



CCI 393.01  
EFFECTIVE DATE: 20 June 2023

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**By Order of the Assistant Secretary for Health:**

**ADM Rachel L. Levine, M.D.**

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SUBJECT: Medical Review Board

1. PURPOSE: The purpose of this Instruction is to provide general information on separation of an officer of the U.S. Public Health Service (USPHS) Commissioned Corps for physical disability.
2. APPLICABILITY: This Instruction:
  - 2-1. Applies to all members of the Regular Corps serving on extended active duty except students who the USPHS Commissioned Corps has ordered to active duty in the Uniformed Services University of the Health Sciences (USUHS) School of Medicine and other members of the Regular Corps that the USPHS Commissioned Corps orders to active duty for training for a period of more than 30 days.
  - 2-2. Applies to members of the Ready Reserve Corps in accordance with [10 U.S.C. Chapter 61](#), except that Sections 1201, 1202, and 1203 do not apply to members who the USPHS Commissioned Corps has ordered to active duty for training for a period of more than 30 days. This includes, but is not limited to, officers appointed to the Junior and Senior Commissioned Officer Student Training and Extern Program (JRCOSTEP and SRCOSTEP), and officers appointed to a training program who do not meet appointment standards to qualify for appointment in the Regular Corps.
  - 2-3. Does not apply to former officers who become physically disabled after separation from the USPHS Commissioned Corps, even though the origin of the disability may be service connected. Such individuals are not eligible for disability benefits from the USPHS Commissioned Corps. However, they may be eligible for compensation from the U.S. Department of Veterans Affairs (VA) and should apply to that agency for adjudication of any claim.
  - 2-4. Does not apply to candidates seeking an appointment to the Ready Reserve Corps or Regular Corps.
3. AUTHORITY:
  - 3-1. Commissioned Corps Directive (CCD) [128.01](#), "Medical Fitness for Duty"
  - 3-2. [38 C.F.R. Book C](#), "Schedule for Rating Disabilities"

4. **PROPONENT:** The proponent of this Instruction is the Assistant Secretary for Health (ASH). The Surgeon General (SG) is responsible for supervising activities relating to the day-to-day operations of the USPHS Commissioned Corps. The Director, Commissioned Corps Headquarters (CCHQ), provides overall management of USPHS Commissioned Corps personnel operations and processes.
5. **SUMMARY OF REVISIONS AND UPDATES:** This is the third issuance of this Instruction in the electronic Commissioned Corps Issuance System (eCCIS) and replaces Commissioned Corps Instruction (CCI) 393.01, "Medical Review Board," dated 2 July 2020. This version:
  - 5-1. Adds an expedited Medical Review Board (EMRB) that is an alternative fitness for duty process that the USPHS Commissioned Corps may offer to an officer to allow recommendations to be sent to the SG without convening a Medical Review Board (MRB).

6. POLICY: For the purposes of this Instruction, “aggravated” means any medical condition that is aggravated, exacerbated, accelerated, or permanently worsened by service in the USPHS Commissioned Corps. For the purposes of this Instruction, medical disability, examination, and standards, etc., includes physical, dental, and mental health disabilities, examinations, and standards, etc.

6-1. Requirements for Disability Retirement or Separation with Benefits.

- a. Fitness for Duty Determination (FFD). To be eligible for disability retirement or separation, an officer must be found unfit: to perform the duties of their position/billet, office, grade, rank, or rating; to deploy in response to urgent and emergency public health needs; or to participate in any required military mission because of one or more medical conditions incurred while entitled to basic pay.
- (1) The disabling condition must be permanent in nature or one which is likely to become permanent.
  - (2) The fact that an officer has a medical condition that could, under certain circumstances, render the individual unfit does not, per se, make the officer unfit. Furthermore, the presence of a ratable or non-ratable medical condition under the VA Schedule for Rating Disabilities (VASRD) also does not make an officer eligible for disability retirement/separation (see footnote in Section 6-7.b.).
  - (3) Although a finding of unfitness may be based on medical facts alone, the direct effect that the medical condition has on the officer’s ability to perform their duties is usually the key factor in determining fitness.
- b. Service-incurred or aggravated. To be eligible for disability benefits, an officer found unfit because of a physical disability must have acquired such disability while on active duty. The disability may be due to a condition incurred on active duty or due to a preexisting condition which was aggravated by service. The presumption is made that an officer was physically fit at the time of their call to active duty and any condition incurred or aggravated subsequently is considered service-connected with the following exceptions:
- (1) Physical disabilities noted at the time of the officer’s commissioning physical examination or call to active duty and no service aggravation of the disability has occurred. “Natural progression” of a disease is not considered service aggravation.
  - (2) Abnormalities discovered after entry on active duty which impel the conclusion that they must have existed or have originated before the individual entered the USPHS Commissioned Corps. However, any condition which becomes disabling after eight (8) years of active duty will be sufficient evidence of having a service connection.
  - (3) Any expected disability occurring as a result of necessary treatment of a condition which was neither service-incurred nor service-aggravated.
- c. For a disabling condition in an officer’s first 30 days of service, the condition must be the direct result of an injury or disease that was incurred or aggravated while performing active duty or while traveling directly to or from the place at which such duty is performed. A Ready Reserve Corps officer who is ordered to active duty for a period of more than 30 days, who is released from active duty within 30 days

of commencing such period of active duty for a reason stated below, is considered to have been serving under an order to active duty for a period of 30 days or less.

- (1) Failure to meet physical standards for retention due to a preexisting condition not aggravated during the period of active duty; or
  - (2) Failure to meet medical standards for deployment due to a preexisting condition not aggravated during the period of active duty.
- d. Line of Duty (LOD). A disabling disease or injury incurred while on active duty must also be incurred in the line of duty (see Personnel Operations Memorandum (POM) 821.82, "Line of Duty Determination") to qualify an officer for disability benefits. In general, a condition acquired or aggravated while on active duty with the USPHS Commissioned Corps will be considered to have occurred in line of duty except as outlined in POM 821.82.
- e. Disposition of Cases. An officer found unfit because of a permanent disability cannot be retained on active duty even when further treatment may be required. The officer will be separated, placed on the temporary disability retired list (TDRL), or permanently retired. However, if the Medical Review Board (MRB) finds the officer fit for limited duty, and with the consent of the officer and the officer's program of assignment, the SG may defer the disposition of the case if the officer can still serve with appropriate assignment limitations and if their disability is basically stable, or only slowly progressive, and does not require extensive medical care or jeopardize the officer's health. In no case will the USPHS Commissioned Corps retain an officer who is physically disabled on active duty solely to increase benefits.

6-2. Request for Fitness Evaluation.

- a. A request for a fitness evaluation must be addressed to the Chief, Medical Affairs Branch (MAB), CCHQ, and may be initiated through one of the following mechanisms:
- (1) Officer's Own Initiative. An officer may request, in writing, a fitness evaluation when they feel unable to perform the duties of their office, position/billet, and grade due to medical reasons.
  - (2) Program Official's Initiative. A program official may request, in writing, a fitness evaluation on an officer under their supervision when reasons for unacceptable performance of duties are suspected to be on medical grounds. A detailed description of performance limitations must accompany the request.
  - (3) CCHQ Initiative. Under the following conditions, the Director, CCHQ, may initiate a fitness evaluation:
    - (a) If there has been excessive use of sick leave by an officer (i.e., 90 days of continuous sick leave or 120 days in a 12-month period).
    - (b) If, according to accepted medical principles, an officer has a medical condition which may be disabling or otherwise places the officer or others in jeopardy if the officer were to continue on active duty.

- (c) If an officer has a permanent medical condition that prevents them from being deployed in response to urgent and emergency public health needs, any required military mission, or if the condition prevents the officer from engaging in the physical activities associated with deployments.
    - (d) If an officer is unable to meet medical readiness standards established by the ASH.
  - b. An officer's request for a fitness evaluation will be reviewed by either an MRB or Expedited MRB (EMRB), except as noted in Section 6-3 and Section 6-2.e. and f.
  - c. A fitness evaluation initiated by a program official or under Section 6-2.a.(3) will be reviewed by the Chief, MAB, who will review the officer's records to determine if the documentation supports a review by an MRB.
    - (1) If the record supports referral to an MRB, the Chief, MAB, will convene an MRB or EMRB in accordance with Section 6-5.
    - (2) If the record does not support referral to an MRB, the Chief, MAB, will refer the request for a fitness evaluation to the Director, CCHQ, with a recommendation regarding whether the officer's records should be reviewed by an MRB. The Director, CCHQ, will make the final determination about the merits of a fitness for duty request and whether an MRB will be convened to review the request.
  - d. In all cases, the Chief, MAB, may:
    - (1) Direct the officer to undergo additional examinations or tests, or to supply additional records.
    - (2) Request further information from program supervisors regarding the officer's ability to perform assigned duties.
  - e. A request by either an officer or program official to rescind their request for a fitness evaluation will be reviewed by the Chief, MAB, who will make a recommendation to the Director, CCHQ, regarding whether an MRB should review the officer's medical records. The Director, CCHQ, will make the final determination about the merits of a fitness for duty request and whether an MRB will be convened to review the officer's fitness for duty.
  - f. If a fitness evaluation has been initiated and the officer submits a request for a non-medical retirement in accordance with [CCD 124.01](#), "Retirement," or [CCI 384.03](#), "Mandatory, Voluntary, and Involuntary Retirement," and the officer's request for retirement is approved, CCHQ will consider the non-medical retirement request as equivalent to the officer's decision to forego the disability review. In such circumstances the fitness evaluation and MRB or EMRB process will not proceed, and the officer will be retired without a fitness determination or disability rating from the USPHS Commissioned Corps.
- 6-3. Inappropriate Requests for Fitness Evaluation. Such factors as the following are not to be used as the basis for initiating a fitness evaluation:
  - a. The officer's inability at some later date on active duty to meet the medical accession standards for initial entry into the USPHS Commissioned Corps.

- b. Pending voluntary or involuntary separation or retirement. When an officer is being processed for separation or retirement for reasons other than physical disability, the officer's prior performance of duty, including during periods of non-duty with pay, and lack of documented disabling conditions up to that point creates a presumption that the officer is fit for duty. The officer shall not be referred for disability evaluation unless their physical condition raises substantial doubt that they are fit to continue to perform the duties of their office and grade. Such officers must submit a request, in writing, to the Chief, MAB, along with their records that MAB must receive a minimum of 60 days in advance of the anticipated/requested retirement effective date to allow sufficient time to review the records and determine the need to refer to an MRB.
- c. Inability to physically qualify for specialized duties requiring a high degree of physical fitness.
- d. Inability to physically qualify for transfer to another uniformed service.

6-4. Medical Examination.

- a. Arrangements. The officer is responsible for obtaining the necessary medical examinations and tests that MAB directs or an MRB or EMRB requires.
- b. Examining Facility. The medical examination should be performed at a Uniformed Services medical facility when one is available.
- c. Examinations at Other than Uniformed Services Facilities. The MRB or EMRB may accept medical examinations from either governmental or private sources as the basis for making a determination of fitness if the MRB or EMRB finds it to be in the best interest of the Government and the officer.
- d. When possible, the examining physician/facility should submit medical documents to be reviewed by the MRB or EMRB to MAB directly. Medical documents provided directly from the officer or the officer's representative may not be considered by the MRB or EMRB unless the source and dates of the records are clearly documented and are signed by the provider. All letters from providers must be on the provider's letterhead and contain: the officer's name and at least one other identifier (e.g., date of birth); the provider's signature and date of signature; printed or typed name of the provider; and the provider's contact information.
- e. MAB must receive all medical documentation 14 calendar days prior to a scheduled MRB or EMRB to allow time for staff review and preparation of the records for MRB or EMRB members. Records received less than 14 calendar days before the MRB will be presented to the MRB or EMRB at the discretion of the Chief, MAB.

6-5. Medical Review Board (MRB) and Expedited MRB (EMRB).

- a. Medical Review Board (MRB).
  - (1) Composition of the MRB. The Director, CCHQ, or designee, is responsible for the appointment of MRB members. The MRB shall consist of three or more officers who are licensed as medical (e.g., physician, nurse practitioner, nurse, dentist, therapist, physician assistant) or mental health (e.g., psychiatrist, clinical psychologist, social worker, psychiatric nurse practitioner, psychiatric nurse) providers who are at the O-4 grade or higher with a minimum of five years of active-duty service in the USPHS

Commissioned Corps. At least one board member must be an officer in the medical category and the majority of the members must be senior officers (O-5 or above). Officers assigned to the Immediate Office of the Surgeon General, Immediate Office of the Director, CCHQ, or MAB may not serve as members of an MRB. The Chief, MAB, or designee will serve as the executive secretary of the MRB.

- (2) Responsibilities of the MRB. The MRB is responsible for submitting a formal report to the SG and making recommendations regarding an officer's medical fitness for duty.
    - (a) The report will provide a summary of the officer's service and will be sufficiently detailed to provide the SG with an adequate understanding of the reason(s) the officer was referred to the MRB.
    - (b) A finding of unfitness will include a disability rating of the medical conditions that resulted in the unfitness recommendation (see Section 6-7).
  - (3) Case Presentation. The Chief, MAB, or designee, will prepare and present to the MRB a detailed written summary of all pertinent material made available by the officer, on the physical and mental fitness of the officer to perform their duties. The summary will include the official request for a fitness determination, medical findings provided to MAB from all sources identified by the officer, and such other information as deemed pertinent for determining performance capability. In addition to the detailed summary, copies of all available source documents will be available to the MRB at the time the MRB meets.
- b. Expedited MRB (EMRB). An officer may request that MAB conduct an expedited review for providing a recommendation to the SG regarding the officer's fitness for duty (see Appendix). The EMRB is an alternative process that, based on the criteria outlined in this Subsection, is available to an officer to facilitate CCHQ's ability to submit recommendations to the SG in a shorter timeframe.
- (1) EMRB Case Selection.
    - (a) FFD cases eligible for the EMRB are those that, after initial review of the clinical documentation, demonstrate potentially disabling medical conditions that are straightforward as to diagnosis and resultant impairments in functionality, and the officer recognizes that they can no longer meet conditions of service as listed in [CCD 111.03](#), "Conditions of Service," and thus are no longer medically fit to serve. Examples of these cases include, but are not limited to, those where the officer's clinical documentation clearly indicates that based on the VASRD, they meet the criteria for specific disability ratings, review of officers on TDRL prior to the expiration of their TDRL status, and pre-stabilization TDRL (e.g., joint replacements, malignancies with high likelihoods of complete remission).
    - (b) FFD cases that are not eligible for the EMRB are those in which, despite clinical documentation to the contrary, the officer feels that they are still fit to serve; or when the medical conditions are

complicated and the impact of those conditions on the officer are multifaceted thus making an MRB review more appropriate.

- (2) Officer Consent and Rights Regarding the EMRB.
  - (a) Waiving an MRB in favor an EMRB is contingent upon the officer consenting in writing to waive the MRB and to have their FFD evaluation recommendations to the SG made by the EMRB (see Appendix).
  - (b) MAB must inform the officer that they can elect to end the EMRB and have their case heard by an MRB at any time up to the point when the MAB EMRB Adjudicator reaches a decision and completes their report of the case with their recommendations to the SG.
  - (c) Once the MAB EMRB Adjudicator completes their report of the case with their recommendations to the SG, the identical process used for MRB recommendations will be followed. The MAB Liaison Officer (see Section 6-11) will send the case report and recommendations to the officer undergoing the EMRB evaluation and the officer will have the right to request a Medical Appeals Board.
  
- (3) EMRB Roles and Responsibilities. The Chief, MAB, will assign a MAB Liaison Officer, MAB EMRB Adjudicator, and, if necessary, a MAB EMRB Reviewer to serve as the EMRB members. Selection of these individuals will adhere to the MRB membership requirements outlined in [CCD 128.01](#), "Medical Fitness for Duty," and each member will have the following roles and responsibilities:
  - (a) MAB Liaison Officer. The MAB Liaison Officer (see Section 6-11) will:
    - (i) Inform the officer undergoing a FFD evaluation of their options, medical record submission requirements, and deadlines.
    - (ii) Explain the EMRB process and its difference from the MRB process to the officer as well as answer any questions that the officer may have regarding the EMRB.
    - (iii) Obtain the officer's consent to use the EMRB (see Appendix).
    - (iv) Prepare a FFD clinical case summary once all medical records that the MAB Liaison Officer requires are received and present the case with suggested recommendations for the SG to the MAB EMRB Adjudicator.
    - (v) Communicate the recommendations of the MAB EMRB Adjudicator to the officer undergoing the EMRB and provide a copy of the MAB EMRB Adjudicator's EMRB report of the case to the officer for their acceptance or request for a Medical Appeals Board.

- (b) MAB EMRB Adjudicator. The MAB EMRB Adjudicator must have documentation of training in the disability retirement process and in the VASRD. The MAB EMRB Adjudicator will:
  - (i) Review the MAB Liaison Officer's FFD clinical case summary and suggested recommendations along with the officer's medical documentation.
  - (ii) Determine the officer's fitness for duty. If the officer is considered unfit for continued service, determine if the disabling conditions developed or were diagnosed in the line of duty and, if so, determine the officer's disability rating based on the VASRD and determine if all of the disabling conditions are likely to resolve within 3 years (i.e., placement on TDRL) or not (i.e., placement on the Permanent Disability Retirement List (PDRL)).
  - (iii) Submit the FFD summary report of the officer's case with the recommendations for the SG to the MAB EMRB Reviewer.
- c. MAB EMRB Reviewer. The MAB EMRB Reviewer must be the Chief, MAB, or their designee. The MAB EMRB Reviewer will:
  - (i) Ensure that the MAB Liaison Officer and MAB EMRB Adjudicator have the training required by this Instruction and ensure that EMRBs adhere to the requirements of this Instruction.
  - (ii) Review the MAB EMRB Adjudicator's FFD summary report and recommendations to the SG.
  - (iii) Forward the FFD summary report, which constitutes the EMRB's findings, to the Director, CCHQ, for review and forwarding to the SG.

#### 6-6. MRB and EMRB Findings.

- a. If the information is sufficient to make a decision, the MRB or EMRB shall find the officer:
  - (1) Fit for Full Duty. If the MRB or EMRB finds the officer fit for full duty, the officer is expected to perform the duties of their grade and office without significant restrictions;
  - (2) Fit for Limited Duty. If there is written documentation of concurrence between the officer and the officer's program of assignment, the officer may return to duty with limitations as stipulated by the MRB. The program of assignment must affirm that they will modify the officer's work environment and/or schedule to conform with the limitations stipulated by the MRB. Such limited duty status will not exceed one year. At the end of one year, the MRB must render a finding of fitness or unfitness for duty; or
  - (3) Unfit for Duty. An officer found unfit may not be retained on active duty and must be separated or retired in accordance with existing laws, regulations, and policies. The Director, CCHQ, will determine the officer's date of

separation which must be the earliest date practicable, but no later than 60 days from the SG's approval of the MRB or EMRB recommendation.

- b. If the information available is insufficient to render a decision, the MRB or MAB EMRB Adjudicator, as applicable, may:
- (1) Direct the officer to undergo additional examinations or tests or supply additional records.
  - (2) Request further information from program supervisors regarding the officer's ability to perform assigned duties.
  - (3) Provide the officer an opportunity to submit a formal statement or answer written questions posed by the MRB or MAB EMRB Adjudicator regarding the officer's ability to perform assigned duties.
- c. If the MRB or EMRB, as applicable, finds the officer unfit for duty, the officer may be:
- (1) Separated Without Benefits. Separation without benefits occurs when a disability is not incurred in line of duty, is caused by a nonservice-incurred condition, or is the result of a non-compensable condition such as alcohol and/or drug abuse (see [CCI 211.06](#), "Substance Use").
  - (2) Separated with Severance Pay. If the total disability rating is determined to be less than 30%, the officer will receive a lump-sum payment based upon years of active duty in accordance with 10 U.S.C. § 1212 and will be separated from the USPHS Commissioned Corps. The officer will receive no further benefits from the USPHS Commissioned Corps but should apply to the VA for possible benefits administered through that agency, including disability payments, medical care, etc.
  - (3) Permanently retired. A disability is permanent if, based on accepted medical principles, the defect has stabilized so that the compensable percentage rating is not expected to change during the next 3 years or if the compensable disability rating is 80 percent or more and the disability will probably not improve so as to be ratable at less than 80 percent during the next 3 years. An officer who meets either of these requirements and is otherwise qualified shall be permanently retired (i.e., placed on PDRL).
  - (4) Placed on Temporary Disability Retired List (TDRL). Disability retirement may be temporary when the officer's condition has not stabilized and they may recover and become fit for duty or the degree of severity may substantially change within the next 3 years. In such cases, the officer shall be removed from active duty and placed on TDRL administered by CCHQ. While on TDRL, the officer must undergo periodic fitness for duty evaluations no sooner than 6 months after being placed on TDRL and at intervals no greater than 18 months as determined by the MRB or Chief, MAB.
    - (a) An officer on TDRL must comply with directives by the MRB and/or MAB to undergo examinations or tests, or to supply records. At a minimum, an officer on TDRL must obtain a medical examination at 18 months. Failure of an officer to report for or obtain any examination or failure to ensure that all their records are submitted to MAB will result in the termination of the officer's

disability retired pay after notice by CCHQ, unless the officer can show good cause for their failure to comply. If the officer's disability retired pay is terminated and the officer later provides good cause for their failure to comply with these requirements, the officer may be reinstated on TDRL and payments made retroactive for a period not to exceed 12 months.

- (b) Review of Officers on TDRL.
  - (i) While an officer is on TDRL, the MRB or MAB EMRB Adjudicator, as applicable, may review the officer's examination and may retain the officer on TDRL unless the examination is the final examination prior to the 3-year limit on TDRL. If the officer has less than 20 years of qualifying service for retirement purposes, and their rating falls below 30%, the officer must be removed from TDRL and separated from the USPHS Commissioned Corps with severance pay.
  - (ii) The USPHS Commissioned Corps will not keep any officer on TDRL for more than 3 years. An MRB or EMRB, as applicable, must review the case at least 3 months prior to the 3-year anniversary of being placed on TDRL and recommend that the officer is fit for duty, permanent retirement, or separation. The MRB or EMRB will consider all conditions to determine the officer's fitness for duty, including those that did not exist and/or were not disabling at the time of the officer's placement on TDRL. If it recommends permanent retirement, the MRB or EMRB will re-rate the disability, taking into account changes in the disabling conditions present at the time of placement on TDRL. In rating the disability of the officer for permanent retirement, the MRB or EMRB will not rate nonservice-connected conditions as well as non-disabling conditions that did not prevent the officer from performing the duties of their position/billet, office, grade, rank, rating, or the officer's ability to deploy or serve on required military missions, including those occurring during the TDRL period.
- (c) Actions Resulting from Finding of Fitness on TDRL Examinations. If the MRB or EMRB, in reviewing a periodic examination, finds an officer fit for duty:
  - (i) The USPHS Commissioned Corps will, unless the officer submits a request for separation, remove a Regular Corps officer from the TDRL and return the officer to active duty as soon as practicable after being reappointed by the President. However, if the officer does not meet the conditions of service or is unable to secure a suitable assignment, the officer will have their commission processed for termination or retirement if the officer has 20 or more years of creditable active-duty service for retirement (see [CCD 111.03](#), "Conditions of Service," [CCI 382.03](#), "Involuntary Termination of Commission," and [CCI 384.03](#), "Mandatory, Voluntary, and Involuntary

Retirement”). An officer may also submit a request for an intercomponent transfer to the Ready Reserve Corps; however, the approval of such a request is dependent on the availability of a position and whether the officer has specific qualifications that the USPHS Commissioned Corps requires for the performance of duties with the service.

- (ii) Ready Reserve Corps officers may be returned to an active status if the Director, CCHQ, determines that there is a position available for the officer or that the officer has specific qualifications that the USPHS Commissioned Corps requires for the performance of duties with the service. However, if the officer does not meet the conditions of service, the officer will have their commission processed for termination or retirement, if the officer has 20 or more years of qualifying service for a non-regular retirement.
- (iii) For purposes of promotion eligibility for an officer returned to active duty (for a Regular Corps officer) or an active status (for a Ready Reserve Corps officer), the officer’s seniority in grade, promotion credit, Training and Experience, time in service, and other dates associated with promotion are offset by the length of time the officer was on TDRL.

Note: The Operating Division (OPDIV)/Staff Division (STAFFDIV) to which an officer is assigned is responsible for reimbursing the USPHS Commissioned Corps for the costs of paying a separating officer’s severance pay under Section 6-6.c.(2). The costs of paying severance pay to an officer detailed to a non-HHS organization is determined in accordance with the Memorandum of Agreement (MOA)/Understanding (MOU) with that organization. The USPHS Commissioned Corps is responsible for paying an officer’s retired pay associated with placement on TDRL or PDRL. The officer’s OPDIV/STAFFDIV and non-HHS organization (in accordance with the MOA/MOU) is responsible for paying the officer directly or reimbursing the USPHS Commissioned Corps (as applicable) for a separating/retired officer’s travel and transportation entitlements as well as payment for unused Annual Leave.

#### 6-7. Rating of Disability.

- a. The normal outcomes of the treatment for a condition (e.g., limitations or restrictions on activities, convalescence and recuperation time, etc.) are not rated. However, if such treatment outcomes result in an officer’s inability to perform their duties for an extended period of time that is not less than six (6) months, the MRB or EMRB, as applicable, may recommend the officer’s placement on TDRL with a suitable rating.
- b. Use of VASRD.<sup>1</sup> If the MRB or EMRB, as applicable, finds an officer eligible for disability benefits, the rating for each compensable disability must be determined

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<sup>1</sup> Disability retirement awarded by uniformed service medical reviews differs from disability compensation awarded by the VA in that “the [military] provides for disability retirement based on fitness for military duty, 10 U.S.C. § 1201, while the VA’s disability rating decision is based on capacity to function in the civilian world, 38 U.S.C. § 355.” At the

from the VASRD. When an officer has more than one compensable disability, the percentages are combined rather than added (except when a “note” in the VASRD indicates otherwise). This results from the consideration of the individual’s efficiency, as affected first by the most disabling condition, then by the less disabling conditions in the order of their severity. Thus, an officer having a 60 percent disability is considered to have a remaining efficiency of 40 percent. If the officer has a second disability rated at 20 percent, then they are considered to have lost 20 percent of that remaining 40 percent, thus reducing their remaining efficiency to 32 percent. Hence, a 60 percent disability combined with a 20 percent disability results in a combined rating of 68 percent.

c. Retirement Eligibility.

- (1) If the officer has less than 20 years of creditable service for retirement purposes and the combined percentage of disability is less than 30 percent, the officer must be separated with severance pay.
- (2) If the officer has at least 20 years of service for retirement purposes or the percentage of disability is 30 percent or more, the officer must be retired.
- (3) If the officer has at least 20 years of service for retirement purposes and the percentage of disability is less than 30, the officer must be retired.

6-8. Appeal Rights.

- a. An officer may appeal a finding by the MRB or EMRB that the officer is unfit for duty.
- b. An officer may appeal the findings if the officer requested the fitness evaluation and the MRB or EMRB finds the officer fit for full duty.
- c. An officer may not appeal a finding that they are fit for full duty if the program official or Director, CCHQ, requested the fitness evaluation.
- d. Except in the circumstances of Subsection 6-8.c., prior to forwarding the findings and recommendation to the SG, MAB will notify the officer of the findings of the MRB or EMRB, and of their right to appeal under [CCI 393.02](#), “Medical Appeals Board.”

6-9. Approval of MRB and EMRB Findings. If the officer does not appeal or if the officer is ineligible to appeal an MRB or EMRB recommendation, the Chief, MAB, will submit the findings of the MRB or EMRB, as applicable, to the SG.

- a. The SG will approve the findings of the MRB or EMRB, as applicable; return the findings to the MRB or EMRB for further investigation and recommendation; dissolve the MRB or EMRB, and appoint a new MRB to complete the investigation; or appoint a new MRB to reinvestigate the case.
- b. If the SG approves a fit-for-full-duty finding and, based on documented allegations, reports, or other circumstances that are unrelated to an impairment or disability, the SG has reason to believe the officer is unsuitable for continued service, the SG

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same time, “the [military’s] disability retirement decision is based on the service member’s ability to continue service at that time, 10 U.S.C. § 1201, while the VA’s disability rating decision is based on the service member’s projected earning capacity in the future, 38 U.S.C. § 355.” (*Gossage v. United States*, 394 Fed. Appx. 695, 698 (Fed. Cir. 2010)).

may refer the officer to an appropriate administrative separation process (i.e., Probationary Period, 3-Year File Review, Involuntary Termination Board (ITB), Board of Inquiry (BOI), or Involuntary Retirement Board).

- c. An officer who is found fit for full duty but who does not return to their duty station or is otherwise unable to perform the duties of their position/billet, office, grade, rank, or rating may be deemed unsuitable by the SG and/or placed into an Absence Without Leave (AWOL) status by the Director, CCHQ. Such an officer will be referred to the appropriate administrative separation process.
- 6-10. Computation of Pay. If an officer is permanently or temporarily retired for disability, the officer's retired pay will be computed in accordance with the formula most favorable to the officer at the time of retirement unless the officer selects a different method of computation that the officer believes will be best for their individual circumstances. In no instance shall the disability retired pay exceed 75 percent of the individual's basic pay nor be less than 50 percent of the basic pay while an officer is on TDRL.
- 6-11. MAB Liaison Officer. The Chief, MAB, CCHQ, will assign a MAB Liaison Officer who serves as a case management specialist. The MAB Liaison Officer assists officers through the Fitness for Duty Determination (FDD) process. To promote an informed and seamless transition for officers who are medically separated or retired, the MAB Liaison Officer's responsibility continues until the officer attains veteran status and is transferred to VA support.
- a. MAB Liaison Officer Duties and Responsibilities:
    - (1) Is primarily responsible for informing and assisting the officer or the officer's designated representative, as applicable, during the FFD process. The MAB Liaison Officer helps manage expectations, oversees the officer's case file, explains the FFD process in detail, and provides and explains an overview of the VA claims process to the officer or designated representative.
    - (2) Provides a copy of the statutory rights and requirements, USPHS Commissioned Corps requirements, and assists in the processing of requests for an EMRB, formal boards, and appeals.
    - (3) May provide advice to the officer regarding requesting a FFD, appeals, and officer statements; however, MAB Liaison Officers are not legal advocates, and may not provide legal advice, legal counsel, or other assistance regarding substantive aspects of an officer's case.
    - (4) Educates the officer about the FFD process and explains the EMRB or board results to the officer, or their designated representative.
    - (5) Explains the payment calculations for severance pay or retirement pay or refers the officer to the appropriate Compensation representative.
    - (6) Provides the officer or their designated representative with a copy of the FFD results and the narrative summary; the informal MRB or MAB EMRB Adjudicator's findings, ratings, recommendation, and LOD determinations; and ensures medical records are available for review.
  - b. MAB Liaison Officer Training. The Chief, MAB, CCHQ, will ensure that instruction on the following competencies is provided to the MAB Liaison Officer upon assignment and at least every 3 years thereafter:

- (1) An overview of the statutory and policy requirements of the FFD process.
- (2) Electronic and paper recordkeeping practices of the USPHS Commissioned Corps.
- (3) Customer service philosophies.
- (4) Familiarization with medical administration processes.
- (5) An overview of VA services and benefits.
- (6) Online and other resources pertaining to the MRB, EMRB, Department of Defense (DoD), and VA.
- (7) The chain of supervision and command.

#### 7. RESPONSIBILITIES:

- 7-1. The ASH is responsible for establishing policies related to disability retirement and separation.
- 7-2. The SG may issue necessary POMs, through the electronic Commissioned Corps Issuance System (eCCIS), to address specific compliance issues.
- 7-3. The Director, CCHQ, is responsible for providing oversight to the MRB process.
- 7-4. The Chief, MAB, or designee is responsible for informing the officer concerning the required medical evaluation relating to the MRB or EMRB, as applicable; presenting the resultant reports to the MRB; providing oversight and guidance to the MAB Liaison Officer and MAB EMRB Adjudicator; and presenting the findings and recommendations of the MRB or EMRB to the SG. When appropriate, the Chief, MAB, is responsible for ensuring that the Commissioned Corps Agency Liaison is informed of the outcome of the MRB or EMRB.
- 7-5. Members of the MRB and EMRB are responsible for maintaining the confidentiality of the officer's records, the MRB and EMRB proceedings, and for notifying the Chief, MAB, or designee, of any potential conflicts of interest.
- 7-6. All officers are responsible for adhering to the guidelines and procedures listed in this Instruction.
  - a. An officer is required to promptly inform MAB of any significant new medical diagnoses which could potentially affect their long-term health status (i.e., not likely to resolve within one year).
  - b. An officer must maintain current and updated contact information (e.g., phone, e-mail, address) at CCHQ to facilitate the USPHS Commissioned Corps' communication of information to the officer.
  - c. An officer's failure to comply with the requirements of this Instruction, refusal to undergo a physical examination, and/or failure to furnish information may result in a decrease in benefits, loss of pay, disciplinary action, and/or termination of the officer's commission.

8. HISTORICAL NOTES: This is the third issuance of this Instruction in the eCCIS.
  - 8-1. CCI 393.01, "Medical Review Board," dated 2 July 2020.
  - 8-2. CCI 393.01, "Medical Review Board," dated 12 June 2019.
  - 8-3. Commissioned Corps Personnel Manual (CCPM) CC23.8.6, "Disability Retirement," dated 5 April 1982.

## Appendix

## Request for Use of Expedited Fitness for Duty Process

I hereby request that the Medical Affairs Branch (MAB) of Commissioned Corps Headquarters (CCHQ) use the Expedited Medical Review Board (EMRB) Process to determine my fitness for duty (FFD). I discussed the EMRB with the MAB Liaison Officer and the EMRB process and its difference from the Medical Review Board (MRB) process was fully explained. Additionally, the MAB Liaison Officer provided me with a copy of, or link to, Commissioned Corps Instruction (CCI) 393.01, "Medical Review Board," and all my questions regarding the EMRB were answered. I further understand and agree to the following:

1. That, unless I withdraw this request in writing as noted in paragraph 4 below, I hereby waive an MRB review and instead request to have my FFD evaluation recommendations to the Surgeon General (SG) made by an EMRB.
2. The EMRB will determine my fitness for duty.
3. The EMRB is an alternative to an MRB and consists of three licensed health care professionals who are assigned to CCHQ. The EMRB process consists of a MAB senior clinical officer adjudicator (MAB EMRB Adjudicator) who has experience and training in determining an officer's fitness for duty and who will review the MAB Liaison Officer's FFD clinical case summary and suggested recommendations along with my medical documentation. The MAB EMRB Adjudicator will submit to the MAB EMRB Reviewer a FFD summary report of my case with the recommendations for the SG about my fitness for duty, as well as my temporary or permanent disability and disability rating, if indicated.
4. I will be apprised of the EMRB recommendations for the SG and that, up to the point that the MAB EMRB Adjudicator formulates and submits their recommendations for the SG to the MAB EMRB Reviewer, I have the right to withdraw my EMRB request and submit a request that a MRB review my case.
5. That, in accordance with CCI 393.02, "Medical Appeals Board," I will have the right to appeal the EMRB recommendations to a full and fair hearing by the Medical Appeals Board after the MAB EMRB Adjudicator transmits their recommendations to the MAB EMRB Reviewer, but before the MAB EMRB Reviewer transmits the EMRB recommendations to the SG through the Director, CCHQ.

(Signature of officer)  
(Typed name, grade, and PHS number) (Date)