

Note from the Field

The Military Occupational Specialty/Medical Retention Board: An Introduction and Practical Guide

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Introduction

A military occupational specialty/medical retention board (MMRB) is a type of physical evaluation board that is convened by a soldier's local command to determine whether the soldier can perform in his primary military occupational specialty (PMOS) or specialty code in a worldwide field environment.¹ The MMRB is not technically part of the Army's physical disability evaluation system (APDES). Rather, an MMRB is a part of the Army's physical performance evaluation system (PPES) within the personnel system, not the medical system. The MMRB is an administrative screening procedure to determine whether a soldier can perform worldwide in his PMOS. This note acquaints practitioners with the reasons for, and the procedures involved in, the conduct of a command MMRB and provides a brief synopsis of the processing of a typical MMRB. Finally, it provides the administrative law attorney with an MMRB checklist for conducting a proper legal review of an MMRB.

Isn't This Just Another Medical Board?

Perhaps the term "MMRB" causes people to associate it automatically with a physical evaluation board (PEB) or a medical evaluation board (MEB).² However, the MMRB operates

as a function of the personnel system. While the results of an MMRB may eventually place a soldier within the disability system, the MMRB should be viewed entirely separate from the other "medical" boards.³

Currently, Army policy requires soldiers to perform duties commensurate with their office, grade, rank, or rating under worldwide field conditions.⁴ A soldier's ability to operate in a worldwide theater is determined by his ability to perform basic soldier physical tasks as well as the physical tasks associated with and required of his PMOS.⁵ While these standards are viewed only as guidelines, "[t]he overriding consideration by the MMRB is whether the soldier possesses the physical ability to perform PMOS or specialty code assignments worldwide under field conditions."⁶

Referral to an MMRB

The majority of soldiers who are referred to an MMRB are those who have a permanent physical profile with a numerical factor of three in one or more of the physical profile serial (PULHES) factors.⁷ In addition to these mandatory referrals, a company commander has discretion to refer soldiers whom the PPES⁸ has previously evaluated if the commander determines that the soldier is incapable of performing in his PMOS or if the

1. U.S. DEP'T OF ARMY, REG. 600-60, PHYSICAL PERFORMANCE EVALUATION SYSTEM (31 Oct. 1985) [hereinafter AR 600-60]. *Army Regulation 600-60* is the current regulation concerning the conduct of an MMRB. The Office of the Judge Advocate General point of contact for MMRB's is Major Anthony Jones at (703) 588-6791.

2. See Captain James R. Julian, *What You Absolutely, Positively Need to Know About the Physical Evaluation Board*, ARMY LAW., May 1996, at 31. A soldier who has been injured or who becomes ill while on active duty is referred by his treating physician to an MEB. The MEB will determine whether the soldier's injury or illness prevents him from meeting medical retention standards, as defined by *Army Regulation 40-501*. *Id.* See U.S. DEP'T OF ARMY, REG. 40-501, STANDARDS OF MEDICAL FITNESS (30 Aug. 1995) [hereinafter AR 40-501]. If the soldier does not meet these retention standards, he is referred to a PEB. The PEB is generally located at a major Army medical center. The PEB makes the determination of whether the soldier is fit for continued service and, if not, the extent of disability payments, if any, he is to receive. Julian, *supra*.

3. See Julian, *supra* note 2, at 31.

4. AR 600-60, *supra* note 1, para. 2-1b.

5. See *id.*

6. *Id.* The regulation cautions commanders not to refer soldiers to an MMRB automatically if they have medical conditions that restrict or limit full participation in the Army physical fitness test (APFT). For example, a soldier who has been diagnosed with knee problems may have a permanent profile that restricts him to walk rather than run the APFT. "[R]eferring a soldier for further evaluation in the disability system based only on these factors is inappropriate." *Id.* However, a soldier's restrictive PT profile may be considered along with other evidence of inability to perform. *Id.*

7. Referral in this situation is mandatory. Mandatory referral is also required for soldiers who have a condition listed in AR 40-501, *Standards of Medical Fitness*. See AR 40-501, *supra* note 2, ch. 3. In addition, soldiers who are wounded in combat will be referred to an MMRB under certain circumstances. See AR 600-60, *supra* note 1, para. 2-1g.

soldier's medical condition deteriorates.⁹ The commander also has discretion to refer a soldier whose permanent physical profile provides overly restrictive limitations for his grade and MOS.¹⁰ Soldiers who possess a temporary profile are not referred to an MMRB.

General officers with a physical profile of three or four in one or more of the PULHES factors will not be *mandatorily* referred to an MMRB. A general officer may be referred to an MMRB at the discretion of the MOS/Medical Review Board Convening Authority (MMRBCA), commonly the general court-martial convening authority.¹¹

Conducting an MMRB

The MMRBCA is responsible for convening an MMRB.¹² The MMRB is composed of five voting members and at least two non-voting members. The president of the board must be a colonel (O-6). Typically, the president will be the commander of the boarded soldier's brigade. A medical officer, either a colonel or a lieutenant colonel, must be present at all times during the MMRB.¹³ Regardless of date of rank, the medical officer will not serve as president. Two additional voting members in the rank of lieutenant colonel (O-5) may be from the combat arms, combat support, or combat service support

branches. Judge advocates, chaplains, and medical corps officers will not be appointed as voting members.¹⁴ The fifth voting member will be a command sergeant major (CSM); however, if the MMRB is being conducted for a commissioned officer, the CSM will be replaced with another lieutenant colonel of the same branch as the boarded officer (if reasonably available).¹⁵ All voting board members must be senior to the soldier being boarded.¹⁶

At least two nonvoting members are required for an MMRB. A personnel officer, generally a warrant or commissioned officer, advises the board regarding personnel policy and procedures.¹⁷ An enlisted member serves as a recorder. The recorder in an MMRB assists the president in assembling records that the board considers and also prepares a record of the proceedings.¹⁸

The Hearing¹⁹

The hearing itself is non-adversarial.²⁰ After the president convenes the board, the personnel officer provides the board with a verbal summary of the pertinent facts relating to each soldier who is to appear before the board.²¹ The medical officer appointed to the board briefs the other members on the import and characteristics of the soldier's profile.²² The president

8. U.S. DEP'T OF ARMY REG. 635-40, PHYSICAL EVALUATION FOR RETENTION, RETIREMENT, SEPARATION (1 Sept. 1990).

9. *Id.*

10. *Id.*

11. AR 600-60, *supra* note 1, para. 2-1f.

12. The MMRBCA may delegate convening authority to another general officer on his staff or to the first general officer in the soldier's chain of command. AR 600-60, *supra* note 1, para. 3-1d. Any delegation must be in writing. *Id.* Administrative authority over the remainder of the MMRB may be delegated to a commissioned or warrant officer on the MMRBCA's staff. *Id.* This authority includes the appointment of board members by the MMRBCA, referring individuals to the MMRB, administratively processing the board recommendations, and taking action on approved or disapproved board recommendations. *Id.* Typically, the MMRBCA will delegate administrative authority to the division or corps personnel section.

13. *Id.* para. 3-2b(1)(b). A civilian physician may be appointed to serve in lieu of a medical officer if the medical center commander or the medical activity commander determines that a medical officer is not reasonably available. *See id.* para. 3-2b(1)(b).

14. An officer from one of these branches may be appointed as the fifth voting member if the MMRB involves a member of that branch. *Id.* para. 3-2b(1)(e).

15. *See id.* para. 3-2b(1)(e). If the board concerns a warrant officer, a warrant officer three or four will replace the CSM. If the MMRB is being conducted for a chaplain or a judge advocate, the CSM will be replaced by a lieutenant colonel in the Judge Advocate General's Corps or the Chaplain's Corps.

16. *See id.*

17. *See id.* para. 3-2b(2)(a).

18. *See id.* para. 3-2b(2)(b).

19. *See generally* Major Curtis A. Parker, *The Army Physical Disability Evaluation Deskbook*, at B-1 through B-10 (3 May 1996) (available on the Legal Automated Army Wide System bulletin board service in the legal assistance files).

20. *Id.* at B-6.

21. *Id.*

22. *Id.* at B-7.

advises the soldier regarding the purpose of the board and explains how the board will conduct the proceedings.²³

A soldier who appears before an MMRB is not entitled to counsel representation.²⁴ He may, however, be represented or accompanied by a commissioned, warrant, or noncommissioned officer of his own choosing. The soldier may call witnesses and testify before the board.

Following the presentation of all relevant evidence, the board will conduct its evaluation of the capabilities (or lack thereof) of the soldier. The board must consider the soldier's physical abilities and limitations, the unit commander's evaluation, the soldier's personal statement, and other evidence presented.²⁵ The board must conduct a comparison of the physical tasks required of the soldier's PMOS and those tasks that the soldier cannot perform.²⁶

In addition to evaluating the tasks required of the PMOS, the board must determine whether the soldier can perform basic soldier skills with the limitations contained in the soldier's profile. For example, a soldier might have a permanent profile that precludes the wearing of a kevlar helmet. The soldier would probably be able to perform in the PMOS. However, performance in the PMOS necessarily includes basic soldier skills. The wearing of a kevlar helmet is essential in weapons qualification, often flag detail, and generally any deployed situation. Accordingly, the soldier cannot perform in a worldwide field environment.

Following this comparison, the board will close and deliberate on its recommendations. The board makes its recommendations by majority vote. Each board member uses an MMRB worksheet to reduce to writing the factors he considered in arriving at his respective vote. The recorder collects the worksheets and prepares a summary that provides an explanation of the board's rationale.²⁷

23. *Id.*

24. The regulation covering legal assistance operations does not address MMRBs as a type of legal assistance service provided. It does, however, indicate that a legal assistance attorney may provide PEB counseling as an optional service, if time and the number of attorneys permits. *See* U.S. DEP'T OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM, para. 3-6g(4)(q) (10 Sept. 1995).

25. Parker, *supra* note 19, at B-7.

26. This is a critical stage in an MMRB. Each PMOS has required physical tasks that soldier's must perform. If a soldier cannot perform one of the tasks of his PMOS, the board must determine whether the skill is critical to the PMOS. If the skill is not critical, the board may recommend that the soldier be monitored but returned to his PMOS.

27. In addition, if the board recommends reclassification or referral to an MEB or PEB, the summary will provide the circumstances which preclude the soldier from performing in his PMOS. The summary will also provide a concurrence or non-concurrence with the commander's recommendation regarding the soldier. *See* AR 600-60, *supra* note 1, para. 3-4a(3).

28. Parker, *supra* note 19, at B-8.

29. *Id.*

30. *Id.* at B-9.

31. *Id.*

The board has four possible recommendations. First, the board can retain the soldier in his current MOS.²⁸ The board makes this recommendation when the soldier's profiled condition does not preclude satisfactory performance of the physical requirements of the PMOS in a worldwide field environment. The soldier is fully deployable.

Second, the board can place the soldier in a probationary status.²⁹ The board makes this recommendation when the soldier's profiled condition has caused an impairment which precludes performing the physical requirements of the PMOS in a worldwide field environment. However, a program of rehabilitation may improve the soldier's condition to the point where he could be worldwide deployable. The probationary period cannot exceed six months.

Third, the board can recommend reclassification or change in specialty of PMOS.³⁰ This will only be recommended when the soldier can perform capably in another shortage or balanced MOS. The soldier must meet all of the qualifications of the new MOS.

Fourth, the board can recommend referral to the Army's physical disability system.³¹ The board makes this recommendation when the limitations of the soldier's profile preclude satisfactory performance in any MOS in a worldwide field environment.

The soldier will be informed of the board's findings and recommendations following the hearing. The soldier may submit a written rebuttal to the board's recommendations, but the rebuttal must be submitted to the board within two working days after the board adjourns. Following the expiration of the opportunity for rebuttal, the action is forwarded to the personnel division for actions commensurate with the findings.³²

The Legal Review

A review of the board proceedings is required. A member of the MMRBCA's staff in the rank of major or higher must conduct the review.³³ The regulation does not require that a judge advocate conduct the review. In practice, however, MMRBs are not staffed to the MMRBCA without judge advocate legal concurrence.

A legal review of an MMRB can be tedious. Each brigade that initiates an MMRB uses a different format, which often sidesteps certain provisions of the regulation. While the regulation itself is generally clear, commands have a tendency to overlook basic regulatory provisions. As a result, the MMRB recommendations cannot be approved; sometimes, an MMRB must be returned for initiation of a new board. While the command can easily fix these mistakes, the delay in processing the action might produce tremendous inconvenience for the soldier. Once an MMRB is reviewed and found to be legally sufficient, it should become the command's prototype for future boards.

The appendix to this note contains an MMRB checklist that provides practitioners with the basic standards for legal review. If each MMRB reviewed complies with the checklist, the review required by regulation will be accomplished.

Conclusion

An MMRB is but a small part of the overall physical disability system in the Army. The goals of the MMRB system are to achieve retention of a quality force and to ensure effective transition of members who cannot satisfactorily perform in a worldwide environment. The legal review of an MMRB is only one of many actions that an administrative law attorney will conduct. If effectively conducted, however, the legal review of an MMRB can be accomplished in a timely fashion with very few problems. A timely and properly conducted legal review can ultimately assist in the overall goal of retaining only the best of the force.

32. See generally AR 600-60, *supra* note 1, paras. 3-6 through 3-7.

33. See *id.* para. 3-5a.

MMRB CHECKLIST

1. The regulation governing an MMRB is *AR 600-60, Physical Performance Evaluation System*. This checklist is not a substitute for the regulation.
2. In accordance with *AR 600-60*, para. 3-5b, review of these board proceedings must ensure that:
 - a. The soldier received a full and fair hearing;
 - b. Proceedings of the MMRB were conducted IAW *AR 600-60*; and
 - c. Records of the case are accurate and complete.
3. The cases must be reviewed by a major or above.
4. MMRB review checklist:
 - a. Was the convening authority authorized to convene the board?
 - (1) In accordance with *AR 600-60*, para. 3-1, the convening authority must be a general court-martial convening authority.
 - (2) If the convening authority is not a GCMCA, check to see if a proper delegation has been done IAW para. 3-1.
 - b. Was the board properly appointed?
 - (1) In accordance with *AR 600-60*, para. 3-2b, the following members must be on the board:
 - (a) president (O-6), voting;
 - (b) medical officer (O-5 or above), voting;
 - (c) 2 board officers (combat arms, combat support, or combat service support officers, O-5), voting; and
 - (d) noncommissioned officer (command sergeant major), voting (an additional O-5 replaces the CSM if an officer is appearing before the board).
 - (2) Are voting members senior to the soldier?
 - (3) Voting members are not judge advocates, chaplains, or medical corps officers.
 - (4) Is there a personnel officer (commissioned, warrant, or DA civilian) serving as an adjutant (nonvoting)?
 - (5) Is there an enlisted member serving as a recorder (nonvoting)?
 - c. Did the soldier receive written notification of the board, IAW *AR 600-60*, para. 3-3a(5)(a)? Is a copy of the notice included in the file? A sample notification is found at Figure 3-3, *AR 600-60*.
 - d. Did the soldier acknowledge notification of the board, in writing, IAW *AR 600-60*, paragraph 3-3a(5)(d)? Is a copy included in the file? Sample acknowledgment is found at Figure 3-4, *AR 600-60*.
 - e. Did the soldier's unit commander write an evaluation of the soldier's physical capabilities and the impact of the profile on the full range of PMOS duties, as required by *AR 600-60*, para. 3-3c?
 - f. In accordance with *AR 600-60*, para. 3-4a, does the summary of board proceedings contain, at a minimum:
 - (1) A detailed explanation of the board's rationale for its recommendation;
 - (2) Circumstances or evidence that documents how the soldier's condition prevented performance in his PMOS (if reclassi-

fication or referral to an MEB or PEB is recommended); and

(3) Concurrence or nonconcurrence with the commander's evaluation of the soldier's ability to perform and why?

g. Does the file reflect that the board compared the physical tasks that the soldier is incapable of performing with the physical requirements of the soldier's PMOS, IAW *AR 600-60*, para. 3-3d(8)?

h. Did the MMRB recommend one of the following, IAW *AR 600-60*, para. 3-4b:

(1) Retain the soldier in his current MOS;

(2) Place the soldier in a probationary status to monitor the impairment, for a period not to exceed 6 months;

(3) Reclassify; or

(4) Refer to an MEB/PEB?

i. In accordance with *AR 600-60*, para. 3-4c, was the soldier informed that he may submit a written rebuttal to any of the findings and recommendations within two working days after the board adjourns?