

## **Public Forum Statement to the Recovering Warrior Task Force - 3 April 2013**

Enclosure 5 of DoDI 1332.38 (attached) list conditions that are not considered disabilities and can lead to an administrative separation without DoD disability compensation. Examples of such conditions are sea sickness, adjustment and personality disorders and sleepwalking. Key provisions of this policy state that the Secretary of Defense must designate such conditions and that these conditions cannot be caused by a compensable disability.

The Services abused this policy by administratively separating members found fit by a PEB by stating they had a condition, not a disability, that made them unsuitable for further military service. They simply called a compensable medical issue a condition not constituting a physical disability without the condition being designated as such by the Secretary of Defense. As a result, these members were removed from service due to a compensable condition without DoD disability benefits.

I addressed this issue in my DES Outrage # 3 (attached). As a result, Congress passed legislation in the 2011 NDAA that prohibited the Services from administratively discharging members for a condition a PEB found fitting. Subsequently, I began seeing cases where members were denied reenlistment for a condition a PEB found fitting. Congress fixed this issue in the FY2012 NDAA. The congressional fixes are captured in 10 USC 1214a (attached).

At the time, I and other advocates became concerned that the Services could avoid the new laws by simply not referring members for DES processing. In short, the Services could avoid the law by avoiding PEB fit findings. This concern was validated in two recent cases brought to my attention. The first case involves a sailor with 10 years of active service with Turner Syndrome. The other case involves a marine with 11 years of active service with a low back condition. These conditions were required to be submitted for DES evaluation. Instead, these members were ordered to be administratively separated without disability benefits. I have attached their separation messages for your review.

I brought these two cases to the attention of Admiral Nathan last month. As a result these members are now undergoing proper DES processing. Thank you Admiral Nathan. However, there are undoubtedly other such cases out there across the Services. I am aware of a soldier who was administratively separated in 2009, without DES processing, for a compensable mental health issue deemed to be a condition not a disability. He was subsequently awarded a 100% disability rating from the VA for the same condition.

I call on the Task Force to make recommendations to DoD and Congress to ensure such administrative separations are indeed limited to non-compensable conditions designated by the Secretary of Defense as outlined in Enclosure 5 of DoDI 1332.38. I also ask that the Task Force recommend that DoD conduct a review to identify and rectify past abuses of this policy.

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Attachments as Stated