



UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JAN 6 2009

PERSONNEL AND
READINESS

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
GENERAL COUNSEL OF THE DEPARTMENT OF
DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Expedited DES Process for Members with Catastrophic Conditions and
Combat-Related Causes

- References:
- (a) Department of Defense Directive 1332.18, "Separation or Retirement for Physical Disability," November 4, 1996
 - (b) Department of Defense Instruction (DoDI) 1332.38, "Physical Disability Evaluation," November 14, 1996
 - (c) Policy Guidance for the Disability Evaluation System and Establishment of Recurring Directive-Type Memoranda, dated May 3, 2007
 - (d) Directive-Type Memorandum (DTM) on Implementing Disability-Related Provisions of the National Defense Authorization Act of 2008 (Pub L. 110-181), dated March 13, 2008
 - (e) Policy Memorandum on Implementing Disability-Related Provisions of the National Defense Authorization Act of 2008 (Pub L. 110-181), dated October 14, 2008

This memorandum establishes policy that allows the Secretary concerned to expedite a member through the Disability Evaluation System (DES). The expedited DES process is a special benefit to those Service members who sustain catastrophic injuries or illnesses from combat or combat-related operations as defined in this policy. The establishment of this policy supports the Department's belief that there must be a special process for those members who sustain catastrophic disabilities while participating in combat or combat-related operations, in contrast with those disabled otherwise. It is a voluntary program.

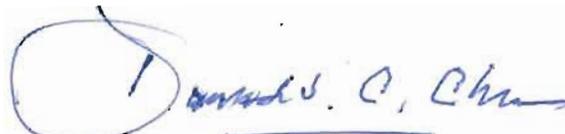
To qualify, a Service member's condition must be designated as "catastrophic" and the injuries/illnesses must have been incurred in the line of duty and received as a result of the causes prescribed under the statutory definition of "Combat-Related" as used in the combat-related special compensation program. The expedited DES process will

allow the early identification of the full range of benefits, compensation and specialty care offered by the Department of Veterans Affairs.

The rapid transition to the next stage of the Service member's recovery process under this policy requires an informed decision by the member or his or her designated representative. If no representative has been designated by the Service member, then the member's primary next of kin or court appointed guardian, shall make the decision. There are many crucial aspects of an informed decision that necessitate that the Department of Defense and Department of Veterans Affairs work together closely. This process provides rapid transition from military service, maximum recovery, and the certainty of financial support to the Service member and his/her family as the member focuses on the essentials of recovery, reintegration, employment and independent living, where possible.

The expedited DES process is promulgated in the attached revision to references (a) through (e).

This policy is issued pursuant to the delegation of authority in paragraph 6.21 of DoDD 5124.02, "Under Secretary of Defense for Personnel and Readiness," June 23, 2008, to the USD (P&R). This policy memorandum will be effective upon the date of signing by all signatories to the DoD and VA Memorandum of Agreement, which comports with the legal requirement set forth in 10 USC 1216(a)(2) (see attached).



David S. C. Chu

Attachments:

As stated

cc:

Under Secretary of Veterans Affairs (Veterans Benefit Administration)

Under Secretary of Veterans Affairs (Veterans Health Administration)

Chief, National Guard Bureau

Assistant Secretaries of the Military Departments

(Manpower and Reserve Affairs)

Director, Transition Policy & Care Coordination

The following revises Department of Defense Instruction (DoDI) 1332.38, *Physical Disability Evaluation*, November 14, 1996, and Directive-Type Memoranda dated May 3, 2007, March 13, 2008, and October 14, 2008 as indicated, to implement the Secretary of Defense's guidance to develop an expedited Disability Evaluation System (DES) for the catastrophically injured or ill:

ADD THE FOLLOWING PARAGRAPH TO DoDI 1332.38:

4.5. That as an exception to general policy through agreement with the Department of Veterans Affairs (VA), the Secretary concerned may designate a Service member's condition as "catastrophic" if he or she has an injury or illness incurred in the line of duty that would reasonably result in the Service member meeting the disability criteria set in accordance with the definition of catastrophic in paragraph E2.1.3.4, enclosure 2. These Service members may waive evaluation by the DES under E3.P2.7 and may be rated by the Physical Disability Agency or Activity of the Military Departments at a combined rating of 100 percent if those Service members are designated as catastrophic and received those injuries or conditions as a result of the causes prescribed under paragraph E3.P5.2.2 Combat-Related. The Secretary concerned may waive the requirements under E3.P5.2.2 for catastrophically injured or ill members whose condition was not combat-related on a case-by-case basis for extraordinary reasons of fairness or equity and thereby provide the expedited DES process to catastrophically injured or ill members whose condition was not combat-related. This waiver authority cannot be delegated further.

ADD THE FOLLOWING PARAGRAPH TO DEFINITIONS IN ENCLOSURE 2 OF DoD 1332.38:

E2.1.3.4. Catastrophic Injury or Illness. A permanent, severely disabling injury, disorder, or disease incurred in the line of duty in operations as defined in E3.P5.2.2, Combat-Related, that compromises the ability to carry out the activities of daily living to such a degree that a Service member requires personal or mechanical assistance to leave home or bed, or requires constant supervision to avoid physical harm to self or others.

ADD THE FOLLOWING PARAGRAPHS TO RESPONSIBILITIES OF DoDI 1332.38:

5.3. The Assistant Secretary of Defense for Health Affairs under the Secretary of Defense for Personnel and Readiness shall:

5.3.3. Provide any necessary guidance and instruction to the Military Departments through their respective Secretaries on the recognition,

establishment, and documentation to include the preparation of a medical summary of the diagnoses and prognoses pertaining to the designation of Service members as having conditions that are catastrophic. The recommendation for such designation must be made by a physician or physicians, and will be in accordance with the process described in E9.4.

5.5. The Secretaries of the Military Departments shall:

5.5.11. Establish a process for an expedited DES for members who qualify or who have been designated under paragraph 4.5 as catastrophically injured or ill and who meet the requirements of E3.P5.2.2, Combat-Related, or who have received waiver from the Secretary concerned to be treated as if combat-related. The requirements of the process are at enclosure 9.

5.5.12. Provide special consideration and exception for members who permanently retire under the expedited DES process to reenter the Service with a waiver should they subsequently request reentry to the Service after recovery and rehabilitation. This provision is to ensure fairness and consistency with paragraph 3.12 which allows members who recover from combat injuries to remain on active duty or in a limited status or in the Ready Reserve despite unfitting injuries and conditions when special skills or experience justify retention.

MODIFY THE *REFERRAL TIME* WITH AN ADDED SENTENCE:

E3.P1.6.1. Referral.

Members who are covered under paragraph 4.5 are not required to be brought to maximum medical benefit prior to receiving their disability rating and retirement disposition provided the DES process is waived.

ADD THE FOLLOWING PARAGRAPH TO *WAIVER OF MEB/PEB*:

E3.P2.7. Waiver of MEB/PEB Evaluation.

E3.P2.7.4. The member has been designated as a member with “catastrophic” conditions and meets the qualifying criteria of E3.P5.2.2, Combat-Related, and has been rated as 100 percent disabled under paragraph 4.5.

ADD THE FOLLOWING PARAGRAPH TO *TIME STANDARDS* IN DODI 1332.38:

E3.P1.6. Time Standards.

E3.P1.6.10. For cases where the member is designated as having a catastrophic condition, the Military Departments shall expedite the process to PDRL if the member or his/her designated representative, after counseling, waive the DES and decide that expedited retirement is in the member's best interests. While there is no specific time standard associated with the expedited process, the goal should be to move the member consistent with medical and recovery care to the PDRL so that the member may obtain benefits from the VA as soon as practical. Expediting the process must be balanced with the needs of the member and his or her family.

ADD THE FOLLOWING PARAGRAPH TO *COUNSELING OF DODI 1332.38*:

E3.P1.4. Counseling.

E3.P1.4.6. Expedited DES Counseling. The Secretary concerned will establish procedures to ensure, for cases where the member is designated as having a catastrophic condition, that the member, or designated representative, and family, are thoroughly counseled and advised on the benefits associated with waiving or staying in the DES process, depending on the particular case. This counseling must be conducted jointly with the representative from the VA. At the end of a 30- day period, the Secretary concerned will reconvene the team to advise the member of the full range of benefits.

ADD THE FOLLOWING PARAGRAPH TO ENCLOSURE 8 *PROVISION OF LEGAL COUNSEL IN THE PHYSICAL DISABILITY EVALUATION PROCESS*:

E8.1.5. Legal Counsel for Expedited DES Processing for the Catastrophically Injured or ill. Government legal counsel, who is familiar with the DES process, will be appointed. If the Service member, or his/her representative, waive the assistance of the Government legal counsel, such a waiver must be obtained in writing. No decisions should be solicited or accepted from the member or their designated representative, until at least 30 days have elapsed from the date of counseling whereby the member or his or her designated representative and /or legal counsel, will have the opportunity to consult with other medical and care professionals, and the VA.

ADD NEW ENCLOSURE 9 TO DODI 1332.38:

E9. ENCLOSURE 9

GUIDELINES FOR AN EXPEDITED DES PROCESS FOR THOSE DESIGNATED AS HAVING CATASTROPHIC CONDITIONS

E9.1. GENERAL.

E9.1.1. This enclosure describes the scope, intent, and process of an expedited DES for those members who have catastrophic conditions with injuries or illnesses incurred in the line of duty and who receive those injuries or illnesses as a result of combat or combat-related operations.

E9.1.2. The provisions of this enclosure are applicable to only those active duty members with qualifying conditions upon or after the implementation date of this policy change. The policy is not retroactive.

E9.2. SCOPE.

E9.2.1. Covered Service members must meet all of the following criteria.

E9.2.1.1. Possess a catastrophic condition as defined in paragraph E2.1.3.4. Note: It is understood that the application of the catastrophic condition definition, which states that the member will require aid or assistance to carry out the activities of daily living, will require qualified health care professionals to make their best clinical judgment based on the medical evidence at the time the injured member presents to the health care system, whether “personal or mechanical assistance” will be required; recognizing that individual motivation and response to treatment might affect the eventual outcome of rehabilitative care.

E9.2.1.2. Have catastrophic conditions that were incurred in the line of duty through operations defined under paragraph E3.P5.2.2, Combat-Related, as follows:

E9.2.1.2.1. Direct Result of Armed Conflict - The disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. There must be a definite causal relationship between the armed conflict and the resulting disability. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or terrorists. Armed conflict may also

include such situations as incidents involving a member while interned as a prisoner of war or while detained against his or her will in the custody of a hostile or belligerent force or while escaping or attempting to escape from such confinement, prisoner of war, or detained status.

E9.2.1.2.2. While Engaged in Hazardous Service - Such service includes, but is not limited to, aerial flight, parachute duty, demolition duty, experimental stress duty, and diving duty.

E9.2.1.2.3. In the Performance of Duty Under Conditions Simulating War - In general this covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapons practice, bayonet training, hand-to-hand combat training, rappelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities such as calisthenics and jogging or formation running and supervised sport activities.

E9.2.1.2.4. Instrumentality of War - Incurrence during an actual period of war is not required. However, there must be a direct causal relationship between the instrumentality of war and the disability. The disability must be incurred incident to a hazard or risk of the service. An instrumentality of war is a vehicle, vessel, or device designed primarily for military service and intended for use in such service at the time of the occurrence or injury.

E9.3. INTENT.

E9.3.1. The expedited DES process allows the accelerated processing of a Service member who has sustained catastrophic injury or illness while in the line of duty incurred as a result of the causes prescribed under paragraph E3.P5.2.2, Combat-Related. Accelerating the process for this group of individuals will allow the early identification of the full range of the benefits, compensation and specialty care offered by the VA to which the member may be entitled.

E9.3.2. The Department's intent in adopting the definition of the covered Service members under the expedited DES process is to offer a special benefit to those members who have sustained catastrophic injury or illness in combat or combat-related activities. Such an approach is consistent with the strong belief that there must be a special process for those who incur catastrophic disabilities while participating in the risk of combat or combat-related operations.

E9.3.3. The affected Service member or his or her designated representative, will be empowered to decide, after counseling on all the options and potential concerns and benefits, the most appropriate option for disability evaluation for their respective case.

E9.3.4. Participation in the expedited DES process is voluntary and occurs only when the affected Service member, or his or her designated representative, waives in writing, evaluation by the established DES process.

E9.4. PROCESS.

E9.4.1. Designation of a Member as Having a Catastrophic Condition(s). Military medical authorities, the Federal Recovery Care Coordinator, PEBLOs, treating physicians, medical and non-medical case managers collaborate in identifying Service members who are qualified for referral to the expedited DES process. The PEBLOs work to obtain a medical declaration of catastrophically ill or injured through the Military Department's PEB. A narrative summary of care describing, at minimum, the Service member's course of medical treatment since injury, current condition, description of the treatment plan and prognosis will be forwarded under the signature of the senior attending physician to the Military Department's PEB for review and approval. The summary must include all known medical diagnoses. Whether the member is determined to be catastrophically disabled is an administrative determination which, for consistency and accuracy, should be made no lower than the Military Department's servicing PEB or Physical Disability Agency levels. In those cases where the Military Department determines that the member's conditions do not support a designation of catastrophic, the member will follow the established recovery and DES referral process.

E9.4.2. Designation of a Member's Conditions as Combat-Related. To be eligible, a member must have disabilities that are determined, by the parent Military Service, to be the direct result of armed conflict, hazardous military duty, training exercises that simulate war, or caused by an instrumentality of war. Determination of disabilities as qualifying should utilize those constructs and rules of proof and evidence presently in existence in the management of 10 U.S.C. § 1413a., (*combat-related special compensation*). Whether the member's conditions are determined to be combat-related is an administrative determination which, for consistency and accuracy, should be made no lower than the Military Department's servicing PEB or Physical Disability Agency levels.

E9.4.3. Counseling, Options and Decision. The covered member, when competent, will be counseled on the aspects of his or her particular case and the prognosis for return to duty with or without medical waiver. The Service member

will be counseled on the differences between DES processing under this expedited DES process for catastrophic injury or illness and the process under the established DES process set forth in reference (d). The Service member's Wounded Warrior Program has jurisdiction for the non-medical care manager who may conduct the counseling. This non-medical care manager will ensure the Service member and family have information on the expedited DES process. If the Service member is enrolled in the Federal Recovery Coordination Program, the Federal Recovery Coordinator will ensure that the Service member received information on and understands the consequences of enrollment in the expedited DES process. If the member is not anticipated to be capable of making a decision, the member's designated representative, and family members shall receive the counseling information. The member's designated representative and family will also be invited to participate in the counseling sessions. The counseling must assure the covered member that medical care and continuum of recovery will be provided under any selection of options. Legal counsel shall be appointed before any decision is made. As part of their oversight of the member's Federal Individual Recovery Plan, the Federal Recovery Coordinator shall document that a counseling session has taken place with appropriate members of the healthcare team.

E9.4.3.1. Options.

E9.4.3.1.1. The covered member may waive the DES and opt for immediate processing to the PDRL with 100% disability.

E9.4.3.1.2. The covered member may opt to proceed in the established DES once recovery and maximum medical benefit have been attained in accordance with paragraph 2.3.1.2 of the May 3, 2007, Directive-type memorandum providing policy guidance on the DES.

E9.4.3.2. Decision. The member, or his designated representative, shall be given an appropriate amount of time not less than 30 days to consult with other recovery and care professionals and consider their personal options and situation. During this 30-day period, coordination with the VA will be made to develop an individualized Veteran's Benefits package to offer the member. An informed decision consists of the following elements:

E9.4.3.2.1. The member is capable of making an informed decision. This means that the member has full comprehension of the implications of his/her decision or, in the case of a member who is comatose, incompetent, or otherwise not capable of expressing his/her wishes, the member is represented by his/her designated representative. Mental health professionals and legal counsel

shall be consulted prior to determination that a conscious member is not capable of comprehension or making decisions.

E9.4.3.2.2. The member has competent legal representation and advice, and has been fully informed of the implications of any decision made.

E9.4.3.2.3. An informed decision means the member is informed of the military benefits, which include: retired pay, Combat-Related Special Compensation benefits, TRICARE, and commissary/PX/BX privileges, potential VA benefits to include disability compensation, potential Social Security benefits, continued access to a Federal Recovery Coordinator, if desired, as well as information as to what Department of Defense-provided services will no longer be available, such as housing allowance, Invitational Travel Orders, and TRICARE benefits reserved for Active Duty members. The member must be counseled on the duration and termination of coverage under Servicemembers' Group Life Insurance and potential entitlement to Traumatic Servicemembers' Group Life Insurance.

E9.4.4. Documentation. The PEBLO or other representative of the member's Military Department's Physical Disability Agency or Activity shall obtain medical summaries, claims information, and necessary authorizations, either from the member or designated representative, for submission to appropriate Military Service Coordinator for the VA for processing of benefits in addition to disability compensation. Documentation of the case must be expeditious.

E9.4.5. VA Rating and Benefits. The expedited DES process will occur at the following military installations: Walter Reed Army Medical Center, National Naval Medical Center Bethesda, Brooke Army Medical Center, Balboa Naval Medical Center, and other installations mutually agreed to between the DoD and VA. The Departments of Defense and Veterans Affairs, under 10 U.S.C. §1216a(a)(2), jointly agree that the Department of Defense may prescribe a combined rating of 100 percent for members with a combat-related catastrophic condition (as designated by proper Military Department authority as explained in E9.4.1) without specific evaluation under the VA Schedule for Rating Disabilities. During the minimum 30-day period a member who has been identified as catastrophically ill or injured and is considering whether to accept the expedited process, DoD will make available to VA inpatient records for the catastrophic disability, any other inpatient records during the period of the current treatment as well as a copy of the member's Service Treatment Records (STR) within 5 days of the date the member is identified. The VA rating will be prepared at a centralized VA activity which will be provided access to the member's Electronic Health Record (EHR). The VA will evaluate the extent of disability of covered members prior to the expiration of the 30-day. The tentative rating will be provided to the

member to better inform the decision about electing the expedited process. The VA will consider the veteran's eligibility for benefits, including: special monthly compensation, automobile and adaptive equipment, clothing allowance, specially adapted housing/home adaptation grants, vocational rehabilitation and employment services or, chapter 33 education benefits as appropriate, VHA healthcare and CHAMPVA, chapter 35 Dependents Educational Assistance as appropriate, insurance coverage if desired, and provision of appropriate financial planning services.

E9.4.6. Recovery Plan. After consent for proceeding with the expedited DES is given by the Service member or designee, the Federal Recovery Coordinator will include enrollment in the expedited DES as an item in the recovery plan and will track the progress. The Federal Recovery Coordinator will help facilitate delivery of information and benefits from the VA, other federal agencies including the U.S. Social Security Administration, and the member's respective State as part of the execution of the Federal Individual Recovery Plan. The Federal Recovery Coordinator will also work with members of the Recovery Team such as PEBLOS and the Military Service non-medical care managers to ensure that the appropriate applications for Combat Related Special Compensation have been completed.

E9.4.7. Transition. The member shall be given the opportunity to take transition leave as desired. Nothing in this instruction shall be construed as to waive due process or the right of the individual to change his or her decision prior to separation from the Service. The Military Department's PEB will comply with existing Service policies and direct the appropriate personnel actions to process the member for disability retirement on permanent disability, issuance of the DD214, notification of Defense Finance and Accounting Service to initiate retired pay, authorize appropriate transition leave, provide for dependent identification cards, and do other appropriate personnel actions to insure smooth and efficient transition. DoD and VA will work jointly to facilitate, when appropriate, the transfer of the member/veteran to his/her permanent place of residence.

E9.4.8. Timeline. While the length of the process for the expedited DES is dependent on the stabilization of the member's condition and other factors such as the member's understanding of the ramifications of a decision to enter the expedited DES, it is still important not to delay the process. The anticipated timeline from decision to departure on transition leave should not exceed 45 days.

E9.5. RECORDS MANAGEMENT. The Military Departments shall maintain data and summaries on the use of this authority and report data as required for the Disability Evaluation System Quarterly and Annual Reports.

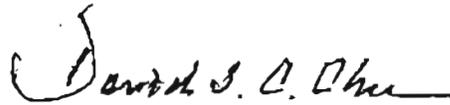
**MEMORANDUM OF AGREEMENT
BETWEEN
DEPARTMENT OF VETERANS AFFAIRS (VA)
AND
DEPARTMENT OF DEFENSE (DoD)**

SUBJECT: Disability Ratings for Service Members with Catastrophic Conditions and Combat-Related Causes under the Expedited DES Process

Under the authority of 10 USC 1216a(a)(2), for purposes of disability ratings by the Department of Defense under 10 U.S.C. Chapter 61, Service members with combat-related catastrophic conditions as those terms are defined in DoD Instruction 1332.38, as revised by the Directive-Type Memorandum, "Expedited DES Process for Members with Catastrophic Conditions and Combat-Related Causes," who voluntarily choose to undergo expedited DES processing as therein described, may be rated 100% disabled, with such rating considered permanent and stable, effective with the date of this memorandum of agreement.



Gordon H. Mansfield
Deputy Secretary
Department of Veterans Affairs



David S. C. Chu
Under Secretary of Defense for
Personnel and Readiness
Department of Defense

EFFECTIVE DATE: 13 Jan 2009