

## MILPERSMAN 1910-168

### SEPARATION BY REASON OF PHYSICAL DISABILITY

<b>Responsible Office</b>	NAVPERSCOM (PERS-83)	Phone:	DSN	882-3229
			COM	(901) 874-3229
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<b>References</b>	(a) SECNAVINST 1850.4E (b) SECNAVINST 1770.3D (c) 10 U.S.C. 1214
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1. **Policy - Members on Active Duty in Excess of 30 Days.**

A member on active duty or active duty for training in excess of 30 days may be separated by reason of physical disability upon determination that member is physically unfit to perform the duties of member's rating in a reasonable manner. When separation from Naval Service is indicated by reason of physical disability, the member concerned will be reported upon by a medical board. The determination of a member's fitness for active Naval Service and/or entitlement to disability benefits, where found unfit, rests with Secretary of the Navy (SECNAV) as contained in reference (a).

2. **Policy - Members on Inactive Duty.** Members on inactive duty may be separated by reason of physical disability upon determination that they are not physically qualified to perform the duties of their rating on active duty in the Navy Reserve in a reasonable manner due to disease or injury.

3. **Policy - Members on Active Duty for 30 Days or Less.** When a member incurs a physical disability on

- active duty of 30 days or less,
- active duty for training, or
- inactive duty training (drill),

separation is authorized under this article following the guidelines established in reference (b).

4. Policy - Members in the Navy Reserve

a. Members not physically qualified for active duty or retention in the Navy Reserve shall not be involuntarily discharged upon expiration of their enlistment, or enlistment as extended, until the action pertaining to the resolution of their physical status is completed.

b. When the member's enlistment, or extension of enlistment, expires before their physical status is resolved, the member may be administratively retained in the service beyond the expiration date with their consent.

c. When such action is necessary, the retention and the expression of consent shall be set forth in writing on NAVPERS 1070/613 (7-06), Administrative Remarks and shall be signed by the member. If mental incompetency or other impairment precludes member indicating consent, tacit consent will be assumed. Retention for this purpose will be in training pay "Category H."

d. If members do not consent to the retention, their discharge shall be executed in the normal manner and an entry made on NAVPERS 1070/613 denoting their desire to be discharged in lieu of retention.

5. Commander's Responsibility to Inform the Member. This procedure is used when an inactive duty member incurs a physical disability on active duty of 30 days or less, active duty for training, or inactive duty training (drill), and is determined by Chief, Bureau of Medicine and Surgery (BUMED) to be not physically qualified for active duty or retention. The

- Navy Reserve Readiness Commander; or
- Commanding Officer of the Naval Air Station, Naval Air Reserve Unit, Naval Air Reserve Center, or Naval Air Facility under either
  - Commander, Naval Reserve Force, or
  - Commanding Officer, Naval Reserve Personnel Center (NAVRESPERSCEN)

to which the member is assigned shall inform the member by letter using the following format: (Use proper letter format.)

From: Commander/Commanding Officer, command  
To: (rate, first, middle, last name; branch of service;  
social security number (xxx-xxx-0000))  
(street address)  
(city, state, zip code)

Subj: FINDING OF PHYSICAL DISQUALIFICATION

Ref: (a) 10 U.S.C.  
(b) MILPERSMAN 1001-010

1. I regret to inform you that Chief, Bureau of Medicine and Surgery, Department of the Navy, has found that you are not physically qualified for retention in the Navy Reserve by reason of (state defect) (example: diabetes mellitus).

2. Section 12644 of reference (a) provides for the Honorable Discharge, or transfer to the Retired Reserve (without pay) if otherwise eligible, of any member who is not physically qualified for assignment to active duty.

3. In view of the foregoing, it is requested that you take one of the following courses of action:

a. Request discharge by reason of being not physically qualified.

b. Request transfer to the Retired Reserve if eligible under provisions of reference (b).

c. Request a review by the Physical Evaluation Board (PEB) on the basis of available medical records. You will be notified of the Board's recommended findings and given an opportunity to accept or rebut, or to demand a formal hearing before a hearing panel empowered to conduct formal hearings. Appearance before a hearing panel must be at your own expense. You are not eligible to receive retirement pay, severance pay, or any other benefits specified in chapter 61 of reference (a).

4. If a reply is not received from you within 30 days, it will be considered that you do not desire a review, and action will be taken to discharge you involuntarily by reason of being not physically qualified.

COMMANDER'S/COMMANDING OFFICER'S SIGNATURE

6. Member's Response. Members shall reply to the commander/commanding officer (CO), within 30 days of receipt of their letter, using the following format: (Use proper letter format.)

From: (rate, first, middle, last name; branch of service;  
social security number (xxx-xx-0000))  
(street address)  
(city, state, zip code)

To: Commander/Commanding Officer, command

Subj: RESPONSE TO FINDING OF PHYSICAL DISQUALIFICATION

Ref: (a) CO, \_\_\_\_\_ ltr of \_\_\_\_\_

1. Having been informed in reference (a) that Chief, Bureau of Medicine and Surgery, Department of the Navy, has found that I am not physically qualified for retention in the Navy Reserve, I request (initial as appropriate)

( ) discharge by reason of being not physically qualified.

( ) transfer to the Retired Reserve (if eligible).

( ) a review by the Physical Evaluation Board on the basis of available medical records.

MEMBER'S SIGNATURE

7. CO's Follow-up Responsibilities. The CO shall follow up as indicated below, depending on the circumstances:

IF...	THEN...
discharge is requested, or if no reply to the letter informing reservist of their status is received within 30 days,	issue the appropriate discharge certificate citing as authority this article and the letter informing the member of their status. Make appropriate field service record (FSR) entries and forward the closed FSR to NAVRESPERSCEN.
transfer to the Retired Reserve is requested and the reservist is eligible,	reservist will be transferred.
a Physical Evaluation Board (PEB) review is desired,	authorization will be issued by the <ul style="list-style-type: none"> <li>• Navy Reserve Readiness Commander, or</li> <li>• Commander, Naval Air Reserve Activity,</li> </ul> as appropriate, citing this article as authority.
the member desires to rebut the findings of the PEB and a formal hearing with personal appearance before a hearing panel is demanded,	the Office of Naval Council of Personnel Boards will request the <ul style="list-style-type: none"> <li>• Naval Reserve Readiness Commander, or</li> <li>• Commander, Naval Reserve Force,</li> </ul> as appropriate, to issue authorization orders for the reservist to appear before the hearing panel located in Washington, DC. See "Requesting Authorization to Appear Before a Hearing Panel."

8. Requesting Authorization to Appear before a Hearing Panel.

When the member requests a formal hearing panel the CO will prepare the following: (Use proper letter format.)

From: Commander/Commanding Officer  
To: (rate, first, middle, last name; branch of service;  
social security number (xxx-xx-0000))  
(street address)  
(city, state, zip code)  
Via: President, Physical Evaluation Board Hearing Panel,  
720 Kennon Street SE, RM 309,  
Washington Navy Yard, DC 20374-5023  
Subj: AUTHORIZATION TO APPEAR BEFORE A HEARING PANEL  
Ref: (a) SECNAVINST 1850.4D (Department of the Navy Disability  
Evaluation Manual)

1. Per reference (a), when notified by the via addressee that the necessary records are available for presentation of your case, you are authorized to report to that officer for an evaluation of your present physical condition.

2. In the evaluation of your physical condition, the Hearing Panel board will conduct the proceeding in all respects as provided for hearings in the case of active duty members, except that it will make only the recommended finding that you are or are not physically qualified for active service, and if not so qualified, will set forth the disqualifying defect or disability with the diagnostic nomenclature number (International Classification of Diseases (ICD) code) noted, and an opinion whether such disability is or is not due to intentional misconduct or willful neglect.

3. The above is authorized with the understanding that you will not be entitled to reimbursement for mileage or expense in connection therewith. In case you do not desire to bear this expense or, if for any reason, you fail to report to the Hearing Panel on the date specified, you will regard paragraph 1 of this authorization revoked.

4. You are advised that if, for any reason, you are unable to report in person to the Hearing Panel on the date specified, you may waive your right to appear in person. If you waive your right to appear in person, and elect not to have your counsel

appear on your behalf and represent you at the hearing, your case will be considered by the Hearing Panel on the record.

5. Whether you appear in person to waive your right to appear in person, a counsel will be appointed to represent you. You will be given the opportunity to consult with counsel, after which you may waive counsel if you so desire. You may, if you so desire, also employ civilian counsel at your own expense, and retain your designated counsel, or you may waive designated counsel. If you choose not to appear in person at the hearing, you may elect to have your counsel appear on your behalf and represent your interest during the hearing.

6. By endorsement hereon the via addressee is requested to notify you of the date and place you are to appear and of your designated counsel. You are requested to advise President, Hearing Panel, (address), whether you desire to appear in person.

COMMANDER'S/COMMANDING OFFICER'S SIGNATURE

Copy to:  
BUMED (MED-3361)  
NAVPERSCOM (PERS-83 and PERS-4913)

9. **Advisability of Requesting a Hearing.** Do not include entitlement to travel allowances in the authorization to appear before the panel since such must be at the member's expense. As explained in the letter to the member, the option of requesting a hearing before a hearing panel is offered solely to comply with the provision of reference (c), which states that no member of the Armed Forces may be retired or separated for physical disability without a full and fair hearing if member demands it. Since such hearing does not normally alter the findings of the board, particularly in cases of members who have never served on active duty and who are not qualified for retention in the Navy Reserve by reason of conditions arising in civilian life, members who inquire relative to the advisability of requesting a hearing should be so advised and discouraged from requesting a hearing due to the time and expense involved.

10. **If the Member has reported for Active Duty.** In any case where the member has reported for active duty, Navy Personnel Command (NAVPERSCOM), Disability/Retirement/LIMDU Section

(PERS-83) shall be notified of this fact together with return of the BUMED recommendation or request.

11. **Separations for Members on Inactive Duty**

a. NAVPERSCOM, Reserve Enlisted Personnel Section (PERS-4913) shall authorize separations for those members listed in the "Policy - Members on Inactive Duty" paragraph of this article who are not separated locally by the CO.

b. Characterization of service or description of separation shall be Honorable, General (Under Honorable Conditions), or Entry Level Separation following guidance in MILPERSMAN 1910-300.