize opportunities that would allow disabled beneficiaries to return to productive work.⁴

Department of Defense (DOD) Disability Evaluation

The DOD disability evaluation is focused on the effect of any disabling condition on the performance of the servicemember's duties in the military. The evaluation can be viewed as a two-step process. The first step is to determine if the applicant (servicemember) is fit for military duty. The second step, for applicants found to be unfit, is the rating of service-connected disability.

Several factors are taken into account to determine a servicemember's fitness for duty, including:

- whether or not the servicemember can perform his or her required duties (based on office, grade, rank, or rating);
- whether or not the servicemember is medically prevented from taking the required physical fitness test;
- the impact on deployability of the servicemember and his or her unit; and
- whether or not an alternative job specialty for the servicemember is feasible.

If a servicemember is found unfit for duty, the servicemember can be placed on the Temporary Retired Disability List (TRDL, which requires a reevaluation in the future), or permanently released from military service. Prior to release, DOD examines those service-connected physical impairments that rendered the soldier unfit, and provides a disability rating. For soldiers with multiple diagnosed physical impairments, each is potentially ratable, provided that DOD finds each physical impairment to be separately unfitting.⁵ DOD and VA use the same rating table, the Veterans Administration Schedule for Rating Disabilities (often referred to as VASRD or SRD, described in the **Text Box** below) to determine the disability percentage. This disability percentage is one factor used to determine if the service member receives a lump-sum payment upon discharge (based on a rating of 20% or lower), or an annual pension and possibly other lifelong benefits (based on a rating of 30% or higher).

Once the ratings determination is made and accepted by the servicemember, no further changes to the evaluation, percentage rating, lump-sum payment, or pension are made in the future. The military disability evaluation process does not look at the individual servicemember's current, future, or potential earnings or earnings capacity in evaluating disability.

⁴ Government Accountability Office (GAO), "Modernizing Federal Disability Programs," in *High Risk Series: An Update*, GAO-07-310, p. 83, January 31, 2007.

⁵ Each individual condition must, independently of the others, result in unfitness for duty.

The Veterans Administration Schedule for Rating Disabilities (VASRD)

A schedule of ratings was first attempted (and soon abandoned) in 1924, with ratings in 1% increments. Two editions of a ratings schedule were published in 1933, with different levels or grades of disability (the first had 25%, 50%, 75%, and 100%, while the second had 10 grades from 10% to 100%). The current basic schedule is the 1945 Schedule for Rating Disabilities, which was reprinted in 1957. When several laws related to veterans were combined in 1958 by P.L. 85-857, which created the Veterans Administration, the Administrator was given the authority to develop a schedule of ratings for disability, and to periodically update the schedule based on experience. The VASRD last underwent a thorough review and revision for all body systems in the early 1990s (revisions for 11 of the 15 body systems were finalized as of April 2007).

The VASRD is contained in 38 C.F.R. Chapter 1, Part 4. While some sections are descriptive of the injury and the ratings, others are schedules. For example, for removal of ribs (diagnostic code 5297), the scheduled rating percentage is as follows:

- More than six: 50%
- Five or six: 40%
- Three or four: 30%
- Two: 20%
- One, or resection of two or more ribs without regeneration: 10%

Department of Veterans Affairs (VA) Disability Evaluation

The VA evaluates a qualified individual's disability based on the likely prognosis — the progression of severity of the disability over time — and the effect of the disability on employability within the civilian job market. A qualified individual is generally a former servicemember with active-duty service in the military who has been discharged under conditions other than dishonorable.⁶ The DOD's central consideration in disability evaluation, i.e., fitness for military duty, is not relevant for the VA's evaluation.

The VA evaluates all medical conditions or illnesses that the veteran (the former servicemember) incurred during military service, *and* preexisting medical conditions or illnesses that were aggravated by military service.⁷ The resulting disability percentage rating (based on the VASRD) determines the level of disability benefits

⁶ For more information on eligibility, see CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, by Douglas Reid Weimer.

⁷ For more information on the disability process, see CRS Report RL33323, *Veterans Affairs: Benefits for Service-Connected Disabilities*, by Douglas Reid Weimer.

received by the veteran, and also plays a role in determining the veteran's position in the priority system for VA medical care. In order to receive disability compensation, an individual must be rated at least 10% disabled.⁸ In contrast to the DOD system, the veteran can be reevaluated if new or newly recognized medical conditions or illnesses occur and are determined to have been caused or aggravated by military service. A veteran may, upon reevaluation, receive a different percentage ranking than he or she received initially. (Though such a reevaluation may yield a disability payment that is a larger or smaller, the former outcome is much more common.)

Social Security Administration (SSA) Disability Evaluation⁹

The Social Security Administration (SSA) evaluates individuals to determine their eligibility for Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) benefits. SSDI benefits are available to persons with disabilities who are below the retirement age and who have paid into the Social Security system through payroll taxes, while SSI benefits are available to children and adults with disabilities who have limited assets and income.¹⁰ In order to qualify for either SSDI or SSI benefits based on disability, a person must have a medically determinable impairment that is expected to last at least one year or result in death, and that renders the person unable to perform his or her previous work or any other work that exists in significant numbers in the national economy.

There are no percentage ratings or partial disability determinations for SSDI or SSI benefits. SSDI benefit amounts are based on an individual's career earnings covered by Social Security. All SSI recipients receive the same basic monthly federal benefit; this benefit is reduced by any earned or unearned income the recipient receives in a month, and is augmented by any supplement paid by the recipient's state.¹¹

Workers' Compensation (WC) Disability Evaluation¹²

Workers' compensation (WC) is an employer-provided benefit. Generally, an employer, under state laws, must purchase WC insurance to provide medical care and compensation for the work-related injuries or illnesses of employees. In general, WC provides, subject to limitations in state laws, medical coverage and payments for lost wages. State laws specify a percentage of the worker's usual wage (66 and two-

⁸ A veteran can receive a 0% rating for a service-connected disability.

⁹ This section was prepared by Scott Szymendera, Analyst in Social Security, Domestic Social Policy Division, CRS.

¹⁰ For more information on the SSDI and SSI programs, see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by Scott Szymendera.

¹¹ For 2007, the monthly federal SSI benefit is \$623 for an individual and \$934 for a couple; 44 states and the District of Columbia offer a state supplement to some SSI benefits.

¹² This section was prepared by Edward Rappaport, Analyst in Industry Economics and Finance, Domestic Social Policy Division, CRS.

thirds percent, in most cases) to be paid during periods of work-related total, but not necessarily permanent, disability.¹³ In addition, for all work injuries, the employer is responsible for full payment of all necessary medical treatment until the point of “maximum medical improvement” is reached.¹⁴ Various forms of cost control (e.g., utilization review) may be used, and disputes can be referred to an administrative proceeding conducted by the state labor department or equivalent agency.

Medical evaluations for WC may be done by the employee’s personal physician or one specified by the insurance carrier, with disputed results again appealable to a state agency. As noted, *total* disability is compensated by a percentage of lost wages for as long as the disability persists (though with some time limits or reductions in amount at retirement age in some states). The various jurisdictions evaluate *partial* disability in many different ways, which have been classified by some analysts into three basic models:

- Impairment rating: An assessment is made of the worker’s proportionate loss of general physical and/or mental functioning compared to a hypothetical “whole person.”
- Loss of earning capacity: An estimate is made of the maximum level of earnings the worker can attain in his or her present condition compared to his or her previous earnings. This takes into account education, age, state of the local job market and other particulars of the case.
- Actual wage loss: Post-injury earnings are subtracted from the pre-injury rate of earnings. However, additional criteria are usually applied in order to assure that the loss of earnings is fully caused by the injury.¹⁵

Most jurisdictions also make distinctions among types of injury. For example, there may be benefit limitations applied to mental injury versus physical injury, or occupational disease versus traumatic injury. Most states also list specific types of injuries (called “scheduled” injuries) — usually loss of body parts or functions such as vision or hearing — and specify a standardized benefit. For example, loss of an arm could be compensated by six years of payment at two-thirds of one’s normal wage.

State governments, insurers and employers generally place a high priority on *return to work*, whether it is to the original job, a light duty assignment, or with a new employer. This strategy is usually the most cost-effective, and, arguably, preferred by most workers. Accordingly, vocational rehabilitation is included in all WC systems and, indeed, a worker may lose his or her WC payments if not participating in a prescribed rehabilitation program.

¹³ Workers compensation payments are tax-exempt.

¹⁴ Maximal medical improvement is the greatest degree of cure likely to be achieved with further medical services.

¹⁵ Reville, Robert T. et al., *An Evaluation of California’s Permanent Disability Rating System*, Appendix A, Santa Monica CA, RAND Corp, Institute for Civil Justice, 2005, at [http://www.rand.org/pubs/monographs/2005/RAND_MG258.pdf].

In addition to WC, some employers offer private disability insurance to cover disabilities that may not be caused by work injuries. Under these policies, the employee makes premium payments (the employer may or may not contribute to the premiums) for insurance to provide a replacement for lost income in the event of an injury or illness that prevents him or her from working.¹⁶

The DOD Physical Disability Evaluation System

Initial Medical Treatment of Injured Servicemembers

In general, when a soldier is injured on the battlefield, such as in the OEF/OIF conflict theaters, he or she is stabilized in theater by a combat medic/lifesaver and then moved to a battalion aid station. If the servicemember has serious injuries, he or she is transferred to a forward surgical team to be stabilized, and then moved to a combat support hospital and further stabilized for a period of about two days. If the servicemember needs more specialized care, he or she is evacuated from OEF/OIF conflict theaters and brought to Landstuhl Regional Medical Center (LRMC) in Germany for treatment. Most patients arrive at LRMC 12 to 48 hours after injury. In general, servicemembers remain in Germany for a period of about four to five days.¹⁷ Length of stay at in-theater medical facilities is determined by the stability of the patient and the availability of medical evacuation aircraft.

After further stabilization at LRMC, seriously injured soldiers are evacuated to the United States. They arrive at an Echelon V (highest level of care) Military Treatment Facility (MTF), such as WRAMC, or the National Naval Medical Center (NNMC) in Bethesda, Maryland. Catastrophic burn patients are flown to the Brooke Army Medical Center (BAMC) at Fort Sam Houston, Texas. BAMC has also established a specialized amputee rehabilitation center.

Injured servicemembers remain hospitalized as inpatients as long as required for optimal medical care and treatment. When hospitalization is no longer required and the patient is ambulatory, the servicemember may transition to outpatient status. Depending on the severity of the servicemember's injuries, lengths of stay in inpatient and/or outpatient facilities may be considerable, lasting months or sometimes years. Nonetheless, the individual remains a member of the military — not a veteran — unless or until he or she separates from military service. Generally, servicemembers do not undergo medical assessments for disability evaluation until it is felt that the progression of their medical condition has reached a plateau. Until this occurs, active-duty servicemembers whose injury or illness prevents them from

¹⁶ In five states (CA, HI, NJ, NY, RI) and Puerto Rico, employers are required to provide a non-work-related disability benefit, in most cases covering up to a half-year or year of disability.

¹⁷ Joachim J. Tenuta, "From the Battlefields to the States: The Road to Recovery. The Role of Landstuhl Regional Medical Center in US Military Casualty Care," *Journal of the American Academy of Orthopedic Surgeons*, vol. 14, (2006), S45-S47.

working in their assigned unit during recovery and rehabilitation are placed on “Medical Hold” status.¹⁸

Steps in the Disability Evaluation Process

Overview. The DOD has well-established criteria for the medical qualifications and physical aptitude of those desiring to enlist or be appointed in the military.¹⁹ For servicemembers who become potentially unfit for further service due to injury or disease, DOD has a process to evaluate their fitness for retention in the Armed Forces. DOD has granted the Army, Navy and Air Force some latitude in tailoring disability processes to their specific requirements.²⁰ The determination of fitness is individualized and based, in addition to medical criteria, upon a soldier’s ability to perform the duties of his or her primary military occupation speciality (MOS) or officer speciality at a minimum level of competence, taking into consideration rank and current duty position. *Consequently, two servicemembers with comparable medical conditions, but different MOSs, may receive different fitness determinations if the medical condition affects duty requirements in different ways.*

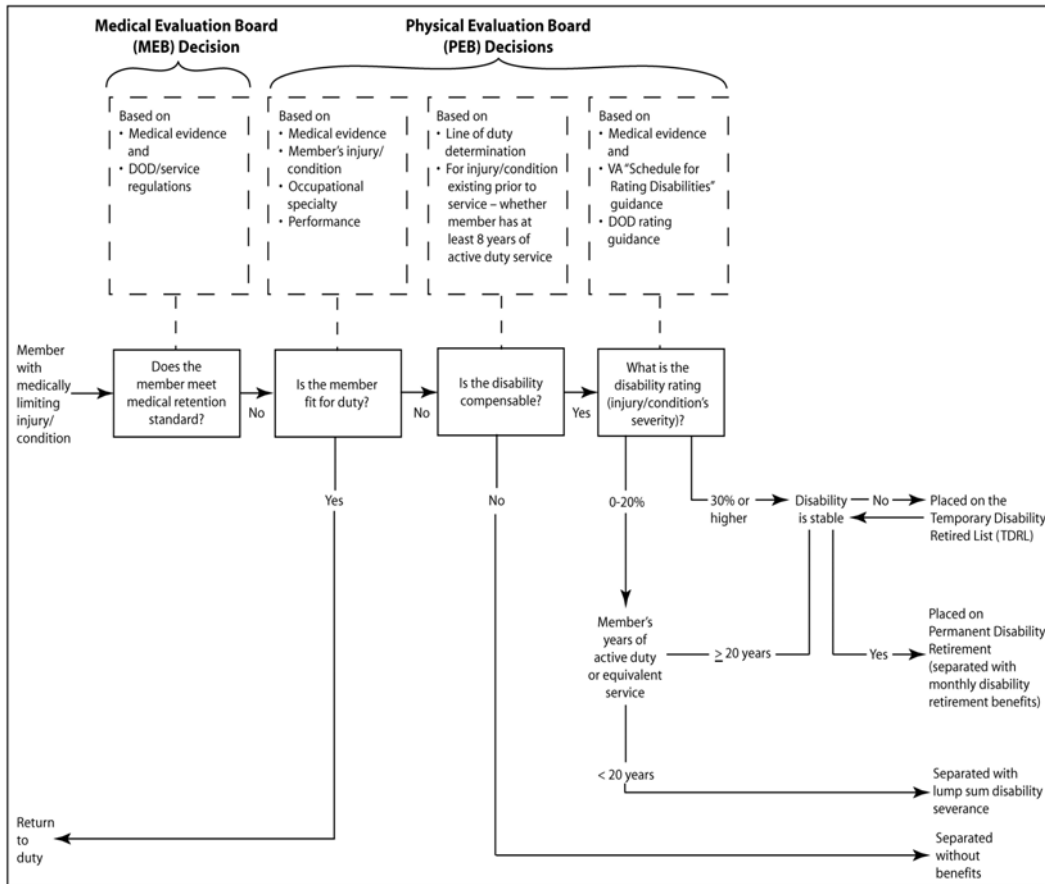
In general, if a military commander or physician determines that an active or reserve military servicemember may be physically unfit for return to duty, the servicemember is referred to a Medical Evaluation Board (MEB). If the MEB finds that the individual does not meet medical fitness standards, the case will be referred to a Physical Evaluation Board (PEB). The PEB’s role is to determine whether a soldier can reasonably perform his or her military duties, and if not, to determine the severity of the soldier’s physical or mental disability and rate it accordingly. The disability rating determines if the soldier is retained in the service, separated with or without separation pay, permanently retired, or placed on the Temporary Disability Retired List (TDRL). (These outcomes are discussed in greater detail later in this report.) The PEB process incorporates informal, formal, and appeals procedures. Throughout the process, military personnel must be provided with trained counselors to advise and assist. The steps in this process — MEB, PEB, and appeal — are referred to as the Physical Disability Evaluation System (PDES), which is diagramed in **Figure 1**. Each branch of the Armed Forces oversees its own PDES processes and procedures.

¹⁸ See, for example, Army regulation 40-400, “Medical Services: Patient Administration.” Reserve component personnel who have an illness or injury that prevents their deployment or return to duty with their unit are placed on “medical holdover” status.

¹⁹ Department of Defense Directive 6130.3, *Physical Standards for Appointment, Enlistment and Induction*, May 2, 1994.

²⁰ Department of Defense Directive 1332.18, *Separation or Retirement for Physical Disability*, November 4, 1996 (certified current as of December 1, 2003), at [<http://www.dtic.mil/whs/directives/corres/pdf/133218p.pdf>].

Figure 1. Steps in the DOD Physical Disability Evaluation System



Note: The DOD Physical Disability Evaluation System also includes an appeals process, not depicted in this figure.

Source: Adapted from GAO, *Military Disability System: Improved Oversight Needed to Ensure Consistent and Timely Outcomes for Reserve and Active Duty Service Members*, GAO-06-362, p. 7, March 31, 2006, derived from DOD documents.

Medical Evaluation Board (MEB). The MEB, usually composed of two to three physicians, is conducted to first document the medical status and duty limitations of servicemembers referred to it. The board reviews medical information and the determination of whether an injury is service-connected. MEBs may be formal or informal, and may permit appeals based on service guidelines. Importantly, the MEB does not make a conclusion of unfitness, recommend a disability percentage rating, or make a determination regarding separation or retention in the service. MEB results are forwarded to the Physical Evaluation Board (PEB) for disability rating and retention or separation decisions.

Physical Evaluation Board (PEB). The PEB is usually composed of both physicians and officers within the servicemember's chain of command. PEBs can also be conducted on a formal or informal basis. The informal PEB is used if the servicemember has not requested a personal appearance and only a documentary review is required. The formal PEB is required when the servicemember has requested a personal appearance before the board, with or without legal representation or other advisory assistance.

Using the medical assessment provided by the MEB, the PEB first determines whether the servicemember meets medical standards for retention in the service. The determination has a presumption of fitness. That is, the servicemember is presumed to have been fit until the injury or illness occurred. This is because the servicemember was examined prior to entering the service, and periodically afterward, including prior to deployment. If a servicemember is deemed unfit for duty, the PEB determines if the disability is service-connected and assigns a disability rating based on fitness for military service. Formal PEBs require a written record that is made available to the servicemember, and servicemembers can appeal the findings and recommendations of the PEB. Final results are forwarded to appropriate personnel authorities for final approval, as delegated by the secretary of the respective service branch.

Assistance to Servicemembers During Disability Evaluation. DOD provides trained counselors for servicemembers being evaluated in the disability process to assist with the MEB, PEB, and other required processes. These individuals are commonly referred to as Physical Evaluation Board Liaison Officers, or PEBLOs. However, the GAO recently noted inconsistencies among the military services (Army, Air Force, and Navy) in when the PEBLOs entered the disability process and the adequacy of their training.²¹ Assistance is also available from new programs established by DOD and the services to support severely disabled OIF/OEF servicemembers.²²

Outcomes of the DOD Disability Process. For the injured servicemember, there are five potential outcomes from the disability process. These are described below. For those who are separated as a result of a disability, benefits provided will vary depending on years of service, a determination of whether the disability is service-connected, and the percentage disability rating. Servicemembers with less than 20 years of service who are separated with disability ratings of 30% or greater may be eligible for lifelong benefits, including retirement pay and health insurance for the servicemember and his or her family. Servicemembers separated with disability ratings of 20% or less do not receive lifelong benefits, but instead receive a single lump-sum severance payment.

²¹ GAO, *Military Disability System: Improved Oversight Needed to Ensure Consistent and Timely Outcomes for Reserve and Active Duty Service Members*, GAO-06-362, March 31, 2006.

²² See CRS Report RS22366, *Military Support to the Severely Disabled: Overview of Service Programs*, by Charles A. Henning.

The possible outcomes of the military disability process are as follows:

1. Retained. Servicemembers may be found fit for duty and retained. In some cases, based on the physical limitations resulting from an illness or injury, a servicemember may be reclassified into a different job category.

2. Placed on Temporary Disability Retired List (TDRL). Servicemembers who are found unfit but whose condition is unstable (i.e., the condition may improve or worsen over time) may be placed on the TDRL for a maximum of five years. While on the TDRL, periodic reexaminations are required (normally every 18 months). Based on the reexaminations and a determination of stable condition, the retiree could be found fit for duty, could have his or her disability rating lowered and be separated with severance pay, or could be permanently retired. While on the TDRL, servicemembers receive monthly retired pay (not to exceed 50% of base pay), and are eligible for all retiree benefits and programs, but are not required to perform any military duties.

3. Separated from Service with No Benefits. Disability benefits are not available if the injury or illness was incurred while not on duty (i.e., is not service-connected), or as a result of willful misconduct.

4. Separated with Severance Pay. Eligibility for this outcome is based on a finding of unfitness and a disability rating of less than 30%. The amount of severance pay is determined by multiplying the monthly basic pay at the time of discharge by twice the number of years of active service. The maximum payment is two years of basic pay.

5. Permanently Retired with Physical Disability Benefits. Servicemembers who are determined to be physically unfit and have a disability rating of 30% or greater generally will be retired, even though they may have less than 20 years of active duty. The disability retirement pay calculation differs somewhat from the normal longevity retirement calculation. It is computed by multiplying the basic pay of the retired grade by the greater of the percentage of the disability, or 2.5% multiplied by the number of years of service. The maximum benefit under either computation cannot currently exceed 75% of basic pay.²³

Retired servicemembers with service-connected disabilities may also be eligible for VA disability compensation. Until recently, military retired pay was offset by any VA compensation received. However, the FY2004 National Defense Authorization Act now allows some military retirees to receive both VA and military retirement compensation, if the individual was retired with more than 20 years of service.²⁴ Generally, military retired pay is taxable. Exceptions are (1) if the disability pay is for combat-related injuries or (2) if the servicemember was in the military, or so obligated, on September 24, 1975.

²³ See CRS Report RL33449, *Military Retirement, Concurrent Receipt, and Related Major Legislative Issues*, by Charles A. Henning.

²⁴ *Ibid.*

Issues of Timely and Consistent Processing. The goal of DOD disability policy is that the physical disability evaluation process will be conducted in a “consistent and timely manner.”²⁵ However, DOD has given the services the latitude to set up their own processes, so inconsistencies would appear to be inevitable. While standards or common schedules such as the VASRD are used, these may be subject to interpretation and/or misapplication.

DOD has also established timeliness standards for case initiation and processing. All servicemembers must be referred for evaluation within one year of the diagnosis of their condition if they are unable to return to duty. In addition, DOD allows 30 days to complete the MEB process and 40 days to complete the PEB process. GAO has found that DOD has not monitored compliance by the services with DOD directives on disability evaluation, or exercised oversight over the training of disability program staff.²⁶ The Army Inspector General, in a recent inspection of the Army disability system, found that the Army was not meeting the DOD timeliness standards.²⁷

VA Disability Evaluation

In general, once DOD separates a servicemember from active military service,²⁸ the servicemember becomes eligible to obtain various benefits administered by the VA.²⁹ This section of the report provides information about the veterans disability evaluation process.

The veterans disability evaluation process begins with application for veterans’ disability compensation payments. The VA disability rating determines the level of monthly disability compensation payments available to the veteran and his or her spouse and children. In addition, the priority system for veterans’ health care services is based in part on the VA disability rating.

An application for disability compensation requires information related to the veteran’s military service and medical condition. A veteran must have been in active service and be discharged under conditions other than dishonorable. The veteran

²⁵ DOD Instruction 1332.38, *Physical Disability Evaluation*, July 10, 2006.

²⁶ GAO, *Military Disability System: Improved Oversight Needed to Ensure Consistent and Timely Outcomes for Reserve and Active Duty Service Members*, GAO-06-362, March 31, 2006.

²⁷ U.S. Army, “Army Inspector General Details Findings on Soldier Disability System,” press release with link to full report, March 12, 2007, at [<http://www.army.mil/news/jumparchive/newsreleases/>].

²⁸ A veteran (former servicemember) has received a DD 214 (Certificate of Release or Discharge from Active Duty) form.

²⁹ See CRS Report RL33985, *Veterans’ Benefits: Issues in the 110th Congress*, by Carol D. Davis, Shannon S. Loane, Meredith Peterson, Christine Scott, Charmaine Mercer, Libby Perl, and Douglas Reid Weimer.

must also have a current medical condition that is service-connected (i.e., in general, incurred as a result of, or aggravated by, active service).³⁰

For servicemembers who have been discharged from the military, the VA has access to DOD discharge data to determine veteran status, as well as access to military medical records. However, a veteran making an initial claim for disability compensation some years after discharge, or making a claim for an additional disability some time after an initial disability rating, may encounter more problems in providing the required documentation. For example, a veteran filing a claim for a disability 15 years after service may need to contact, or have the VA contact, several physicians who have treated the veteran for the medical condition over the period (15 years) since the veteran was discharged from the military. In addition, a veteran out of the military for a number of years may have to rely on the VA or DOD to conduct a search of stored paper documents for the needed discharge documentation.

Once all of the documentation needed for the application is complete, a veteran may be asked to undergo a medical examination at a VA facility at the veteran's convenience (a small number of examinations are done under contract outside of VA facilities). This is common for veterans not receiving medical treatment at VA or DOD medical facilities. The information gathered during the medical examination is then reviewed by a ratings specialist using the Veterans Administration Schedule for Rating Disabilities (VASRD) to determine the disability rating for the veteran. The VA ratings are done in increments of 10%, with a scale of 0% to 100%.³¹ The finding is then reviewed by a different rating specialist as a means of confirming the rating. A letter is sent to the veteran explaining the rating and the basis for the rating. The veteran has the right to appeal a rating determination.³²

The veteran's disability evaluation is based on the impact of the disability on civilian employability. The VASRD rating can be viewed as a measure of the average impact on civilian employment of the disability. However, the evaluation does not take into account a veteran's current earnings or potential future earnings in determining disability payments. The evaluation may take into account the individual unemployability of a veteran if the veteran claims that he or she cannot work as a result of the disability, or if the disability is of such a nature that there is a presumption of unemployability. The payment levels are established in law based on the disability percentage and whether the veteran has a spouse or dependents. An additional payment can be made, if needed, for aid and attendance.

Problems have been noted with the veterans disability evaluation process. Because the evaluation is done at the local level, the VA Inspector General has noted

³⁰ Lower-income wartime veterans who are elderly or have a nonservice-connected disability may apply for a VA pension. The pension benefits are offset by income from other sources.

³¹ For more detail on the VA disability process, see CRS Report RL33323, *Veterans Affairs: Benefits for Service-Connected Disabilities*, by Douglas Reid Weimer.

³² For information on the appeal process, see CRS Report RL33704, *Veterans Affairs: The Appeals Process for Veterans' Claims*, by Douglas Reid Weimer.

that there are unwarranted geographic variations in disability ratings.³³ Also, GAO has recommended that the department do more monitoring with respect to the process, particularly of the regional medical centers reports, to ensure consistency in disability determinations.³⁴

The VA's claims process also has a large backlog. Currently OIF/OEF servicemembers, particularly those recuperating in MTFs, are the VA's first priority in claims processing.³⁵ This may extend the processing time for claims by other veterans. The size of the claims backlog is related to the increase in the number of claims. According to the VA, the number of disability claims has increased from 578,773 in FY2000 to 806,382 in FY2006. The department attributes the increase in claims to several factors, including (1) the large size of the military's active-duty force; (2) the aging of the veteran population; and (3) increases in the number and complexity of conditions claimed. The department has also expanded outreach efforts that have contributed to the increase in claims.³⁶

Recent Congressional and Executive Actions

Congress has followed recent news reports with interest, and several legislative initiatives are under consideration. For example, H.R. 1538, the Wounded Warrior Assistance Act of 2007, passed unanimously in the House on March 28, 2007. The bill includes numerous provisions to improve or streamline medical care and benefits processing for returning injured servicemembers. Several provisions address disability evaluation. These include (1) a requirement that DOD standardize training and caseload limits for staff who are involved in its disability evaluation system;³⁷ (2) assurance of the availability of medical personnel to advise servicemembers who are undergoing DOD disability evaluation; (3) criteria to clarify certain aspects of the DOD disability evaluation; and (4) a joint DOD/VA study and report to Congress on the disability evaluation systems used by each department, recommendations for improvement, and the feasibility of consolidating the two systems.

³³ Department of Veterans Affairs, Office of Inspector General, Review of State Variances in VA Disability Compensation Payments, Report No. 05-00765-137, May 19, 2005.

³⁴ Government Accountability Office, *VA Disability Benefits, Routine Monitoring of Disability Decisions Could Improve Consistency*, GAO-06-120T, October 20, 2005.

³⁵ Under the VA Benefits Delivery at Discharge program, the VA begins processing servicemembers' claims prior to separation from the military. See the statement of Daniel L. Cooper, Under Secretary for Benefits, Department of Veterans Affairs, before the Senate Committee on Veterans' Affairs, hearing on VA Claims Adjudication Process, March 7, 2007.

³⁶ U.S. Congress, House Committee on Veterans Affairs, Hearing on the Impact of OEF/OIF on the VA Claims Process, Statement of Ronald R. Aument, Deputy Under Secretary for Benefits, Department of Veterans Affairs, March 13, 2007, at [<http://www.va.gov/OCA/testimony/hvac/sdama/070313RA.asp>].

³⁷ Currently, each of the services specifies its own training requirements.

The Veterans' Disability Benefits Commission, established by Congress in 2004, is charged with, among other things, evaluating the DOD and VA disability evaluation and compensation systems.³⁸ The commission anticipates issuing its final report on October 1, 2007. Following the *Washington Post* series, the commission's Chairman, Retired Lieutenant General James Terry Scott, testified before Congress regarding preliminary findings of the commission's work. He noted that he was testifying as an individual and not on behalf of the commission, and that the commission had not reached conclusions at that time.³⁹ Scott's testimony included preliminary data on outcomes of DOD and VA disability ratings, as well as preliminary analyses of variations in ratings between services within DOD and between DOD and VA ratings. Scott posited possible explanations for variations, noting that the DOD services and the VA each tailor their disability evaluation standards to different missions, and, consequently, comparability of ratings is not necessarily expected. Scott also testified that the DOD has an incentive to assign disability ratings at less than 30% because they avoid lifetime payment of benefits, and made a number of recommendations, including a long-term realignment of responsibilities in which the VA is responsible for rating the disability of injured servicemembers.

In response to the news stories about WRAMC and other problems experienced by returning servicemembers, Secretary of Defense Robert Gates formed an Independent Review Group (IRG), established as a subcommittee of the Defense Health Board, to review and, within 45 days, report upon and provide recommendations regarding any critical shortcomings and opportunities to improve rehabilitative care, administrative processes, and the quality of life of patients.⁴⁰ The IRG issued its final report on April 12, 2007.⁴¹ The report commented on the complexity of the DOD Physical Disability Evaluation System and the widespread perception that it is unfair to service personnel. The IRG recommended, among other things, a statutory remedy that would, for all personnel, place DOD in charge of fitness-for-duty determinations and VA in charge of disability assessments.⁴² On May 2, 2005, Secretary Gates announced the formation of an internal oversight

³⁸ The National Defense Authorization Act for FY2004, P.L. 108-136, 38 U.S.C. § 1101 note. See [<http://www.vetscommission.org/index.asp>].

³⁹ Statement of Lieutenant General James Terry Scott, USA (Ret.), Chairman, Veterans' Disability Benefits Commission, before a joint hearing of the Senate Committees on Armed Forces and Veterans' Affairs on the DOD and VA disability rating systems and the transition of servicemembers from the DOD to veteran status, April 12, 2007, at [<http://armed-services.senate.gov/statemnt/2007/April/Scott%2004-12-07.pdf>].

⁴⁰ See [<http://www.ha.osd.mil/DHB/default.cfm>]. Secretary Gates also established a DOD website to provide a centralized location for news articles pertaining to health care problems at WRAMC. See [http://www.defenselink.mil/home/features/2007/walter_reed/].

⁴¹ Independent Review Group on Rehabilitative Care and Administrative Processes at Walter Reed Army Medical Center and National Naval Medical Center, *Rebuilding the Trust*, April 2007, at [<http://www.ha.osd.mil/dhb/recommendations/2007/IRG-Report-Final.pdf>].

⁴² *Ibid*, pp. 28-34.

committee, chaired by Deputy Defense Secretary Gordon England, that will ensure that recommendations of the Independent Review Group are implemented.⁴³

On March 6, 2007, President George W. Bush directed VA Secretary Jim Nicholson to establish an interagency task force on returning servicemembers to examine the range of federal services available to these individuals, gaps in those services, and possible corrective actions. The Task Force report was submitted to the President on April 19, 2007.⁴⁴ Among other recommendations, the Task Force advised the development of a joint DOD/VA disability evaluation process.

Also on March 6, 2007, the President issued an executive order establishing the President's Commission on Care for America's Returning Wounded Warriors.⁴⁵ The commission is charged, among other things, with evaluating the coordination, management, and adequacy of disability benefits provided to returning injured servicemembers by federal agencies, as well as by the private sector. The President named former Senator Bob Dole and former Department of Health and Human Services Secretary Donna Shalala to cochair the Commission.

On March 12, 2007, the U.S. Army Inspector General provided congressional committees with a report on the Army Physical Disability Evaluation System, detailing findings of military medical and personnel policies, procedures, and services for injured soldiers.⁴⁶ The inspection — which was requested by the Secretary of the Army in April 2006 — found that policies varied between VA, DOD, and Army regulations; that training for personnel assisting soldiers was not standardized; and that current information-management databases were inadequate. The report also noted that cases are often more complicated than in the past because of the types of combat injuries soldiers now sustain, and found that because of this and an increased patient volume, the Army currently does not meet its own case-processing time standards or those of the DOD.

⁴³ Fred W. Baker III, "Gates Puts Punch Behind Fixing Wounded Warrior Care," *American Forces Press Service*, May 2, 2007, at [<http://www.defenselink.mil/news/newsarticle.aspx?id=33033>].

⁴⁴ U.S. Department of Veterans Affairs, "Task Force Report to the President on Returning Global War on Terror Heroes," April 2007, at [<http://www1.va.gov/taskforce/>].

⁴⁵ White House, "Executive Order: Establishing a Commission on Care for America's Returning Wounded Warriors and a Task Force on Returning Global War on Terror Heroes," press release, March 6, 2007.

⁴⁶ U.S. Army, "Army Inspector General Details Findings on Soldier Disability System," press release with link to full report, March 12, 2007, at [<http://www.army.mil/news/jumparchive/newsreleases/>].

Appendix. Definitions of U.S. Military Servicemembers and Veterans⁴⁷

Members of the U.S. Military Service

Federal statutes define various components of, and types of service in, the United States military — for those currently serving and for those discharged or released from service. This section provides a list of relevant definitions. Different services and benefits provided by the federal government (such as medical, educational, and financial) may be available to the servicemembers based upon the type of military service that the servicemembers provide or have provided.

Armed Forces. The term “armed forces” means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.⁴⁸

Reserve Components.⁴⁹

National Guard. “National Guard” means the Army National Guard and the Air National Guard.⁵⁰

Army National Guard. The term “Army National Guard” means that part of the organized militia of several states and territories, active and inactive, that is a land force, is trained and has its officers appointed under Article 1, § 8, cl. 16 of the Constitution, and is supported by federal funds and federally recognized. The Army National Guard is a state rather than a federal entity.

Army National Guard of the United States. The term “Army National Guard of the United States” means the reserve component of the Army, all of whose members are members of the Army National Guard.⁵¹

Air National Guard. The term “Air National Guard” means that part of the organized militia of the several states and territories, active and inactive, that is an air force, is trained and has its officers appointed under Article 1, § 8, cl. 16 of the Constitution, and is supported by federal funds and federally recognized.⁵² The Air National Guard is a state rather than a federal entity.

⁴⁷ Appendix prepared by Douglas Reid Weimer, Legislative Attorney, American Law Division, CRS.

⁴⁸ 10 U.S.C. § 101(a)(4).

⁴⁹ *Ibid.*, § 101(c).

⁵⁰ *Ibid.*, § 101(c)(1).

⁵¹ *Ibid.*, § 101(c)(3).

⁵² *Ibid.*, § 101(c)(4).

Air National Guard of the United States. The term “Air National Guard of the United States” means the reserve component of the Air Force, all of whose members are members of the Air National Guard.⁵³

Reserve. The term “reserve,” with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or office held as a reserve of one of the armed forces.⁵⁴

Reserve Active-Status List. The term “reserve active-status list” means a single list for the Army, Navy, Air Force, or Marine Corps, respectively, that contains the names of all officers of that armed force except warrant officers who are in an active status in a reserve component and are not on an active-duty list.⁵⁵

Duty Status.

Active Duty. The term “active duty” means full-time duty in the active military service of the United States.⁵⁶ It includes 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 military department concerned. Such term does not include full-time National Guard duty.⁵⁷

Active Duty for a Period of More than 30 Days. The term “active duty for a period of more than 30 days” means active duty under a call or order that does not specify a period of 30 days or less.⁵⁸

Active Service. The term “active service” means service on active duty or full-time National Guard duty.⁵⁹

Active Status. The term “active status” means the status of a member of reserve component who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve.⁶⁰

⁵³ Ibid., § 101(c)(5).

⁵⁴ Ibid., § 101(c)(6).

⁵⁵ Ibid., § 101(c)(7).

⁵⁶ Ibid., § 101(d)(1).

⁵⁷ Full-time national guard duty is considered state service rather than federal service.

⁵⁸ 10 U.S.C. § 101(d)(2).

⁵⁹ Ibid., § 101(d)(3).

⁶⁰ Ibid., § 101(d)(4).

Other Duty Status Definitions. Federal statutes define other duty statuses: “*full-time National Guard duty*,”⁶¹ “*active Guard and Reserve Duty*,”⁶² and “*inactive-duty training*.”⁶³

Discharge from the Military: Classification and Status

The servicemember usually leaves the United States military service at the time of his or her *discharge* or release from military service. At that time, the servicemember’s status changes, and his or her eligibility for various benefits and services may change.

Concept of “Veteran”. *Not all discharged service members are considered “veterans” for the purposes of Veterans Administration benefits and programs. It should also be considered that services and benefits provided to a servicemember during his or her military service may not be available after his or her discharge.*

In order to be eligible for most VA benefits, it is necessary for the discharged servicemember to be classified as a “veteran,” or in some circumstances, the survivor or the dependent of a veteran. It should also be considered that available benefits may vary for “veterans” and for fully retired members of the armed services.

Definition of “Veteran”. Within the context of the VA, a “veteran” is defined as a “person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.”⁶⁴ The VA largely bases its determination of veteran status upon military department service records.⁶⁵

In addition to the member’s service records, other factors affect his or her classification as a “veteran,” and may affect future benefits. These include *discharge criteria*,⁶⁶ a requirement of “*active military, naval or air service*,”⁶⁷ whether the military service was during *time of war*,⁶⁸ and the *length of duty requirement*.⁶⁹

After it has been proven that the discharged servicemember meets these criteria, he or she is considered to be a “veteran” who may be eligible for certain benefits relating to health care, education, and other services provided by the VA.

⁶¹ Ibid., § 101(d)(5). See note 11.

⁶² Ibid., § 101(d)(6).

⁶³ Ibid., § 101(d)(7).

⁶⁴ 38 U.S.C. § 101(2); 38 C.F.R. § 3.1(d).

⁶⁵ See CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, at 2-3, by Douglas Reid Weimer.

⁶⁶ Ibid., at 3-4.

⁶⁷ Ibid., at 4-6. See 38 U.S.C. § 101(2); 38 C.F.R. § 3.1(d).

⁶⁸ Ibid., at 6-7. See 38 U.S.C. § 101 (6)-(11); 38 C.F.R. § 3.2.

⁶⁹ Ibid., at 7.