

MANUAL: Personnel
Chapter Series CC--Commissioned Personnel Manual
Part 2--Commissioned Corps Personnel Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

Chapter CC23--Staffing
Subchapter CC23.8--Retirement
Personnel INSTRUCTION 6--Disability Retirement

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Section A. Purpose and Scope

The purpose of this INSTRUCTION is to provide general information on retirement of PHS commissioned officers for physical disability. More detailed information is contained in Commissioned Corps Personnel Manual (CCPM) Pamphlet No. 47, "Disability Evaluation Manual for the Commissioned Corps of the U.S. Public Health Service," which may be obtained from the Medical Branch, Commissioned Personnel Operations Division (CPOD), Office of Personnel Management (OPM), Office of Management (OM)/PHS, Parklawn Building, Room 4-35, 5600 Fishers Lane, Rockville, Maryland 20857 (telephone: 301-443-2606.).

Section B. Authorities

1. General Authorities. Statutory authority for the retirement of commissioned officers of PHS due to physical disability is contained in Title 10, U.S. Code, Chapter 61, and Section 221(a)(2) of the PHS Act. Regulations regarding disability retirement are set forth in Subchapter CC43.8, INSTRUCTION 1, of this manual. To assure uniform interpretation of the law among the uniformed services, PHS has adopted as policy the guidelines, definitions, and policies set forth in the Department of Defense (DoD) Directive 1332.18 (subject: Uniform Interpretation of Laws Relating to Separation from the Military Service by Reason of Physical Disability), and the Veterans Administration Schedule for Rating Disabilities (VASRD).
2. Delegated Authorities. The Assistant Secretary for Health (ASH), or his/her designee, has authority to approve all disability retirements or separations. The Director, CPOD, has been delegated authority to appoint PHS Medical Review Boards (PHS MRB) and to initiate action on requests for fitness evaluations.

Section C. Eligibility

All officers, reserve or regular, serving on active duty are covered by the above-indicated disability retirement provisions with the exception of Commissioned Officer Student Training and Extern Program (COSTEP) and Senior COSTEP participants who are excluded from disability retirement under Section 221(a)(2) of the PHS Act (42 USC 213a[a][2]). Former officers who become physically disabled after separation from PHS, even though the origin of the disability may be service-connected, are not eligible for disability benefits from PHS. However, they may be eligible for compensation from the Veterans Administration (VA) and should apply to that agency for adjudication of any claim.

Section D. Responsibilities

The Chief, Medical Branch, CPOD, has been assigned responsibility for informing the officer and the designated hospital concerning the required medical evaluation relating to disability retirement, presenting the resultant reports to the PHS MRB, informing the officer of the findings and recommendations of the PHS MRB, counseling the officer and program officials concerning administrative procedures and disability entitlements, and handling the administrative arrangements for Appeals Boards (see CCPM Subchapter CC23.8 INSTRUCTION 7).

Section E. Requirements for Disability Retirement or Separation with Benefits

1. Fitness for Duty Determination. To be eligible for disability retirement or separation, an officer must be found unfit to perform the duties of his/her grade, category, or office because of one or more physical or mental conditions. The disabling condition must be permanent in nature or one which may become permanent. In some cases, a finding of unfitness may be based on medical facts alone; for example, in the case of a severe illness or injury if continuation of active service would obviously be deleterious to the officer's health or significantly interfere with his/her ability to perform official duties. In other cases, however, evaluation of an officer's performance by his/her supervisors may provide better evidence regarding fitness than an estimate by examining physicians based on medical findings alone. The fact that an officer has a medical condition which could, under certain circumstances, render the individual unfit does not, per se, make him/her unfit. The officer's demonstrated level of performance is usually the key factor in determining fitness. On the other hand, demonstrated unfitness to perform is not necessarily due to physical disability. A cause-effect relationship between an officer's inability to perform and his/her physical condition must be established.
2. 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 his/her call to active duty and any condition incurred or aggravated subsequently is considered service-connected with the following exceptions:
 - a. 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.

- b. Abnormalities discovered subsequent to entry on active duty which impel the conclusion that they must have existed or have originated before the individual entered PHS. As a matter of policy, any condition which becomes disabling after 180 days of active duty will be sufficient evidence of service connection unless the officer willfully withheld information which would have established the preexistence of the disabling condition.
 - c. Any expected disability occurring as a result of necessary treatment of a condition which was neither service-incurred nor -aggravated.
3. Line of Duty. A disabling disease or injury incurred while on active duty must also be incurred in the line of duty to qualify an officer for disability benefits. In general, a condition acquired or aggravated while on active duty with PHS will be considered to have occurred in line of duty except for those incurred under the following circumstances:
 - a. As a result of an officer's misconduct.
 - b. While absent without leave.
 - c. As a result of an officer's willful neglect.
4. Disposition of Cases. An officer found unfit because of a permanent disability cannot ordinarily be retained on active duty even though further hospitalization may be required. The officer will normally be separated, placed on the temporary disability retired list (TDRL), or permanently retired. However, with the consent of the officer and the officer's program of assignment, ASH may defer the disposition of the case if the officer can still serve with appropriate assignment limitations and his/her 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 an officer who is physically disabled be retained on active duty solely to increase benefits.

Section F. Request for Fitness Evaluation

A request for a fitness evaluation should be addressed to the Director, CPOD, Parklawn Building, Room 4-35, 5600 Fishers Lane, Rockville, Maryland 20857, 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 he/she feels unable to perform the duties of his/her office and grade because of medical reasons.
2. Program Official's Initiative. A program official may request, in writing, a fitness evaluation on an officer under his/her 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. CPOD Initiative. In the usual circumstance, initiation of fitness evaluation will be based on a request from the officer or his/her program official, as stated in 1. and 2., above. However, under the following conditions, the Director, CPOD, may initiate such actions:
 - a. If there has been excessive use of sick leave by an officer pursuant to PHS Regulations (CCPM Subchapter CC49.1, INSTRUCTION 1); that is, 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 him/her or others in jeopardy if he/she were to continue on active duty. Medical conditions which may necessitate a fitness evaluation are described in DoD Directive 1332.18, Enclosure 3, (Guidelines Regarding Medical Conditions and Physical Defects Which Normally are Cause for Referral to a Physical Evaluation Board).

Section G. Emergency Retirements

Emergency cases will be processed under the same procedures as any other disability case. An officer sustaining an acute, possibly fatal, injury or illness will not be eligible for disability retirement during the immediate emergency period. The fact that death may, or is likely to, ensue during the emergency period is not grounds for disability. If, however, after a reasonable period of observation and treatment (generally after 72 hours of hospitalization) it becomes obvious that the condition causing the emergency will, or is likely to, result in permanent disability or death, the officer or his/her next of kin acting in his/her behalf, may, after counseling from the Medical Branch, CPOD, request disability retirement. Such request will be processed expeditiously but the same procedures will apply as with any other disability retirement.

Section H. Inappropriate Requests for Fitness Evaluation

Such factors as the following are not to be used as the sole basis for initiating a fitness evaluation:

- a. The officer's inability at some later date on active duty to meet the physical standards for initial entry into PHS.
- 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 continued performance of duty until he/she is scheduled for separation for other purposes creates a presumption that the officer is fit for duty. The officer shall not be referred for

disability evaluation unless his/her physical condition raises substantial doubt that he/she is fit to continue to perform the duties of his/her office and grade or he/she was previously retained on active duty as an exception to policy.

- 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 or another component or program within PHS.

The Director, CPOD, in consultation with the Chief, Medical Branch, CPOD, will make the final determination about the merits of a fitness for duty request.

Section I. Medical Examination

1. Arrangements. Upon receipt of a request for a fitness evaluation from the officer, the officer's program official, or, at the initiative of the Director, CPOD, the Chief, Medical Branch, CPOD, will arrange for a complete medical examination of the officer at an appropriate medical facility.
2. Examining Facility. In the usual circumstance, the medical examination will be carried out at a Uniformed Services medical facility. In this event, the medical board (MB) procedure established within the facility shall be used and completed reports shall be referred to the PHS MRB for the decision regarding fitness and for the rating of disabilities, if appropriate.
3. Examinations at Other Than Uniformed Services Facilities. The PHS MRB may accept medical examinations, without requiring MB examinations, from either governmental or private sources as the basis for making a determination of fitness if the PHS MRB finds it to be in the best interest of the Government and the officer.

Section J. PHS Medical Review Board (PHS MRB)

1. Responsibilities of the PHS MRB. The PHS MRB, which is established pursuant to PHS regulations (CCPM Subchapter CC49.3, INSTRUCTION 1), is responsible for making formal recommendations to ASH regarding an officer's fitness for duty and the rating of disabilities.
2. Composition of the PHS MRB. The Director, CPOD, is responsible for the appointment of PHS MRB members. The PHS MRB shall consist of three or more senior officers in the medical category. The officers shall be board eligible or board certified in a clinical specialty or otherwise qualified in medicine by experience. A senior dental officer may also be appointed as a member. A majority of those members considering psychiatric cases shall be board eligible or board certified in psychiatry. The Chief, Medical

Branch, CPOD, or designee, shall serve as the executive secretary of the PHS MRB.

3. Case Presentation. The Chief, Medical Branch, CPOD, shall collect and present to the PHS MRB all pertinent material available on the physical and mental fitness of the officer to perform his/her duties, including the official request for a fitness determination, medical findings from MB or other sources, and such other information as deemed pertinent for determining performance capability.
4. PHS MRB Findings. If the information is sufficient to make a decision, the PHS MRB shall find the officer:
 - a. Fit for Full Duty. If the PHS MRB finds the officer fit for full duty, he/she is expected to perform the duties of his/her grade and office without significant restrictions;
 - b. Fit for Limited Duty. If the officer and his/her program of assignment concur, the officer may return to duty with limitations as stipulated by the PHS MRB. Such limited duty status normally will not exceed one year. At the end of one year, a finding of fitness or unfitness for duty must be rendered by the PHS MRB;
or
 - c. Unfit for Duty. An officer found unfit may not be retained on active duty (unless an exception has been granted by ASH) but must be separated or retired in accordance with existing laws, regulations, and policies. The officer may be:
 - (1) Separated Without Benefits (e.g., disability not incurred in line of duty; disability caused by a nonservice-incurred condition; or disability is the result of a noncompensable condition such as alcohol and/or drug abuse [see CCPM Subchapter CC29.3, INSTRUCTION 8])
 - (2) Separated with Severance Pay. In this case, the officer will receive a lump-sum payment based upon years of active duty and will be separated from PHS. The officer will receive no further benefits from PHS but should apply to VA for possible benefits administered through that agency, including disability payments, hospital 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 five 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 five years. An officer who meets either of these requirements and is otherwise qualified shall be permanently retired.

- (4) Placed on Temporary Disability Retired List (TDRL). Disability retirement may be temporary when the officer's condition has not stabilized and he/she may recover and become fit for duty or the degree of severity may substantially change within the next five years. In such cases, the officer shall be removed from active duty and placed on TDRL administered by CPOD. While on TDRL, the officer must undergo periodic medical examinations at intervals no greater than 18 months as determined by the PHS MRB.
- (a) Review of Officers on TDRL. No officer will be kept on TDRL for more than five years. PHS MRB must review the case at least three months prior to the five years anniversary on TDRL and either recommend return to active duty, permanent retirement, or separation.
- (b) Actions Resulting from Finding of Fitness on TDRL Examinations. If the PHS MRB, in reviewing a periodic examination, finds an officer fit for duty and the officer was in the regular corps prior to placement on TDRL, he/she will be returned to active duty if the officer requests such action. Reserve corps officers will be returned to active duty only if a position is available. If there is no suitable assignment, the reserve corps officer will be placed in the inactive reserve component.

Section K. Rating of Disability

1. Use of VASRD. If the PHS MRB finds an officer eligible for disability benefits, the rating for each compensable disability must be determined from VASRD as modified by DoD Directive 1332.18. 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 he/she is considered to have lost 20 percent of that remaining 40 percent, thus reducing his/her remaining efficiency to 32 percent. Hence, a 60 percent disability combined with a 20 percent disability results in a combined rating of 68 percent.
2. Retirement Eligibility. 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, he/she must be separated with severance pay. If the officer has at least 20 years of service for retirement purposes or the percentage of disability is 30 percent or more, he/she must be retired.

Section L. Computation of Pay

If an officer is permanently or temporarily retired for disability, he/she has a choice between two methods of computing the retired pay. One method is based on percentage of disability and the other is based on years of creditable service (see CCPM Subchapter 23.8, INSTRUCTION 2, Computation of Retired Pay). However, in no instance shall the 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. Either all or part of the disability retirement pay may be exempt from Federal income tax, depending on when the officer entered on active duty, the cause of the disability, and the method of computation of pay. Further information concerning this subject is available from the Retirement, Annuities, and Benefits Section of Compensation and Benefits Branch, CPOD, Parklawn Building, Room 4-35, 5600 Fishers Lane, Rockville, Maryland 20857.