



November 2014. Additional guidance for members who are diagnosed with HIV is found in AFI 44-178, *Human Immunodeficiency Program*, 4 March 2014.

3. The Air Force does not have bright line rules regarding which medical conditions require the medical separation or retirement of any Airman. Rather, the questions of whether a given Airman will be medically separated, retired, or will retained after a particular diagnosis are decided on a case by case basis by applying the guidance in the instructions listed in paragraph 2. AFI 48-123, *Physical Exams, Medical Standards Directory*, also provides guidance.

**4. Referral into the Disability Evaluation System:**

a. Prior to the referral of a case into the DES, the Air Force conducts an extensive “pre-IDES” screening process to ensure that members who will likely be returned to duty are not referred for evaluation by the DES. This process is described by paragraphs 4.51 through 4.53 of AFI 41-210, and within AFI 36-3212.

b. Standards For Referral: Airmen may be referred into the DES under any of the following circumstances: 1) the Airman has one or more medical conditions that may, individually or collectively, prevent him from reasonably performing the duties of his office, rank, grade, or rating; 2) the Airman has a medical condition that represents an obvious medical risk to the health of the member or to the health or safety of other members; or 3) the Airman has a medical condition that imposes unreasonable requirements on the military to maintain or protect the Airman. The DES process is then used by the Air Force to make a final determination about the Airman’s fitness for continued military service.

c. Standards for Determining Unfitness: Ultimately, an Airman’s fitness for continued military service, and therefore his/her retention in the Air Force, are determined by criteria set forth in Appendix 2 to Enclosure 3 of DoDI 1332.18. There are three general reasons that Airmen are

found unfit for continued service: 1) they are found to be unable to reasonably perform the duties of their office, grade, rank, or rating, due to a disability; 2) they have a disability which represents a decided medical risk to their health, or the welfare and safety of other service members; and 3) their disability imposes unreasonable requirements upon the military to maintain or protect them.

d. Reasonable Performance of Duties:

i. DoDI 1332.18 requires Air Force adjudicators to consider the following factors in determining whether an Airman is reasonably able to perform the duties of his office, grade, rank, or rating:

1) ability to perform common military tasks (*e.g.*, firing a weapon, performing field duty, wearing heavy equipment or protective gear); 2) whether the Airman is prohibited from performing the service's required physical fitness test; 3) whether the Airman is deployable individually or as part of a unit, to any location that they may be required to deploy to; and 4) whether the Airman's condition disqualifies him from specialized duties in their current duty assignment.

ii. Because this is a reasonableness standard, there are not bright line rules that require specified outcomes for a particular condition in every case. Rather, in determining whether a particular Airman is capable of reasonably performing their duties, adjudicators at all levels consider the above factors along with other factors, such as the particular duties of the Airman's specialty within the Air Force, the likelihood that the Airman would be called on to deploy, the locations that the Airman could deploy if they are limited to certain locations, the commander's assessment and recommendation of the Airman's ability to perform his or her duties, and the likely progression (or lack thereof) of the medical condition.

iii. The fact that an Airman's medical condition prevents him from deploying to a particular location does not necessarily require the Airman to be found unfit for continued service. For example, an Airman who is assigned to a senior staff position with a low likelihood of deployment, an intelligence job with no deployed billets, or a missile officer who was considered to be "deployed in-place" would warrant serious consideration for retention despite being unable to deploy. However, it is a fact of military service that most lower-ranking and therefore younger service members are in positions that are likely to require deployment. The ability to deploy, therefore, will play a more significant role in the analysis of their cases.

**5. Medical Evaluation Board:** If, following the prescreening process, an Airman's case is referred to the DES, it proceeds to evaluation by a Medical Evaluation Board ("MEB"). The MEB is a board of three physicians who have state licensure and have met criteria to be credentialed to practice medicine at the military treatment facility. The Air Force physicians review the Airman's case and, applying the standards for unfitness and considerations of reasonable performance of duties, make a recommendation about whether the Airman should be returned to duty or should proceed for further analysis by a Physical Evaluation Board. After the MEB makes its recommendation, the Airman is given an opportunity to make a written rebuttal and to elect to have an impartial medical review of the case performed by a physician who was not involved in the Airman's MEB.

**6. Physical Evaluation Board:**

a. If an Airman is not returned to duty at the MEB stage, the case will be reviewed by the Informal Physical Evaluation Board ("IPEB"). The IPEB consists of at least two members (one of whom is a physician) and reviews all the information available to the MEB, any new information relevant to the member's condition, and any information provided through the

rebuttal process by the Airman. Once again, the IPEB makes a recommendation on whether the Airman should be retained by applying the standards set forth in DODI 1332.18. Whether the IPEB recommends that the member be returned to duty or recommends separation or retirement, the decision and rationale are provided to the member for review and to accept or appeal.

b. If the Airman is unsatisfied with the result of the IPEB, he or she can elect to appeal his case to the Formal Physical Evaluation Board ("FPEB"). The FPEB is comprised of three members, one of which must be a physician. All Airmen are allowed to make a personal appearance before the FPEB. Generally, all Airmen on active duty are allowed to travel, at government expense, to Randolph Air Force Base, Texas to appear before the FPEB. All Airmen who are found unfit for continued service by the IPEB are provided military legal counsel free of charge and may hire civilian counsel at their own expense. At the FPEB hearing, members are allowed to present evidence and call witnesses. After conclusion of the hearing the FPEB records its decision and rationale which are provided to the member to accept or appeal

**7. Secretary of the Air Force Personnel Counsel Review:** Airmen who are unsatisfied with the results of their FPEB hearings are given another opportunity to appeal their cases to the Secretary of the Air Force Personnel Council ("SAFPC"). This is the final opportunity for review of the case prior to the final decision regarding retention, separation, or retirement from the Air Force. The SAFPC applies the same DoDI 1332.18 criteria that is applied by the MEB, IPEB, and FPEB. Members do not have a right to a personal appearance before SAFPC, but may submit any new evidence, a written rebuttal, and any other material they wish for this appeal. Members continue to have the right to free military counsel during their appeal to SAFPC.

**8. Deployability Determinations:**

a. When an Airman's Medical Treatment Facility ("MTF") discovers that the Airman has a condition that might limit the Airman from deploying to any location throughout the world, the MTF places an Assignment Availability Code ("AAC") in the Airman's medical and personnel records. The code specifies what limits are placed upon the Airman's ability to deploy and specifies a time limit for the limitation (anywhere from 1-365 days). If the condition which caused this limitation does not resolve, or is not expected to resolve within 365 days or less, the Airman will likely be referred for evaluation (at least pre-screening) through the DES. However, the mere assignment of a temporary AAC does not require DES evaluation. If the condition worsens or changes significantly, though, the Airman can always be referred for follow-up/repeat evaluation through the DES.

b. Airmen who have deployment limitations and are nevertheless returned to duty through the DES are assigned an Assignment Limitation Code ("ALC-C") by the Air Force Personnel Center. The codes range from C-1 (least restrictive of potential assignments) to C-3 (most restrictive). The ALC-C is assigned on a case by case basis depending upon the level of medical care that the Airman requires and the availability of that care. The fact that an Airman is assigned an ALC-C does not, in itself, mean that he is unable to deploy or to be assigned overseas. Instead, the Airman's local medical treatment facility will consider the specific case of an Airman to decide whether to cancel the assignment/deployment or to ask for a waiver from the appropriate authority. Thus, it is possible for an Airman with an ALC-C3 code to receive a waiver to deploy or be assigned overseas. Asymptomatic HIV-positive Airmen returned to duty under the above described process have generally received an ALC-C2 coding. However, this is not a mandatory code for asymptomatic HIV and each case is determined on a case-by-case basis determined by the unique facts and medical circumstances of each case.

**9. HIV Specific Policies:**

a. The Air Force evaluates deployment and retention of members who have HIV under the criteria required by the DES (DoDI 1332.18 & AFI 36-3212), and thus treats HIV the same as any other chronic and progressive illness. While it is the stated policy of the Air Force not to discharge members solely on the basis of laboratory evidence of HIV infection, if HIV causes an Airman to be unable to reasonably perform the other duties of his office, rank, grade, or rating, the Airman may be subject to medical separation or retirement. This means that a more senior member or a member who is unlikely to deploy and performs mainly administrative duties may be retained, while a more junior member who is likely to deploy may not be.

b. The question of whether Airmen with HIV are able to deploy in many cases depends on factors outside the Air Force's control. United States Central Command ("USCENTCOM") is the combatant command with authority over the Middle East (including Iraq and Afghanistan), and more than 80% of current Air Force deployments are within USCENTCOM.

USCENTCOM sets its own policies for what medical conditions are acceptable in that theatre of operations. Those policies are often based on the host nations that base U.S. troops within USCENTCOM that prohibit individuals who are diagnosed with HIV from entering.

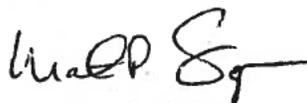
c. The Air Force is thus unable to deploy HIV-positive Airmen to USCENTCOM regions. Such Airmen, however, are permitted to deploy to areas not under USCENTCOM's control, including countries in Latin America and domestic deployments, provided that no other restriction on the deployment applies. Indeed, despite the deployment limitations that exist for Airmen with HIV, the Air Force has ultimately retained many Airmen who have been evaluated through the Disability Evaluation System. Since November 2017, the SAFPC has evaluated the cases of 11 Airmen with HIV. Nine of these Airmen were returned to duty. These Airman were given

assignment limitation codes for the purpose of flagging them in the personnel system, to indicate the Airman required medical clearance for any PCS or deployment. Thus, these individuals have been able to remain within the Air Force.

10. [REDACTED]

11. **SAFPC Cases involving HIV:** All SAFPC cases involving HIV, to include [REDACTED], are currently on hold at SAFPC pending internal Air Force policy review. No HIV-positive Airmen will be discharged by SAFPC while this review is pending.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 16 day of AUGUST 2018.



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