



Health, Education, and
Human Services Division

B-278946

February 9, 1998

The Honorable Strom Thurmond
Chairman
The Honorable Carl Levin
Ranking Minority Member
Committee on Armed Services
United States Senate

The Honorable Floyd D. Spence
Chairman
The Honorable Ike Skelton
Ranking Minority Member
Committee on National Security
House of Representatives

Subject: DOD's Persian Gulf Disability Ratings: Status of Revised Criteria

Upon returning from service in the Persian Gulf conflict in the early 1990s, many members of the armed services reported symptoms such as chronic fatigue, rashes, headaches, difficulty concentrating, forgetfulness, and irritability. When a military physician believes that a service member's health is adversely affecting his or her ability to meet service retention standards, the physician can refer the service member to the Department of Defense's (DOD) Disability Evaluation System, which is the mechanism established to determine a member's medical fitness for military performance. Some Persian Gulf service members who were evaluated according to the Disability Evaluation System complained that their symptoms should have resulted in disability ratings but did not; others complained that the low disability ratings they received did not reflect the severity of their medical condition. Some believed that DOD lacked criteria for rating illnesses associated with service in the Persian Gulf.

Concerns about this situation prompted the Congress to incorporate, in section 721 of the 1995 Defense Authorization Act (P.L. 103-337), requirements that DOD, as soon as possible,

- develop a case definition for Persian Gulf illnesses—that is, a reliable way to identify individuals with specific diseases related to Persian Gulf service—in conjunction with the Secretaries of the Department of Veterans Affairs (VA) and the Department of Health and Human Services (HHS);
- revise criteria used by the services to set disability ratings for Persian Gulf service members; and
- review records and rerate previously rated service members, as appropriate, using the revised criteria.

As required by the 1998 Defense Authorization Act (P.L. 105-85), we reviewed the actions taken by DOD in response to the requirements of the 1995 Defense Authorization Act. Specifically, we determined whether DOD has developed a case definition for Persian Gulf illnesses and reviewed the revised criteria for setting disability ratings to determine the potential impact of the revision on those complaining of Persian Gulf-related symptoms. To accomplish these objectives, we reviewed applicable laws, DOD regulations and policies, and information on the services' disability evaluation systems. We also interviewed DOD, Army, Navy, and Air Force officials. We performed our work primarily at the Offices of the Assistant Secretaries of Defense, Force Management Policy and Health Affairs, in Washington, D.C. We conducted our review from September through December 1997 in accordance with generally accepted government auditing standards.

In summary, we found that DOD has not yet developed a case definition for Persian Gulf illnesses in conjunction with the Secretaries of VA and HHS. Efforts to date have been hampered by the lack of clear medical or scientific understanding of the multiple symptoms reported by Persian Gulf service members and an absence of specific information on the substances to which service members may have been exposed. DOD has revised the criteria used for rating Persian Gulf illnesses but has not rerated service members who received disability ratings before the revised criteria were issued. According to DOD officials, the primary reason for not rerating cases is that the revised criteria apply only to cases of undiagnosed illnesses, and no Persian Gulf service members were separated from the service as a result of a disabling but undiagnosed condition before the revision. Since the promulgation of the revised criteria, the services have used the undiagnosed illness codes in only five cases.

DESCRIPTION OF THE DISABILITY
EVALUATION PROCESS

Each of the services administers its own disability evaluation process, although all base their process on DOD Directive 1332.18, Separation or Retirement for Physical Disability. The disability evaluation process begins when a service member is referred by a physician to a Medical Evaluation Board. This Board determines whether a service member meets medical standards for retention on active duty; if the member does not meet retention standards, the Board's medical evaluation is then forwarded to the Physical Evaluation Board (PEB).

The PEB, a three-member panel consisting of line officers and at least one medical officer, reviews the medical evaluation, personnel records and appropriate position descriptions, and unit commander's recommendation to make an overall determination on whether the service member is fit for duty. If the service member is determined to be unfit for duty, the PEB establishes a disability rating.¹ Disability ratings range from 0 to 100 percent, in increments of 10. A member's percentage of disability, together with years of military service, affects whether the member will receive severance pay or medical retirement pay. For example, a member who has a disability rating and at least 20 years of service would receive permanent disability retirement pay and additional benefits, such as health care and certain tax exemptions. Similarly, a member with a disability rating of 30 percent or more and fewer than 20 years of service would receive permanent disability retirement pay and related benefits. On the other hand, a member who has a disability rating of less than 30 percent and fewer than 20 years of service would receive severance pay—generally 2 months' pay for each year of service (up to 12 years)—and would not be eligible for full government-sponsored health care.²

The disability rating, although based on the medical conditions that rendered the member unfit for military duty, recognizes the extent to which those conditions could limit the member's ability to perform in a civilian setting. For example, a service member with claustrophobia who cannot wear a gas mask could be found unfit for military duty but might receive a

¹The VA Schedule for Rating Disabilities rates reduction in earning capacity as a result of specific diseases and injuries and their residual effects.

²However, such veterans may obtain free hospital care and medical services for their service-connected disability at VA medical facilities.

disability rating of zero because that medical condition would not significantly affect the member's ability to secure civilian employment. Similarly, a service member with diabetes who requires medical treatment to stabilize the condition might be found unfit for duty because he or she could not deploy and perform the required duties in a field setting. Nevertheless, that same service member might receive a low or even a zero disability rating, because the diabetes would not affect his or her ability to perform in a civilian occupation.

If a service member has an unstable condition (that is, a condition that could get better or worse in the near future) and a 30-percent or higher disability rating, the member is placed on the Temporary Disability Retirement List. The condition of such individuals is periodically reevaluated, and they can potentially receive a different rating and be either returned to duty or permanently retired. For active duty members, all injuries or illnesses incurred are considered to be service connected, except when incurred as a result of misconduct (for example, as a result of alcohol abuse or drug use). Reservists, on the other hand, must establish that their injury or illness was incurred while they were on active duty.

The PEB decides whether the service member is fit or unfit for duty primarily on the basis of whether the service member can perform the military duties specified by his or her branch of service. A significant factor in this decision is whether the member can be deployed with only limited medical support. The service member can either accept the PEB's decision or request a formal PEB hearing. At a formal hearing, the service member can make a personal appearance, present additional information, call witnesses, and be represented by counsel. Also, the PEB can request another medical examination. Beyond the formal PEB hearing, additional appeal options are available if the service member brings forth new evidence or demonstrates that legal mistakes were made.

DOD HAS NOT DEVELOPED A CASE
DEFINITION FOR PERSIAN GULF
ILLNESSES, BUT THIS MAY NOT YET BE POSSIBLE

The Secretary of Defense has not yet developed, in conjunction with the Secretaries of VA and HHS, a case definition for Persian Gulf illnesses, as directed by the 1995 Defense Authorization Act. The Secretaries' ability to develop a case definition has been impeded by the lack of clear medical or scientific understanding of the multiple symptoms being reported by Persian Gulf service members and by the absence of specific information about the

substances to which service members may have been exposed. It has thus been difficult to develop a case definition for Persian Gulf-related illnesses.

Since 1994, DOD has initiated numerous research efforts, some in conjunction with VA and HHS, to better understand the nature and causes of the diverse symptoms being reported by veterans of the Persian Gulf War. Research efforts to date have investigated the possible health effects of vaccines and medications and exposure to various chemical combinations, smoke from oil well fires, other petrochemicals, chemical and biological warfare agents, depleted uranium, and parasites, as well as other potentially health-related exposures. What remains unknown at this time is whether the results of 91 federally sponsored studies will foster the development of a case definition for Persian Gulf illnesses. As of early 1997, 72 of these studies were ongoing, and some will not be complete until 2000 or later. As we reported in June 1997,³ methodological problems inherent in some of the research, such as reliance on self-reported exposures and difficulty in isolating and characterizing the effects of individual agents and in studying the combined effects of multiple agents, could severely limit the ability of the research to identify the potential causes of Gulf War illnesses.

DOD HAS REVISED ITS CRITERIA FOR RATING
PERSIAN GULF ILLNESSES, BUT LIMITED IMPACT IS
EXPECTED ON INCREASING DISABILITY RATINGS

As required by section 721 of the 1995 Defense Authorization Act, DOD issued revised criteria for rating Persian Gulf illnesses. However, these revised criteria have had little impact on increasing disability ratings for Persian Gulf service members because the criteria apply only to members who are determined to have "undiagnosed illnesses," and, lacking a case definition for Persian Gulf illnesses, military physicians have tended to rely on existing diagnoses, such as arthritis or asthma, to explain the many and varied symptoms reported by service members.

DOD's revised criteria, as contained in a May 1995 memorandum (shown in enc. D) issued by the Under Secretary of Defense, Personnel and Readiness, were based on final regulations promulgated by VA. These final regulations

³Gulf War Illnesses: Improved Monitoring of Clinical Progress and Reexamination of Research Emphasis Are Needed (GAO/NSIAD-97-163, June 23, 1997).

revised the VA Schedule for Rating Disabilities, which title 10 U.S.C. requires DOD to use in rating the percentage of disability. The revised VA schedule established 35 codes to be used in rating conditions classified by a Medical Evaluation Board as "undiagnosed illnesses" related to service in the Persian Gulf. The 35 undiagnosed illness codes are for symptoms that, while stemming from an undiagnosed illness, are similar or analogous to symptoms of known or existing diagnoses for which standard codes already exist. (Enc. II lists the 35 undiagnosed illness codes.)

To illustrate, before the criteria were revised, a Persian Gulf service member complaining of muscle and joint aches, headaches, fatigue, and difficulty concentrating might be diagnosed with one or more musculoskeletal diseases, and a physician would indicate the associated diagnostic code in the member's record. Using the revised DOD criteria, the physician can instead designate one of the 35 undiagnosed illness codes in the member's record, indicating that, although the symptoms are musculoskeletal in nature, a specific condition cannot be diagnosed.

The services, however, have rarely used the undiagnosed illness codes. According to service officials, the codes are not often used because most symptoms are diagnosed. Army representatives stated that they have used the new codes just four times; the Navy and Marine Corps, one time; and the Air Force, never.

DOD HAS NOT RERATED SERVICE MEMBERS USING THE REVISED CRITERIA

For several reasons, the services have not reviewed previously rated service members' records to determine if they should be rerated using the revised DOD criteria, as was required by the 1995 Authorization Act. First, the services would face some difficulty in determining whose records to review because they do not track Persian Gulf veterans as a unique population relative to disability evaluation decisions. In other words, DOD cannot readily determine which members who have received disability ratings served in the Persian Gulf, nor does DOD have information readily available about which service-related disabilities incurred in the Persian Gulf are actually related to Persian Gulf illnesses. DOD could determine the needed information, however, by taking two steps. DOD could perform a data match between a master list of Persian Gulf service members and a list of the Social Security numbers of those who have received disability ratings. Then, through case-by-case reviews, the services could identify those with

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disability ratings resulting from injuries or illness related to service in the Persian Gulf.

A second reason cited by the services for not having reviewed ratings of service members is that the disability ratings would probably not change. The revised criteria apply only to cases of undiagnosed illnesses and, as stated earlier, the services have used the new undiagnosed illness codes in only five cases.

A third reason cited by DOD officials for not reviewing ratings of service members is that once a member has been determined unfit for duty and separated from the service, that member can then pursue a disability determination from VA, which also uses the VA Schedule for Rating Disabilities to establish disability ratings. For example, if a member developed symptoms or experienced worsening symptoms after separating from the service, that member could receive a disability rating under the VA disability evaluation system.

As agreed with the staffs of the Subcommittee on Personnel, Senate Committee on Armed Services, and the Subcommittee on Military Personnel, House Committee on National Security, this correspondence concludes our work on this issue pursuant to the requirements of the 1998 Defense Authorization Act. We provided a draft of this correspondence to officials in the Offices of the Assistant Secretaries of Defense, Force Management Policy and Health Affairs. These officials generally agreed with the information presented and offered some technical suggestions, which we incorporated where appropriate.

We are sending copies of this correspondence to the Secretary of Defense and will make copies available to others on request.

Major contributors to this correspondence were George Poindexter, Brian Eddington, Jean Harker, and Alan Wernz. Please contact me on (202) 512-7101 if you have any questions.



Stephen P. Backhus
Director, Veterans' Affairs and
Military Health Care Issues

DOD'S REVISED PERSIAN GULF DISABILITY CRITERIAPERSONNEL AND
READINESS

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

MAY 22 1995



MEMORANDUM FOR THE ASSISTANT SECRETARY OF THE ARMY
(MANPOWER & RESERVE AFFAIRS)
THE ASSISTANT SECRETARY OF THE NAVY
(MANPOWER & RESERVE AFFAIRS)
THE ASSISTANT SECRETARY OF THE AIR FORCE
(MANPOWER, RESERVE AFFAIRS, INSTALLATIONS &
ENVIRONMENT)

SUBJECT: Persian Gulf Illnesses and the Disability Evaluation
System

In two recent laws, section 721(e) of the National Defense Authorization Act for Fiscal Year 1995 ("95 Authorization Act"), Pub. L. 103-337, and Title I of the Veterans' Benefits Improvements Act of 1994, Pub. L. 103-446, Congress called for the prompt development of standards for evaluating disabilities among members and veterans who served in the Persian Gulf Conflict and who now have undiagnosed illnesses. The Department of Veterans Affairs (DVA) has now promulgated final regulations establishing a method of rating disabilities associated with signs and symptoms of undiagnosed illnesses arising from Persian Gulf service. This method evaluates signs and symptoms based on analogous diagnoses for which disability ratings now exist under the Veterans Affairs Schedule for Rating Disabilities (VASRD). DoD is required by law to also use the VASRD for ratings performed by the DoD Disability Evaluation System (DES).

Based on these developments, pending revision to DoD Directive 1332.18, "Separation from the Military Service by Reason of Physical Disability" (Feb. 25, 1986), Persian Gulf related illnesses will be considered by the DES under normal DES rules and procedures, with the following special provisions:

1. For any member found unfit for duty based on a physical condition classified by a Medical Evaluation Board (MEB) as an undiagnosed illness related to Persian Gulf Conflict service, the Physical Evaluation Board (PEB) will use the VASRD evaluation by analogy rule adopted by the DVA



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to make a disability rating. These criteria are established pursuant to section 721(e)(1) of the 95 Authorization Act. The Military Departments should, through the DoD Disability Advisory Council, coordinate implementation of these criteria. (In cases in which established diagnoses are made of Persian Gulf related illnesses, the regular provisions of the VASRD will apply.)

2. Whenever an MEB determines that a case should be referred to a PEB based on a physical condition involving an undiagnosed illness related to Persian Gulf service, the MEB will include in its review of the member's condition the results of the Comprehensive Clinical Evaluation Program (or comparable military medical system evaluation).

All other standards, rules, and procedures of the DES shall apply to Persian Gulf related illnesses in the same way they apply to other illnesses.

Attention is also called to the special presumptions set forth in section 721(d) of the 95 Authorization Act. Appropriate service records of members covered by these special presumptions shall reflect that they are considered by DoD to have become ill as a result of Persian Gulf Conflict service. This documentation in members' records is important for future DVA review of cases, and is independent of determinations made by the DES concerning diagnosis, fitness for duty, disability rating, or other matters.

This memorandum, effective immediately, supersedes my memorandum of 2 June 1994, same subject. Please implement without delay and provide a copy of implementation action to my office.



Edwin Dorn

UNDIAGNOSED ILLNESS CODES

To properly identify and track disabilities claimed on the basis of the Persian Gulf War Veterans' Act, the following diagnostic code series was established. The "88" portion of each code indicates that the illness is an undiagnosed condition, and the rest of the code refers to the body system affected by the illness.

| <u>Diagnostic code</u> | <u>Description</u> | <u>Body system involved</u> |
|------------------------|-----------------------|-----------------------------|
| 8850-50 | Undiagnosed condition | Musculoskeletal diseases |
| 8851-51 | Undiagnosed condition | Amputations |
| 8852-52 | Undiagnosed condition | Joints, skull, and ribs |
| 8853-53 | Undiagnosed condition | Muscle injuries |
| 8860-60 | Undiagnosed condition | Diseases of the eye |
| 8861-61 | Undiagnosed condition | Hearing loss |
| 8862-62 | Undiagnosed condition | Ear and other sense organs |
| 8863-63 | Undiagnosed condition | Systemic diseases |
| 8865-65 | Undiagnosed condition | Nose and throat |
| 8866-66 | Undiagnosed condition | Trachea and bronchi |
| 8867-67 | Undiagnosed condition | Tuberculosis |
| 8868-68 | Undiagnosed condition | Lungs and pleura |
| 8870-70 | Undiagnosed condition | Heart diseases |
| 8871-71 | Undiagnosed condition | Arteries and veins |
| 8872-72 | Undiagnosed condition | Upper digestive system |
| 8873-73 | Undiagnosed condition | Lower digestive system |
| 8875-75 | Undiagnosed condition | Genitourinary system |
| 8876-76 | Undiagnosed condition | Gynecological system |
| 8877-77 | Undiagnosed condition | Hemic and lymphatic systems |
| 8878-78 | Undiagnosed condition | Skin |
| 8879-79 | Undiagnosed condition | Endocrine system |
| 8880-80 | Undiagnosed condition | Central nervous system |
| 8881-81 | Undiagnosed condition | Miscellaneous neurological |
| 8882-82 | Undiagnosed condition | Cranial nerve paralysis |
| 8883-83 | Undiagnosed condition | Cranial nerve neuritis |
| 8884-84 | Undiagnosed condition | Cranial nerve neuralgia |
| 8885-85 | Undiagnosed condition | Peripheral nerve paralysis |
| 8886-86 | Undiagnosed condition | Peripheral nerve neuritis |
| 8887-87 | Undiagnosed condition | Peripheral nerve neuralgia |
| 8889-89 | Undiagnosed condition | Epilepsies |
| 8892-92 | Undiagnosed condition | Psychotic disorders |
| 8893-93 | Undiagnosed condition | Organic mental |

ENCLOSURE II

ENCLOSURE II

| | | |
|---------|-----------------------|-------------------|
| 8894-94 | Undiagnosed condition | Psychoneurotic |
| 8895-95 | Undiagnosed condition | Psychophysiologic |
| 8899-99 | Undiagnosed condition | Dental and oral |

Source: VA, Veterans Benefits Administration, Circular 21-95-2 (Washington, D.C.: VA, Feb. 1, 1995).

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