

**AMENDMENT TO THE RULES COMMITTEE PRINT
OF H.R. 1960
OFFERED BY MR. DENHAM OF CALIFORNIA**

At the end of subtitle C of title V, add the following
new section:

1 **SEC. 5___ . REVIEW BY PHYSICAL DISABILITY BOARD OF**
2 **REVIEW OF MILITARY SEPARATION ON BASIS**
3 **OF A MENTAL CONDITION NOT AMOUNTING**
4 **TO DISABILITY.**

5 (a) FINDINGS.—Congress makes the following find-
6 ings:

7 (1) Since September 11, 2001, approximately
8 30,000 veterans have been separated from the
9 Armed Forces on the basis of a personality disorder
10 or adjustment disorder.

11 (2) Nearly all veterans who are separated on
12 the basis of a personality or adjustment disorder are
13 prohibited from accessing service-connected disability
14 compensation, disability severance pay, and disability
15 retirement pay.

16 (3) Many veterans who are separated on the
17 basis of a personality or adjustment disorder are un-
18 able to find employment because of the “personality

1 disorder” or “adjustment disorder” label on their
2 Certificate of Release or Discharge from Active
3 Duty.

4 (4) The Government Accountability Office has
5 found that the regulatory compliance of the Depart-
6 ment of Defense in separating members of the
7 Armed Forces on the basis of a personality or ad-
8 justment disorder was as low as 40 percent between
9 2001 and 2007.

10 (5) In its response to the findings of the Gov-
11 ernment Accountability Office referred to in para-
12 graph (4), the Department of Defense concurred
13 that the Armed Forces needed to develop a system
14 to ensure that personality disorder separations were
15 conducted in accordance with the regulatory require-
16 ments.

17 (6) The Department of Defense required each
18 of the Armed Forces to provide a plan for correcting
19 compliance deficiencies if it found that its compli-
20 ance with any the Department of Defense person-
21 ality disorder separation requirement was less than
22 90 percent, and each of the Armed Forces has
23 planned or taken corrective actions to improve com-
24 pliance.

1 (7) In a January 2009 memo, the Under Sec-
2 retary of Defense for Personnel and Readiness di-
3 rected the Armed Forces to provide a report on their
4 compliance with the Department personality disorder
5 separation guidance for fiscal years 2008 and 2009.
6 In addition, in a summary of their compliance re-
7 ports, the Office of the Under Secretary of Defense
8 stated that the Armed Forces' compliance with the
9 additional personality disorder separation require-
10 ments that the Department of Defense added in
11 2008 was generally well below 90 percent.

12 (8) Since the Department of Defense has recog-
13 nized members of the Armed Forces were incorrectly
14 discharged, providing compensation for the adversely
15 affected members should have been included in the
16 Department's mandatory budget, and the Armed
17 Forces already have a process whereby they can pro-
18 vide benefits. Therefore, this section does not bestow
19 any additional benefits that were not already avail-
20 able to these members at discharge or the review
21 process. Rather it seeks to streamline the existing
22 procedures so those members who were improperly
23 discharged receive their due justice in a timely man-
24 ner.

1 (b) MEMBERS ENTITLED TO REVIEW BY PHYSICAL
2 DISABILITY BOARD OF REVIEW.—Section 1554a of title
3 10, United States Code, is amended—

4 (1) in subsection (a)(1), by striking “disability
5 determinations of covered individuals by Physical
6 Evaluation Boards” and inserting “disability and
7 separation determinations regarding certain mem-
8 bers and former members of the armed forces de-
9 scribed in subsection (b)”;

10 (2) by striking subsection (b) and inserting the
11 following new subsection:

12 “(b) COVERED INDIVIDUALS.—For purposes of this
13 section, covered individuals are members and former mem-
14 bers of the armed forces who—

15 “(1) during the period beginning on September
16 11, 2001, and ending on December 31, 2014, are
17 separated from the armed forces due to unfitness for
18 duty because of a medical condition with a disability
19 rating of 20 percent disabled or less and are found
20 to be not eligible for retirement; or

21 “(2) during the period beginning on January
22 17, 1991, and ending on December 31, 2014, are
23 separated from the armed forces due of unfitness for
24 duty because of a mental condition not amounting to

1 disability, including separation on the basis of a per-
2 sonality disorder or adjustment disorder.”.

3 (c) NATURE AND SCOPE OF REVIEW.—Such section
4 is further amended—

5 (1) by redesignating subsections (d), (e), and
6 (f) as subsections (e), (f), and (g), respectively; and

7 (2) by inserting after subsection (c) the fol-
8 lowing new subsection (d):

9 “(d) REVIEW OF SEPARATIONS DUE OF UNFITNESS
10 FOR DUTY BECAUSE OF A MENTAL CONDITION NOT
11 AMOUNTING TO DISABILITY.—(1) Upon the request of a
12 covered individual described in paragraph (2) of sub-
13 section (b), or a surviving spouse, next of kin, or legal
14 representative of a covered individual described in such
15 paragraph, the Physical Disability Board of Review shall
16 review the findings and decisions of the Physical Evalua-
17 tion Board with respect to such covered individual. In ad-
18 dition, the Physical Disability Board of Review may re-
19 view, upon its own motion, the findings and decisions of
20 the Physical Evaluation Board with respect to a covered
21 individual described in such paragraph.

22 “(2) Whenever a review is conducted under para-
23 graph (1), the members of the Physical Disability Board
24 of Review must include at least one licensed psychologist
25 and one licensed psychiatrist.

1 “(3) In conducting the review under paragraph (1),
2 the Physical Disability Board of Review shall consider—

3 “(A) the findings of the psychologist or psychia-
4 trist of the Department of Defense who diagnosed
5 the mental condition;

6 “(B) the findings and decisions of the separa-
7 tion authority with respect to the covered individual;
8 and

9 “(C) whether the separation authority correctly
10 followed the process for separation as set forth in
11 law, including Department of Defense regulations,
12 directives, and policies.

13 “(4) The review by the Physical Disability Board of
14 Review under paragraph (1) shall be based on the records
15 of the Department of Defense and the Department of Vet-
16 erans Affairs and such other evidence as may be presented
17 to the Physical Disability Board of Review. The board
18 shall consider any and all evidence to be considered, in-
19 cluding private mental health records submitted by the
20 covered individual in support of the claim.

21 “(5) If the Physical Disability Board of Review pro-
22 poses, upon its own motion, to conduct a review under
23 paragraph (1) with respect to a covered individual, the
24 board shall notify the covered individual, or a surviving
25 spouse, next of kin, or legal representative of the covered

1 individual, of the proposed review and obtain the consent
2 of the covered individual or a surviving spouse, next of
3 kin, or legal representative of the covered individual before
4 proceeding with the review.

5 “(6) After the Physical Disability Board of Review
6 has completed the review under this subsection with re-
7 spect to the separation of a covered individual, the board
8 must provide the claimant with a statement of reasons
9 concerning the board’s decision. The covered individual
10 has the right to raise with the board a motion for reconsid-
11 eration if—

12 “(A) new evidence can be presented that would
13 address the issues raised in the board’s statement of
14 reasons; or

15 “(B) the board has made a plain error in mak-
16 ing its recommendation.”.

17 (d) CORRECTION OF MILITARY RECORDS.—Sub-
18 section (f) of such section, as redesignated by subsection
19 (b)(1), is amended to read as follows:

20 “(f) CORRECTION OF MILITARY RECORDS.—(1) The
21 Secretary of the military department concerned shall cor-
22 rect the military records of a covered individual in accord-
23 ance with the recommendation made by the Physical Dis-
24 ability Board of Review under subsection (e) unless the
25 Secretary determines that the board has made a clearly

1 erroneous recommendation. Any such correction shall be
2 made effective as of the date of the separation of the cov-
3 ered individual.

4 “(2) In the case of a covered individual previously
5 separated with a lump-sum or other payment of back pay
6 and allowances at separation, the amount of pay or other
7 monetary benefits to which such individual would be enti-
8 tled based on the individual’s military record as corrected
9 shall be adjusted to take into account receipt of such
10 lump-sum or other payment in such manner as the Sec-
11 retary of the military department concerned considers ap-
12 propriate.

13 “(3) If the Physical Disability Board of Review
14 makes a recommendation not to correct the military
15 records of a covered individual, the action taken on the
16 report of the Physical Evaluation Board to which such rec-
17 ommendation relates shall be treated as final as of the
18 date of such action.”.

19 (e) CONFORMING AMENDMENTS.—Such section is
20 further amended—

21 (1) in subsection (c)—

22 (A) by inserting after “REVIEW” the fol-
23 lowing: “OF SEPARATIONS DUE OF UNFITNESS
24 FOR DUTY BECAUSE OF MEDICAL CONDITION
25 WITH A LOW DISABILITY RATING”; and

1 (B) in paragraph (1)—

2 (i) by inserting “described in para-
3 graph (1) of subsection (b)” after “a cov-
4 ered individual” the first place it appears;

5 (ii) by inserting “described in such
6 paragraph” after “a covered individual”
7 the second place it appears; and

8 (iii) by striking the second sentence
9 and inserting the following new sentence:
10 “In addition, the Physical Disability Board
11 of Review may review, upon its own mo-
12 tion, the findings and decisions of the
13 Physical Evaluation Board with respect to
14 a covered individual described in such
15 paragraph.”; and

16 (2) in subsection (e), as redesignated by sub-
17 section (c)(1), by striking “under subsection (c)”
18 and inserting “conducted under subsection (c) or
19 (d)”.

20 (f) NOTIFICATION OF NEW AVAILABILITY OF RE-
21 VIEW.—

22 (1) NOTIFICATION REQUIREMENT.—In the case
23 of individuals described in subsection (b)(2) of sec-
24 tion 1554a of title 10, United States Code, as
25 amended by subsection (a), who have been separated

1 from the Armed Forces during the period beginning
2 on January 17, 1991, and ending on the date of the
3 enactment of this Act or who are separated after
4 that date, the Secretary of Defense shall ensure, to
5 the greatest extent practicable, that such individuals
6 receive oral and written notification of their right to
7 a review of their separation from the Armed Forces
8 under such section 1554a.

9 (2) COMPLIANCE.—The Secretary of the mili-
10 tary department with jurisdiction over the Armed
11 Force in which the individual served immediately be-
12 fore separation shall be responsible for providing to
13 the individual the notification required by paragraph
14 (1). The Secretary of Defense shall monitor compli-
15 ance with this notification requirement and promptly
16 notify Congress of any failures to comply.

17 (3) LEGAL COUNSEL.—The notification re-
18 quired by paragraph (1) shall—

19 (A) inform the individual of the right to
20 obtain legal or non-legal counsel to represent
21 the individual before the Physical Disability
22 Board of Review; and

23 (B) include a list of organizations that
24 may provide such counsel at no cost to the indi-
25 vidual.

1 (g) REPORTING REQUIREMENT.—Not later than
2 April 1, 2014, the Secretary of Defense shall submit to
3 the Committees on Armed Services of the Senate and the
4 House of Representatives a report containing the fol-
5 lowing:

6 (1) The total number of members of the Armed
7 Forces who were separated during the period begin-
8 ning on January 1, 2010, and ending on December
9 31, 2013, and, of such total, the number of members
10 whose separation was based, in whole or in part, on
11 a personality disorder or adjustment disorder.

12 (2) A description of the findings of the Physical
13 Disability Board of Review in cases since the date
14 of the enactment of this Act involving the separation
15 of members from the Armed Forces due of unfitness
16 for duty because of a mental condition not amount-
17 ing to disability, including separation on the basis of
18 a personality disorder or adjustment disorder.

19 (3) A description of the implementation of this
20 section and the amendments made by this section.

21 (h) CLERICAL AMENDMENTS.—

22 (1) SECTION HEADING.—The heading of such
23 section is amended to read as follows:

1 **“§ 1554a. Physical Disability Board of Review: review**
2 **of separations with disability rating of 20**
3 **percent or less and separations on basis**
4 **of mental condition not amounting to dis-**
5 **ability”.**

6 (2) TABLE OF SECTIONS.—The table of sections
7 at the beginning of chapter 79 of such title is
8 amended by striking the item relating to section
9 1554a and inserting the following new item:

“1554a. Physical Disability Board of Review: review of separations with disability rating of 20 percent or less and separations on basis of mental condition not amounting to disability.”.

