



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

SECNAVINST 1770.3C
ASN(M&RA)
3 Apr 2002

SECNAV INSTRUCTION 1770.3C

From: Secretary of the Navy
To: All Ships and Stations

Subj: MANAGEMENT AND DISPOSITION OF INCAPACITATION AND
INCAPACITATION BENEFITS FOR MEMBERS OF NAVY AND MARINE
CORPS RESERVE COMPONENTS

Ref: (a) 10 U.S.C. 1074
(b) 10 U.S.C. 1074a
(c) 10 U.S.C. 12322
(d) 10 U.S.C. 12301(h)
(e) 37 U.S.C. 204
(f) 37 U.S.C. 206
(g) DoD Military Pay and Allowances Entitlements Manual
(DODPM)
(h) DoD Directive 1241.1 of 3 Dec 92 (NOTAL)
(i) DoD Instruction 1241.2 of 30 May 01
(j) Manual of Judge Advocate General (JAGMAN)
(k) SECNAVINST 1850.4D (Disability Evaluation Manual)
(l) Joint Federal Travel Regulations (JFTR)
(m) NAVMEDCOMINST 6320.3B
(n) Manual of Medical Department (MANMED)
(o) DoD Financial Management Regulation (DoD 7000.14-R,
Volume 7A of Oct 01)

1. Purpose. To revise benefits policy and procedures under references (a) through (o) in the Navy and Marine Corps Reserve. This instruction has been substantially altered and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 1770.3B.

3. Policy. Navy and Marine Corps Reservists who incur or aggravate injuries, illnesses, or diseases during periods of inactive duty training or during periods of active duty are eligible for certain benefits. Incapacitation benefits available to eligible members may include dental and medical treatment, hospitalization, incapacitation pay, Federal civil service employment benefits and disability retirement or separation pay.

3 Apr 2002

The members, with their consent, may also be ordered to or continued on active duty to complete prescribed treatment or medical evaluation. All concerned should give priority to careful management of this program to ensure the protection of both the Reservist's rights and benefits and the Service's interest in prompt resolution of cases. For disability retirement/separation purposes only, a Reservist shall be adjudicated under the statutory provisions applicable to his or her duty status at the time of onset or aggravation of the condition for which the member is determined unfit.

4. Applicability. This instruction applies to members of the Department of the Navy Reserve components excluding Training and Administration of Reserve (TAR) and Active Reserve (AR) personnel.

5. Effective Date. This instruction is effective immediately. Cases initiated prior to issuance of this instruction are within the scope of law, rules and regulations in existence at the time the condition arose.

6. Responsibilities

a. Assistant Secretary of the Navy, (Manpower and Reserve Affairs) (ASN(M&RA)) is responsible for overall policy regarding Reserve incapacitation benefits and disability processing.

b. The Chief of Naval Operations (CNO) and the Commandant of the Marine Corps (CMC) are responsible for efficient, effective management and disposition of members of the Reserve Components who incur or aggravate an illness, injury, or disease and qualify for benefits under this instruction.

c. The Chief, Bureau of Medicine and Surgery (CHBUMED) is responsible for the efficiency of processing and overall quality of Medical Board reports.

d. The Director, Naval Council of Personnel Boards is responsible for the management, integrity and efficiency of the Physical Evaluation Board (PEB).

7. Benefits Issuing Authority. CNO and CMC are authorized to determine eligibility and authorize incapacitation benefits for eligible Reservists, to include determination of whether they should be ordered to or extended on active duty, with their consent, as authorized under references (c) and (d). Authority may be further delegated as follows:

3 Apr 2002

a. Commander, Naval Reserve Force (COMNAVRESFOR). For Naval Reservists authorized benefits under references (b), (e) or (f). Scope of authority includes:

(1) Determination of eligibility for benefits under Notification of Eligibility (NOE) or placement or continuation on active duty for treatment (The NOE is a document that is issued when it is determined that an injury or disease was incurred or aggravated in the line of duty and benefits are authorized).

(2) Oversight and management of the personnel entitled to benefits under an NOE.

b. Commander, Navy Personnel Command (COMNAVPERSCOM). For Naval Reservists entitled to benefits under references (c) and (d). Authority includes:

(1) Preparation or extension of active duty orders (as authorized by CNRF).

(2) Management and oversight of personnel ordered to or continued on active duty for treatment.

c. For Marine Corps Reservists: Assistant Deputy Commandant, Manpower and Reserve Affairs (Reserve Affairs) (CMC(RA)).

8. Assistance. Problems that cannot be resolved at local commands may be directed to:

a. COMNAVRESFOR (N01M).

b. COMNAVPERSCOM (PERS-9).

c. CMC (RAM-3).

9. Reserve Component Incapacitation Management

a. The Benefits Issuing Authority shall:

(1) Establish and implement administrative procedures and guidelines for incapacitation benefits per reference (i). Those procedures shall include a requirement that the Reservist sign an appropriate release in order for the Department of the Navy to obtain military and civilian medical records pertaining to all illnesses that may be related to unfitness for use in the benefit process.

3 Apr 2002

A Reservist may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he/she has. Any such statement against his/her interests, signed by a Reservist is invalid for disability retirement/separation pay benefits. The Reservist must also acknowledge in writing that any civilian medical or dental care acquired to treat a service incurred illness must be pre-approved by the Military Medical Support Office (MMSO).

(2) Establish a tracking system and procedures as per sections 5.2.3 and 5.2.8 of reference (i).

(3) Maintain records of incapacitation benefits awarded under this instruction and monitor trends in incapacitating conditions, issuance/denial of NOE, extensions/suspensions/terminations of benefits, placement on or extension of active duty.

(4) Train subordinate counselors to advise Reservists of their benefits under this instruction.

b. COMNAVRESFOR (N01M) and CMC(RAM) shall manage cases of Reservists entitled to benefits under references (b) or (e) and coordinate with CHBUMED to expedite such cases for return to duty or referral into the Disability Evaluation System (DES).

c. COMNAVPERSCOM (PERS-9) and CMC(RAM) shall manage cases of Reservists ordered to or remaining on extended active duty under references (c) and (d) and coordinate with CHBUMED to expedite such cases for return to duty or release from Active Duty in the appropriate status, or referral into the Disability Evaluation System (DES).

d. CHBUMED (MED 03) shall:

(1) Interface with Benefits Issuing Authorities, as appropriate, to expeditiously resolve medical cases of Reservists receiving benefits or ordered to or remaining on extended active duty under this instruction. This includes ensuring medical board reports are completed within the time standards established in reference (n). Permanently disabling conditions should be processed as soon as recognized through the DES for disability separation or retirement. As per reference (k), a condition is considered permanent when the nature and degree of the condition render the member unable to continue naval service within a reasonable period of time (normally 12 months or less).

3 Apr 2002

(2) Establish procedures to ensure all medical records and reports of Reservists referred to a TRICARE Designated Provider (TDP) for evaluation of injuries, illnesses, or diseases are appropriately entered in the Reservist's medical/dental record. Ensure military treatment facility commanders assign and train a manager for cases involving Reservists who are not on active duty but require healthcare at that facility.

e. Commanding Officer. Nothing in this instruction shall be construed to relieve CO's of their responsibility to:

(1) Ensure expeditious medical treatment and proper case management of individual Reservists who are ordered to or remain on active duty as a result of a qualifying injury, illness or disease.

(2) Act as the Reservists' advocate to ensure that each Reservist is afforded the rights and benefits to which they are entitled.

f. Individual Reservists shall:

(1) Report any injury, illness, or disease incurred or aggravated during a period of duty prior to termination of such duty. This notification shall be made to the CO/Officer in Charge (OIC) via the medical officer or medical department representative.

(2) Immediately report to the CO/OIC any injury, illness, or disease incurred outside of duty (civilian incurred condition) which may require treatment during or after a period of duty.

(3) Make their status as Reservists known to the health care provider and Reserve Liaison Officer when seeking medical or dental care that could lead to incapacitation benefits, when seeking treatment for a condition that existed prior to entry, or when treatment will be required beyond the scheduled release date.

10. Release from Duty Status

a. A Reservist who incurs or aggravates a service-connected injury, illness or disease while performing Individual Duty Training (IDT) or on Active Duty orders for 30 days, or less, or while traveling to or from such duty, must be released from duty no later than the conclusion of the active duty or inactive duty period as stated on the orders unless the appropriate

3 Apr 2002

Benefits Issuing Authority determines, and the member consents, that placement or continuation on Active Duty is in the best interests of the Service and the individual.

b. A Reservist who incurs or aggravates a service-connected injury, illness or disease while on a continuous set of orders for more than 30 days or is ordered to active duty as per paragraph 10a, shall, with the member's consent, be continued on active duty until the member is determined fit for duty, or until the resulting incapacitation cannot be materially improved by further hospitalization or treatment and the case has been processed and finalized through the DES.

c. A Reservist who declines to accept or continue on active duty for treatment will be counseled and acknowledge in writing as a part of the service record/service record book that the benefits of active service and/or Department of Veterans Affairs benefits have been explained and that the member has elected release from active duty with associated benefits as determined by the Benefits Issuing Authority.

d. A Reservist shall be adjudicated under the statutory provision applicable to his or her duty status at the time of the onset or aggravation of the condition for which the member was determined unfit.

11. Benefits. The Benefits Issuing Authority will determine eligibility for benefits as per this instruction and higher authority. Disability Retirement or Separation Pay is determined the Physical Evaluation Board (PEB).

a. Medical and Dental Care. A Reservist in an NOE eligible status who incurs or aggravates a service-connected injury, illness or disease may receive only that medical and dental care which is appropriate for the authorized condition, per reference (b), until the disability cannot be materially improved by further hospitalization or treatment and the case has been processed and finalized through the DES when eligible for disability processing.

b. Incapacitation Pay

(1) Incapacitation pay and allowances are authorized and outlined under references (e) (subsections (g) and (h)), (h) and (o).

3 Apr 2002

(2) Incapacitation pay shall be initially authorized for a period of 6 months if the Reservist meets qualification criteria. Extending incapacitation pay beyond the 6-month period requires a determination by ASN(M&RA) that it is in the interests of fairness and equity to do so.

(3) It is incumbent upon the Reservist to prove with clear and convincing evidence the amount of gross civilian earned income and any losses incurred. Failure of a Reservist to provide current and sufficient information to establish gross earned income may result in a delay, suspension or discontinuation of incapacitation pay. Anyone who knowingly or willfully makes a false, fictitious, or fraudulent statement or claim for civilian earned income may be fined and/or imprisoned (18 U.S.C. 1001).

c. Extension of Incapacitation Pay

(1) The Benefits Issuing Authority will make extension requests no later than 30 days prior to end of initial benefit period.

(2) Requests to extend incapacitation pay must include a brief chronological history, disposition or status of the medical board, or if applicable, the reason a medical board has not been initiated. Information will also be provided as to whether the member has resumed his or her civilian occupation, undertaken a new position in the same occupation, or taken a position in a new occupation.

(3) Requests for a second or subsequent extension must include certification from CHBUMED that the member has not received maximum benefit of medical or dental care or that the member is being processed through the DES. As per ref (i), a member who remains not fit to perform military duty one year after the initial date of injury, illness or disease shall be referred to the DES if the member is not projected to be fit for duty within the next six months.

(4) Extension of the incapacitation pay, if approved by ASN(M&RA), will be effective for a period of 6 months unless earlier terminated.

(5) Those cases in which personnel receiving benefits are returned to duty and subsequently found eligible for further benefits for the same condition will not be considered an extension of the previously terminated case. Benefits Issuing Authorities are cautioned to take care to ensure this authority is not abused.

3 Apr 2002

d. Suspension or Termination of Incapacitation Benefits.

(1) Per reference (h), healthcare benefits shall terminate when a member has recovered sufficiently to be returned to military duty, or the resulting incapacitation cannot be materially improved by further hospitalization or treatment, and the case has been processed and finalized through the DES when eligible for disability processing. Pay and allowances under this instruction shall terminate when the member no longer demonstrates a loss of earned income or the case has been finalized through the DES. Additionally, the Benefits Issuing Authority shall terminate incapacitation benefits as follows:

(a) When a final Line of Duty (LOD) determination finds that the injury, illness or disease was not incurred in the line of duty.

(b) If the Benefits Issuing Authority determines the Notice of Eligibility was issued in error.

(c) Statutory discharge or retirement of the member.

(2) Incapacitation benefits for a Reservist may be suspended for failure to comply with program requirements. Specifically:

(a) The member's refusal to submit to medical, dental, or surgical treatment necessary to restore the member to full duty. A Reservist refusing medical treatment for a bona fide religious reason will need to have a medical board convened as outlined in reference (n) to determine the appropriateness to the refusal. The member may be eligible for continued benefits, if a bona fide religious basis exists.

(b) Failure to authorize release of requested medical or dental documentation.

(c) Failure to obtain a medical or dental evaluation when directed by medical, dental or administrative officials.

(3) If, during the suspension period the Reservist returns to compliance with the requirements of this instruction, the Benefits Issuing Authority will determine the effective date that benefits will resume, taking into consideration the nature of noncompliance, any mitigating circumstances and the date the Reservist once again met the program requirements.

3 Apr 2002

(4) The Benefits Issuing Authority shall inform the member, reserve activity CO, and, if being processed by the DES, the President, Physical Evaluation Board (PEB), with information copies to Defense Finance and Accounting Services (if applicable to incapacitation pay) and Military Medical Support Office (MMSO) when benefits have been suspended or terminated and reasons for the action. The member shall be advised via certified mail.

e. Duty Credit. Members authorized incapacitation pay under 37 U.S.C. 204(g), i.e. in cases of physical disablement precluding the performance of military duties, shall not be allowed to attend inactive duty training periods, Annual Training, or otherwise be placed on active duty other than under the provisions of 10 U.S.C. 12301(h). In order to maintain satisfactory participation for retirement purposes, completion of correspondence courses for retirement point credit is authorized during the period in which benefits are received.

12. Appeals. A Reservist denied incapacitation benefits or activation or extension on active duty, or whose benefits have been suspended or terminated, may appeal that decision. The appeal should be forwarded to the Office of the Judge Advocate General (OJAG) (Code 13) via the Benefits Issuing Authority within 60 days of suspension or termination and set forth in detail the reasons for disagreement with the unfavorable determination. The time requirement may be waived by OJAG if the appellant can demonstrate that it is in the best interest of justice to consider the petition.

13. Hospitalization in Medical Treatment Facilities

a. Sources of Treatment. Medical or dental care authorized by an NOE should be obtained from a Tricare Designated Provider (TDP), DoD Military Treatment Facility (MTF), or a Department of Veteran Affairs Medical Center (DVAMC). When treatment at a TDP is not reasonably available, members may be authorized care at another facility. Prior approval for non-emergency civilian medical care is required from the MMSO. Located in Great Lakes, Il, the MMSO is responsible for determining if the requested care is necessary or appropriate. Failure to secure MMSO approval may result in denial to reimburse expenses but will not be the basis, in itself, to deny incapacitation pay or processing by the PEB.

b. Monitor and Transfer to a TDP. When a member is admitted to a civilian hospital, the MMSO will make a weekly determination of the necessity for continued hospitalization or transfer to a TDP, MTF or DVAMC for evaluation or treatment.

3 Apr 2002

The member should be transferred to a TDP, Uniformed Service Treatment Facility (USTF), or DVAMC when extended hospitalization is necessary, and transfer will not jeopardize the health or impede the convalescence of the member. TDP should be the primary facility used because of the expense and treatment constraints at USTFs and DVAMCs.

14. Emergency Care. Nothing in this instruction shall be construed to preclude emergent and immediate medical or surgical treatment of a Reservist during any period of duty. The circumstances of origin of the condition with regard to having been incurred during or aggravated by service will be resolved after the emergency has been stabilized. A Reservist presenting for emergency treatment after termination of training duty, stating that the condition is related to an injury, illness or disease incurred during or aggravated by an earlier period of duty, will be examined. No treatment beyond that required to stabilize the determined emergency is authorized until the service connection is validated.

15. Approval. The entitlement portion of this instruction has been approved by the Defense Finance and Accounting Service (DFAS) under procedures prescribed by the Secretary of Defense in accordance with 37 U.S.C. 1001. DFAS Item Number A-78 (NOTAL) applies to this instruction.

William H. Navas, Jr.
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

Distribution:

SNDL Parts 1 and 2

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