

DEFENDING OUR FREEDOM TO NEEDING THE DEFENDING: AN EXPLORATION OF THE FOOD SERVED TO OUR NATION’S ARMED FORCES AND THE ENDLESS IMPACT IT HAS ON THEM

I. INTRODUCTION

Imagine Civilian Joe is on shore, as most of Americans are, with endless food opportunities. He can eat as healthy as he wants or as unhealthy as he wants. Civilian Joe can have a burger when he wants, or he can have sushi. In general, food consumption is not regulated. Now imagine being Captain Bob, a military member, who just participated in a mandatory command physical training (“PT”) session, starting at 0615 and ending at 0715, who has to make it to work by 0800.¹ He is in his PT clothes, which are not authorized to be worn in the military installations dining facility, but he does not have time to get home or to shower, get ready, and then go to the galley to eat.² However, he has not eaten anything and there just happens to be a McDonald’s directly across the street from the gym.³ What is Captain Bob going to choose? No food, probably until lunch, or grabbing something that is quick and can be eaten on the drive to work or walk to his barracks’ room? Captain Bob, just as the average person, would likely opt for McDonald’s.

Now imagine Captain Bob just returned home from an eight-month deployment on a ship where his only food option was what was being

¹ Military time is based on a 24-hour system. 6 am will read with a zero in front of it, such as 0600 but once it gets to 6 pm, it runs past 12 and will be identified as 1800. See Rod Powers, *Military Time: Lesson in the 24 Hour Time System*, THE BALANCE (Sep. 19, 2016), <https://www.thebalance.com/military-time-3356971>.

² See Part III for further description of these facilities.

³ Many military installations have fast food restaurants which are there for morale reasons. See generally, Report to the Chairman, Panel on Morale, Welfare, and Recreation, Committee on Armed Services, House of Representatives *Morale, Welfare, and Recreation- Declining Funds Require DOD to Take Action*, United States General Accounting Office (Feb. 1994), <http://www.gao.gov/assets/220/219276.pdf>.

served that day.⁴ The only choice he was able to make regarding food was whether he wanted to eat from the “fast food line,” serving the typical fast food type food, or the “main line,” serving more home-style food.⁵ When his ship was in port and he was able to go out in town, he could choose whatever it is he wanted to eat, but that was maybe once a month if he was lucky.⁶

Now what is the common denominator between both of the scenarios? The food service members eat. It is safe to say that food is an important aspect of everyone’s lives.⁷ Just as important to the military as a whole is fitness, thus, when service members choose not to eat properly, consequences will certainly ensue.⁸ The military seems to be conscious of the food being served at military installation galley’s and dining facilities (“DFAC”) offering a wide range of various foods.⁹ Currently, the military is actively striving to improve the food being offered both on shore and at sea.¹⁰ There is always room for more improvement, but they are definitely on the right roadmap.

This Comment will demonstrate that even with weight regulations and mandatory fitness programs for American service members, there is still a weight epidemic within all military service branches and the

⁴ See generally Rod Powers, *U.S. Military Chow Halls and Food Allowance Guide*, THE BALANCE, <https://www.thebalance.com/what-the-recruiter-never-told-you-3332717> (last updated Sept. 8, 2016).

⁵ See *Admiral Nimitz Hall Galley*, NAVYLIFEPNW.COM, <http://whidbey.navylifepnw.com/programs/f08bc65d-927d-4767-8c03-cc2dcb01f4e> (last visited Nov. 18, 2016) [hereinafter *Nimitz Galley*] (providing access to the current menu of Admiral Nimitz Hall Galley).

⁶ See generally Richard Demorris, *10 Ways to Keep Active While Deployed with the U.S. Military*, MATADOR NETWORK (Jul. 20, 2009), <http://matadornetwork.com/abroad/10-ways-to-keep-active-while-deployed-with-the-us-military/>. (during deployments and depending on the port location, military members will be allowed to explore the immediate area and many members look forward to enjoying a meal outside of the galley and trying the local cuisine).

⁷ See generally *Fuel Your Body*, WEBMD, <http://www.webmd.com/fitness-exercise/guide/health-fitness-fuel-your-body> (last visited Nov. 18, 2016).

⁸ See Part VI Subsection F, *The Greatest Effect of All* for an in-depth analysis.

⁹ See generally David Vergun, *Soldiers feasting on healthier food*, U.S. ARMY (Dec. 27, 2012), https://www.army.mil/article/93564/Soldiers_feasting_on_healthier_food/.

¹⁰ See Lance M. Bacon, *Fried food on the outs in changes for Navy chow halls*, NAVYTIMES (Jul. 12, 2015), <https://www.navytimes.com/story/military/2015/07/12/chow-hall-changes-are-headed-your-way/29936323/>.

food they are being fed has a significant role in that.¹¹ Part II explores the background of the military and their physical requirements. Part III analyzes the ways military members are served food. This depends on if the member lives on or off base. Part IV analyzes the past and current food systems that are provided both on land and for members deployed on a ship. Part V analyzes the new food program that all branches of service will be required to follow. Part VI provides opinions from past and current service members regarding the current food system and their outlook on the new food program. It will discuss the role food plays in morale; where the fault should fall when a service member falls out of body standards; the effect on national security due to the epidemic; the money expended for weight related disability; as well as the remedies that the military and the Department of Defense (“DOD”) actively have. Part VII recommends the various ways and numerous programs the military and DOD have in place that actively strive to remedy this weight epidemic American military members are suffering from. Finally, Part VIII concludes that although there is room for improving the food provided for American service members, the new food program seems to be what will have the greatest impact on the epidemic and be able to turn it around.

II. THE MILITARY SYSTEM

Currently, the American military is comprised of approximately 2,118,000 sailors, soldiers, marines, and airmen.¹² That means more than two million people must stay within body standards as well as successfully complete a semi-annual physical readiness test (“PRT”) implemented by the military, or members can face administrative punishment, including being discharged from the armed services.¹³ Every branch of the military has a semi-annual PRT, however the

¹¹ *Id.* at 2.

¹² *Budget Infographic*, U.S. DEPARTMENT OF DEFENSE, http://www.defense.gov/Portals/1/features/2015/0215_budget/info02.jpg (last visited Nov. 18, 2016).

¹³ These vary between branches; The Marine Corps’ PRT is annually which is conducted during the first half of the year. They also have a Combat Fitness Test (CFT) which is conducted annually, during the second half of the year. *See Marine Corps Order 6100.13 W/CH 1, section 3-1 Combat Fitness Test*, UNITED STATES MARINE CORPS (Aug. 1, 2008), http://www.marines.mil/Portals/59/Publications/MCO%206100.13%20W_CH%201.pdf. [hereinafter *Marine CFT*].

standards and minimum requirements differ in each branch.¹⁴ For example, during a U.S. Navy PRT the sailor must weigh in at or below a specific weight based on their height and gender.¹⁵ Their gender and age will determine the minimum number of sit-ups and push-ups that must be completed in a specific amount of time, and required time to complete a mile and a half.¹⁶ If there is a medical reason as to why participation in the sit-ups, push-ups, or run is impossible, a waiver may be granted.¹⁷ However, the service member must consistently remain within the proper weight standards.¹⁸ Should the member be unable to participate in the Body Composition Assessment (“BCA”) a BCA waiver may also be granted.¹⁹

A service member’s diet is not taken into consideration, and naturally it should not be as it would undermine the physical readiness aspect of the military.²⁰ Beyond the physical readiness aspect, the

¹⁴ *Air Force Instruction 36-2905*, U.S. AIR FORCE (Oct. 21, 2013), http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2905/afi36-2905.pdf. [hereinafter *Air Force PRT*];

FM 7-22 Army Physical Readiness Training, LOUISIANA STATE UNIVERSITY (Oct. 2012), http://www.lsu.edu/hss/milsci/resources/fm7_22.pdf. [hereinafter *Army PRT*]; *OPNAV Instruction 6110.1J*, U.S. NAVY (Jul 11, 2011), http://www.navy-prt.com/files/6110.1J_-_Physical_Readiness_program.pdf. [hereinafter *Navy PRT*]; Marine CFT, *supra* note 13, at 3. (providing the individual branches physical readiness requirements).

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 3.

¹⁷ See *Physical Fitness Assessment (PFA) Medical Clearance/Waiver, Navy Physical Readiness Program*, U.S. NAVY, http://www.public.navy.mil/bupers-npc/support/21st_Century_Sailor/physical/Documents/Guide%206-%20PFA%20Medical%20Waiver.pdf (last visited Mar. 13, 2017) [hereinafter *Navy Waiver*];

Marine CFT, *supra* note 13, at 3; *Air Force PRT*, *supra* note 14, at 3; See Part VI Subsection G *Gain Weight; Lose My Job, That’s It?* for an in-depth analysis.

¹⁸ *Navy Waiver*, *supra* at 17, 4.

¹⁹ *Navy Waiver*, *supra* note 17, at 4; *Army PRT*, *supra* note 14, at 3; See Part VI Subsection G *Gain Weight; Lose My Job, That’s It?* for an in-depth analysis.

²⁰ See generally Aniesa Holmes, *Helping Soldiers shed pounds*, U.S. Army (Nov. 4, 2014), https://www.army.mil/article/137627/Helping_Soldiers_shed_pounds. (New service member recruits who routinely maintained unhealthy lifestyles quickly learn such a lifestyle cannot continue upon entrance into the service. These recruits are expected to become physically and mentally fit service members who are well disciplined in every aspect of their lives; this includes the food they eat).

service member's "chosen diet" can also greatly impact a multitude of areas of their career.²¹

III. GALLEY'S VS. FOOD ALLOWANCE

Generally each military installation has a dining facility; these dining facilities are referred to as galleys, DFAC's, mess halls, or chow halls.²² Most of these facilities will provide breakfast, lunch, dinner, and a midnight meal for those members who work a night or mid-shift.²³ These facilities are open to all military members and certain civilians who have access to the military installations such as family members, civilian contractors, or DOD employees.²⁴ Members who do not receive basic allowance for subsistence ("BAS") can eat at the galley for no out-of-pocket expense.²⁵ While there are various rules on who can receive BAS, generally members who are married or not residing in the barracks or dormitories provided by the military and receiving a basic housing allowance will be the ones to receive this allowance.²⁶

BAS is not intended to cover all costs of the member's food, but instead to offset costs for a member's meal.²⁷ As a result of fluctuations in food costs, BAS is adjusted every year.²⁸ Most enlisted members will receive full BAS, however, a discount meal rate ("DMR") offset will apply during deployment,²⁹ while members are in

²¹ See generally Brenda Forman; Vivian T. Hutson, Rd, Ld, Fache; Tami A. Piemonte, Rd, Ld; and James Weinstein, Rd, *Nutrition and Weight Control*, RECRUIT MEDICINE, https://ke.army.mil/bordeninstitute/published_volumes/recruit_medicine/RM-ch22.pdf (last visited December 11, 2016).

²² The difference in titles comes from the different service branches.

²³ Nimitz Galley, *supra* note 5, at 2.

²⁴ There may be some restrictions regarding the facilities, further detailed in the following paragraph. See generally Powers, *supra* note 4, at 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Military Compensation, *Basic Allowance for Subsistence (BAS)*, U.S. DEPT. OF DEFENSE, <http://militarypay.defense.gov/PAY/ALLOWANCES/bas.aspx> (last visited Jan. 16, 2017).

²⁸ *Id.*

²⁹ See generally *Marine Corps Order 10110.47A*, UNITED STATES MARINE CORPS (Sep. 25, 2013), <http://www.marines.mil/Portals/59/MCO%2010110.47A.pdf>. (DMR applies to meals and rations provided by or on behalf of the U.S. Government and differs from BAS as BAS is to cover food NOT provided for by the government.

boot camp or initial schooling, and while the member resides in the government-owned barracks, dormitories, or ships, and required to eat their meals at their dining facility.³⁰ These members will not actually see the BAS (or full amount) in their paycheck.³¹

Also, a member may submit in a request to receive the allowance and if the military decides it's more advantageous to pay you these allowances (an example being when there is overcrowding in the barracks or dormitories), a member may receive BAS that way.³² A member receiving BAS will not be entitled to eat at the galley for free, and could be at risk of losing BAS if they chose to utilize the galley too often.³³

Members who do not receive BAS can eat at the galley for no out-of-pocket expense.³⁴ These members receive what the Air Force calls a meal card, which identifies them as a non-receiving BAS member.³⁵ Anyone else that utilizes the dining halls will pay a flat fee.³⁶

The average low ranking, single military member will utilize their base's galley for all three of their daily meals due to the fact that they are not receiving BAS.³⁷ In addition, many members up and down the ranking chain will eat at the galley; this is partially because of the convenience of the location as well as the variety of foods, drinks, and

When the government is providing the food, the member is not entitled to be paid an allowance that will not be used as intended).

³⁰ See *Basic Allowance for Subsistence*, MILITARY.COM, <http://www.military.com/benefits/military-pay/allowances/basic-allowance-for-subsistence.html> (last visited Jan. 16, 2017).

³¹ See generally Powers, *supra* note 4, at 2.

³² See MILSPERMAN 7220-160, *Basic Allowance for Subsistence*, U.S. NAVY (Dec. 23, 2008), <http://www.public.navy.mil/bupers-npc/reference/milpersman/7000/Documents/7220-160.pdf>; see generally Powers, *supra* note 4, at 2.

³³ See generally Powers, *supra* note 4, at 2.

³⁴ Every service member receives BAS; however, the cost may be pro-rated and the member won't actually see the money in their paycheck. Elaborated more below in section III, *Galley's Vs. Food Allowance*.

³⁵ See generally Powers, *supra* note 4, at 2.

³⁶ See generally *id.*

³⁷ See generally Jacob Summers, *Eating with A Purpose: Barracks Life*, BARS + STRIPES FITNESS (Apr. 19, 2015), <https://barsandstripesfitness.com/2015/04/19/eating-with-a-purpose-barracks-life/>. (explaining in part that living in the barracks, members are likely to be utilizing the military food installations solely due to budget concerns stemming from the member not receiving BAS).

desserts that are available at a flat cost.³⁸ Sailors and marines attached to a ship during deployments will have no other substantial food option except what is provided to them in the galley.³⁹ Soldiers in the field will likely rely on Meals Ready to Eat (described in-depth later in this comment) or no food at all.⁴⁰

IV. THE PAST AND CURRENT FOOD SYSTEM

The average galley will have a “fast line” that serves food similar to what someone would expect from a fast food restaurant.⁴¹ This includes, hamburgers, fries, hotdogs, and entrée-and-sides styled meals.⁴² There will also be a “main line” serving more home-style food.⁴³ Most facilities also offer a salad bar with a wide range of vegetables, dressings, toppings, desserts and drinks.⁴⁴

In 2004, the Navy released a story that highlighted the ever-evolving food programs.⁴⁵ The article stated that, “as part of the Advanced Food Concepts (AFC) program, the galley will be adding a second ‘main line’ entree to their current selection.”⁴⁶ The goal of the main line is to prepare a meal using fifty percent pre-prepared food and fifty percent food cooked from scratch.⁴⁷

In 2012, the Army published an article describing the process, that later evolved into the Soldier Fueling initiative.⁴⁸ The initiative began

³⁸ See generally Powers, *supra* note 4, at 2.

³⁹ See generally *Module 1-Basics of Shipboard life*, Ready-For-Sea Handbook, U.S. NAVAL RESERVE INTELLIGENCE PROGRAM, <http://fas.org/irp/doddir/navy/rfs/part01.htm> (last visited Jan. 16, 2017).

⁴⁰ See Oliver Lee, *What Do Our Troops Eat?*, TAKEPART (Sep. 20, 2011), <http://www.takepart.com/article/2011/09/18/what-do-soldiers-eat-afghanistan>.

⁴¹ See generally Charlotte Balcomb, *Navy Winning Nutrition Battle There's Room For A Little Fast Food In The Galley*, ORLANDO SENTINEL (Aug. 14, 1986), http://articles.orlandosentinel.com/1986-08-14/lifestyle/0240340145_1_galley-speed-line-fast-foods. (providing a glimpse at how different, yet similar, Naval galleys are compared to today. It also provides a good indication that food and military personnel's diets have always been a topic of concern).

⁴² See generally *id.*

⁴³ Nimitz Galley, *supra* note 5, at 2.

⁴⁴ See generally *id.*

⁴⁵ See Journalist 2nd Class Jon Rasmussen, *NAS Whidbey to Test New Galley*, UNITED STATES NAVY (Aug. 5, 2004), http://www.navy.mil/submit/display.asp?story_id=14566.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Vergun, *supra* note 9, at 2.

in the mid-2000's when the Army realized that newly enlisted and commissioned soldiers struggled with physical fitness and experienced health issues.⁴⁹ The primary cause of these issues was due to the soldier's poor diet and eating habits.⁵⁰

After many obstacles and concerns, the development of better tasting and more nutritious food options through the help of culinary experts and researchers, and program evaluations, the Soldier Fueling Initiative launched in 2011.⁵¹ The program establishes healthy eating standards for Soldiers to improve their health and performance during Initial Military Training.⁵² As many changes as the military has had regarding their food program, it was still in need of a significant overhaul.

V. THE NEW FOOD SYSTEM

Section 301 of Public Law 101-445 also known as 7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, Title III, directs that the U.S. Department of Agriculture and Health and Human Services publish a joint nutritional and dietary report to be used as guidelines for the general public.⁵³ These Dietary Guidelines are to be published at least every five-years and must be premised on "the preponderance of current scientific and medical knowledge."⁵⁴ To comply with the law, the Department of Defense implemented to all service branches, the Go for Green ("G4G") food program.⁵⁵

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See Conference Paper, *Soldier Fueling Initiative: Results of a program evaluation among Soldiers in Basic Combat Training and Advanced Individual Training* (Oct. 2012),

https://www.researchgate.net/publication/266780403_Soldier_Fueling_Initiative_Results_of_a_program_evaluation_among_Soldiers_in_Basic_Combat_Training_and_Advanced_Individual_Training.

⁵³ 7 U.S.C. 5341; See *Dietary Guidelines*, U.S. DEP'T OF AGRIC., <https://www.cnpp.usda.gov/dietary-guidelines>.

⁵⁴ 7 U.S.C. 5341; *Dietary Guidelines*, *supra* note 53, at 8; See *2015-2020 Dietary Guidelines for Americans*, U.S. DEP'T OF AGRIC., <https://www.cnpp.usda.gov/2015-2020-dietary-guidelines-americans>.

⁵⁵ See *Go for Green Fueling to Enhance Performance, Readiness, and Health*, HUMAN PERFORMANCE CENTER, <http://hprc-online.org/nutrition/files/g4g-overview-presentation> (last visited April 8, 2017); See Brittany Carlson, *Health by stealth: Army DFACs swap in 'greener' menus*, U.S. ARMY (Aug. 23, 2011).

G4G was built on many scientific concepts that were proven to guide individuals to make better food conscious decisions.⁵⁶ The program is designed to encourage healthy food choices and eating habits for American military members, which in return will optimize the success in maintaining proper body standards and to maintain crucial combat readiness.⁵⁷ The program is also derived from the United States Department of Agriculture's "MyPlate" Program that provides valuable information on how to build a healthier eating style.⁵⁸ Nutrition professionals in the Department of Defense working in the fields of nutrition education, food service, and health promotion also provided input.⁵⁹

The program is integrated into military installations galleys or DFAC's by using informative cards, described by some as a "stoplight system" because of the red, amber (yellow), and green colors used, and will inform the person of the nutritional level of a specific food or beverage.⁶⁰ These color-coded labels will be based on nutrition quality and indicate fiber, sugar, degree of processing, type and amount of fat, as well as the overall wholesomeness of the food item.⁶¹ Furthermore, the cards will identify the sodium level using the standard indication of low, moderate, or high levels.⁶² The beverages and food items are labeled green (eat often), amber (eat occasionally), and red (eat rarely) based on the impact the food can have on a service member's

<https://www.army.mil/article/64060>). (There is an implication that the DOD G4G was molded after the Army's G4G program. For a number of years, the Army has utilized a performance coding system within the DFAC. In 2011, during the implementation of the Soldier Fueling Initiative the Army began using the "Go for Green" placards to inform each soldier how that specific food would affect their performance. They also began replacing fried foods with baked foods and replaced soda with flavored water).

⁵⁶ *Id.*

⁵⁷ See U.S. ARMY, *A Healthy Diet, LIFESTYLE*, <http://www.goarmy.com/soldier-life/fitness-and-nutrition/components-of-nutrition/healthy-diet.html> (last updated Jun. 12, 2014).

⁵⁸ See generally *MyPlate*, U.S. DEP'T OF AGRIC., <https://www.choosemyplate.gov/MyPlate> (last updated Jan. 7, 2016) (displaying how MyPlate gives suggestions on how to maximize healthy food options such as providing recipes, shopping tips, and an overall resource for nutritional education).

⁵⁹ See generally *G4G Background* (ND), <http://hprc-online.org/nutrition/files/G4GBackground102915.pdf>

⁶⁰ Go for Green, *supra* note 55, at 8.

⁶¹ *Id.*

⁶² *Id.*

performance.⁶³ One major aspect of the program will be the placement of the food.⁶⁴ Making green food more visible and appealing will be a primary goal as it has been found that strategically placed food can impact a consumer's choice on what they choose to eat.⁶⁵

In May of 2015, the Secretary of the Navy, Ray Mabus, announced that many changes were coming to the Navy, which included the area of nutrition.⁶⁶ In particular, Mr. Mabus referred to the deep fryers placed in ships and shore based galleys.⁶⁷ Currently, these fryers are being removed and replaced with state-of-the-art ovens.⁶⁸ Typical fried foods such as French fries and breaded chicken will still be served; they will just be baked instead of fried.⁶⁹ This change is geared towards increasing a sailor's performance and fitness in the military.⁷⁰ In addition, these modifications will lower medical costs by improving the food sailors consume.⁷¹

On the other hand, food is the one consistency that military members can count on when they are deployed.⁷² During an interview conducted by the Navy Times, a Culinary Specialist 2nd Class stated, "certain foods, you can't get the flavor and texture you can get from the fryer, and when you're deployed that's one thing you have to look forward to."⁷³ This new food program will greatly impact a number of people and it seems there are different factors that affect members, past and present, in how this new food program is being perceived.⁷⁴

VI. ANALYSIS

A. Military Members Opinions

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Bacon, *supra* note 10, at 2.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See generally *id.*; Amy Gale, former AD2(AW), via telephone, Aug. 1, 2016.; Keith Allen, AM1(AW) U.S. Navy, via telephone, Aug. 4, 2016.; J.D. Hubert, Sergeant U.S. Army, via e-mail, Aug. 8, 2016. Interviews to immediately follow in Part VI, Subsection A: *Military Members Opinion.*

Not all sailors are opposed to this new cooking method.⁷⁵ When explained the changes made to the food and the new G4G program, a former 2nd Class in the Navy, Amy Gale⁷⁶, felt this was just one more aspect of American service member's lives that is being controlled.⁷⁷ Gale went on to say that ultimately, there is nothing wrong with American service member's food being prepared a little more health consciously.⁷⁸ If someone wants fried French fries, they can always go to McDonald's when they are on back on shore since fried foods are not going anywhere.⁷⁹ She finished by pointing out that if the military is trying to make the food healthier and their health directly ties into whether or not they are retained in the military, the member should just deal with it.⁸⁰

When Aviation Structural Mechanic First Class (AW) Donald Allen⁸¹ was asked how he felt about the fryers being removed from galleys, Allen used a personal experience to convey his opinion.⁸² Allen mentioned that he was recently on a boat det (detachment) and every one of them that was on the ship from his command ended up with food poisoning.⁸³ Allen attributed the illness to the lack of a fryer since, generally, a fryer will cook the food thoroughly.⁸⁴ When food is cooked in an oven, cook times are often longer and if the cook time is cut short, the food will not be cooked for the proper amount to ensure it will be thoroughly cooked.⁸⁵

During an interview with SGT J.D. Hubert of the United States Army,⁸⁶ I asked him if he thought the performance coding system at

⁷⁵ Gale, *supra* at note 74, 10, Allen, *supra* note 74, at 10.

⁷⁶ Former AD2(AW) Gale was Active Duty Navy for just shy of 14 years and deployed four times.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ AM1(AW) Allen has been Active Duty Navy for 15 years and has been on 4 deployments attached to a ship.

⁸² *Id.*

⁸³ A boat det is generally a three-six week hi-tempo training operation. *See generally Exercises-Navy*, GLOBALSECURITY.COM, <http://www.globalsecurity.org/military/ops/ex-navy.htm> (last updated Sep. 26, 2012); Allen, *see id.*

⁸⁴ Allen, *supra* note 74, at 10.

⁸⁵ *Id.*

⁸⁶ SGT Hubert has been in the Army for 12 years and has seen the endless changes of food programs during his time in service.

the DFAC was effective.⁸⁷ He responded by saying that he was on the fence about it because it does offer the healthier options which is what he sticks to when he has a PT test coming up, but the performance coding system does not work for those soldiers who do not know they are there or what the designations mean.⁸⁸ His suggestion for improving the performance-coded system would be to identify the meaning of the different codes.⁸⁹

B. The Greatest Effect of All

As a nation, the number of individuals that are overweight is alarming and is a real public health concern.⁹⁰ Sixty-eight percent of the civilian population is overweight and the active-duty military percentage is not far behind.⁹¹ Twenty-seven percent of individuals ranging between ages seventeen and twenty-four are medically denied to enlist into the armed services due to their weight.⁹² This is particularly concerning, because weight has become the leading medical disqualifier for military enlistment.⁹³

Major General Allen Batschelet, who is in charge of U.S. Army Recruiting Command stated in an interview with CNN regarding the weight issues running rampant in America, “We think by 2020 it could be as high as 50%, which means only 2 in 10 would qualify to join the Army.”⁹⁴

Remaining combat ready is fundamental aspect of the American military.⁹⁵ Despite the semi-annual physical readiness tests as well as potentially being mandated to participate in FEP, military personnel

⁸⁷ Hubert, *supra* note 74, at 10.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ See generally Marian Tanofsky-Kraff, Tracy Sbrocco, Kelly R. Theim, L. Adelyn Cohen, Eleanor R. Mackey, Eric Stice, Jennifer L. Henderson, Sarah J. McCreight, Edny J. Bryant, Mark B. Stephens, *Obesity and the US Military Family*, US NATIONAL LIBRARY OF MEDICINE NATIONAL INSTITUTES OF HEALTH (Nov. 2013), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4010088/#R15>. [hereinafter *Tanofsky-Kraff*].

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See Carol Costello, *America: Too fat to fight*, CNN (Apr. 21, 2015), <http://www.cnn.com/2015/04/21/opinions/costello-america-fat/index.html>.

⁹⁵ See generally 2004 Posture Statement, UNITED STATES ARMY, <https://www.army.mil/aps/04/core.html> (site last revised Apr. 27, 2016).

are not immune to being overweight.⁹⁶ In 2012, the website RT published an article that stated over a period of ten months that year, 1,625 troops were separated from the Army for being overweight.⁹⁷ The increase in weight related discharges, which RT said has more than tripled over the past five years, has in fact led top officials of the Army to deem it a national security concern.⁹⁸

Due to the increase of active duty soldiers who are obese, the Army tightened their physical readiness standards which created a backlash from soldiers who argued the fitness tests are too difficult.⁹⁹ Service member families even joined in to complain about the new policy.¹⁰⁰ One mother of a soldier voiced her opinion claiming her son and his family were now homeless due to being discharged from the Army after being injured while on deployment and unable to stay within the body standards.¹⁰¹ Her view is that her son's weight gain stems from his injuries, and not from being lazy.¹⁰² With that being said, per the Army Body Composition Program, not being able to participate in regular physical training does not excuse the member from being overweight; the soldier is required to maintain a "soldierly appearance" at all times.¹⁰³

C. Nutrition Factor

Aviation Structural Mechanic First Class (AW) Donald Allen is stationed on a Naval Base¹⁰⁴ that is located on the west coast. His specific base has not been implemented with the full G4G program, but after being described the G4G program and what it is intended to accomplish and how it will be implemented, Allen provided another insightful aspect of the impact nutrition, or lack thereof, has on his

⁹⁶ See generally Autonomous Nonprofit Organization "TV-Novosti", *Too fat to serve: US army gives tons of overweight soldiers the boot*, RT (Dec. 11, 2012), <https://www.rt.com/usa/obesity-us-army-soldiers-791/>. [hereinafter *Autonomous*].

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ See MCWT-HR, *The Army Body Composition Program (ABCP)* (Jul. 10, 2013), <http://www.wtc.army.mil/releases/ABCP1.pdf>. (stating that this includes major limb loss injuries).

¹⁰⁴ Allen has asked to not have his naval base be identified.

fellow sailors.¹⁰⁵ Allen is one of his commands fitness leaders (“CFL”).¹⁰⁶ As a CFL, Allen advises the commanding officer regarding any matter that is within Physical Readiness Program matters.¹⁰⁷ Furthermore, he will conduct the semi-annual PRT, as well as lead the command PT sessions and the Fitness Enhancement Program (“FEP”).¹⁰⁸ When a sailor fails to stay within the required body standards or needs assistance with completing their semi-annual PRT, that member must participate in the FEP.¹⁰⁹ Allen instructs and trains the sailor to aid the sailor in increasing his or her fitness.¹¹⁰ In addition, Allen reviews the sailor’s nutrition and diet.¹¹¹

Being a CFL, I come across a number of weight issues. Whether it is genetically, or by one’s own doing based on their poor food choices. We have people joining that are overweight, but lost just enough weight to enlist, so their bodies are used to being overweight and being given free rein to any type of food, they fall back into bad habits and all the weight comes back. Many of the sailors that are on FEP joined overweight and was not ever taught portion control or about nutrition, so can we really expect that they’ll go for the salad over the hamburger and fries? Not to mention, these members are introduced into stressful environments, and for many, food is where they find comfort. On the ship, you have two lines; one is the main line that offers a wide variety of “normal food” such as salad, a protein, mashed potatoes, then you have the fast line. There you have your burgers, wings, and the “fried food bar”. The Navy is not helping eliminate the weight issues so many sailors face by having those types of food available. Regardless if the portion is small or large, those members will still be drawn to that food and will choose it every time.¹¹²

¹⁰⁵ *Id.*

¹⁰⁶ See *Command Fitness Leader (CFL) Administrative Duties and Responsibilities*, Navy Physical Readiness Program, http://www.public.navy.mil/bupers-npc/support/21st_Century_Sailor/physical/Documents/Guide%201-CFLAdministrative%20Duties%20and%20Responsibilities.pdf. [hereinafter *CLF*].

¹⁰⁷ See *Command Fitness Guide: Command/Unit Physical Training (PT) and Fitness Enhancement Program (FEP)* (2011), Navy Physical Readiness Program http://www.public.navy.mil/bupers-npc/support/21st_Century_Sailor/physical/Documents/Command%20PT%20and%20FEP%20Guide%202011.pdf. [hereinafter *Fitness Guide*].

¹⁰⁸ CFL, *supra* note 106, at 13; Fitness Guide, *supra* note 107, at 13; FEP will be discussed in depth below in Part VI Subsection G *Gain Weight; Lose My Job, That’s It?*

¹⁰⁹ Navy PRT, *supra* note 14, at 3; Fitness Guide, *supra* note 107, at 13.

¹¹⁰ Fitness Guide, *supra* note 107, at 13.

¹¹¹ See generally *id.*

¹¹² Allen, *supra* note 74, at 10.

I conducted an in-depth interview with Captain Jason Sharp who is a Physician's Assistant in the United States Army.¹¹³ Sharp has a unique but powerful observation of how much of an issue weight truly is with many of American service members.¹¹⁴ He sees every member from the base that he is stationed at so he sees the members separating from the military or needing their annual physical required by the Army.¹¹⁵ When asked how many people separate with weight issues, Sharp stated, "I'd have to say about forty percent of people I see during their separation physicals are overweight."¹¹⁶ I continued my interview with Sharp, now being more interested in hearing his perspective from a medical stand point, what he thought about the food and nutrition value that is served at the DFAC's.¹¹⁷ I briefly described the G4G program, how it is set up, and the intentions behind it. Sharp said that the DFAC has the green, yellow, and red designators on all their food service items.¹¹⁸ However, the problematic areas he sees with his patients are portions and non-meal plan consumption.¹¹⁹ Meaning they are not getting an exact—or even close—portion compared to the advertised serving size and they choose not to follow a balanced meal plan: lean protein, one to two veggies, a small starch, a fruit, water or milk.¹²⁰ Sharp said the patients seem to opt for a large protein, no veggies, no fruit, cake, and double servings of starches.¹²¹ That or they just skip the DFAC and opt for fast food because they did not like what the DFAC is offering them. Further, I asked him if he had any suggestions on how this program could be improved or ways to help people understand portions better.¹²² Sharp's opinion was that "the DFAC may better serve service members by offering specific meal options, based on dietary recommendations [and menu style] rather than allowing people to pick and choose, often to their detriment. As well as getting rid of the fast food lines."¹²³

¹¹³ Jason Sharp, Captain U.S. Army, via Facebook, June 15, 2016

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

D. The “Other Food”

Not every job within the military is on a base or ship that has a readily available galley or DFAC.¹²⁴ Service members that are out in the field during training or missions have the only option of eating Meals Ready to Eat (“MRE”), or not eat at all.¹²⁵ MRE’s are prepackaged meals that allow the service member to have a meal that is hot, but that does not require a flame.¹²⁶ Each MRE comes with a Flameless Ration Heater even though the MRE does not have to warm to be consumed.¹²⁷ They have a substantial shelf life and can withstand a parachute jump.¹²⁸ MRE’s are available in a number of different flavor indexes, such as meatballs in marinara sauce, and Asian style beef strips with vegetables.¹²⁹ An individual MRE, without the added available “sides” carry a hefty calorie count and breakdown of nutrients.¹³⁰ For example, the Asian style beef strips with vegetables has a calorie count of 1,381.¹³¹ This MRE has a staggering 2,426mg of sodium and 185g of total carbohydrates.¹³²

While these numbers would be shocking to an average person who is conscious of a daily intake of 2,000 calories, MRE’s are designed to be nutritionally balanced replenishing essential vitamins and nutrients assisting in staying combat ready.¹³³ Each MRE provides an average of 1,250 calories (13% protein, 36% fat, and 51% carbohydrates) and one-third of the Military Recommended Daily Allowance of vitamins and minerals.¹³⁴ While they are definitely not intended as a long-term food solution, they allow the service member to have a hot meal (if they so choose) until they can return to a location that provides them with a galley or DFAC.¹³⁵

¹²⁴ Lee, *supra* note 40, at 6.

¹²⁵ *Id.*

¹²⁶ See generally *Military Food: Inside A MRE*, Today’s Military, <http://todaysmilitary.com/videos/military-food-inside-an-mre> (site last visited April 8, 2017).

¹²⁷ See generally *id.*

¹²⁸ See generally *id.*

¹²⁹ See *Combat Rations Database*, ComRaD (ND), <http://hprc-online.org/comrad/>.

¹³⁰ See generally *id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Military Food: Inside A MRE*, *supra* note 126, at 16.

¹³⁴ *Id.*

¹³⁵ *Id.*

E. How Food Can Affect Morale

In 2010, the United States commander in Afghanistan, General Stanley McChrystal, implemented a base-wide ban of fast food outlets ending the “junk food culture” that had taken root.¹³⁶ General McChrystal did not state the reasoning behind the ban was for the health of the soldiers, rather, he said that a war zone is not an amusement park,¹³⁷ and that those restaurants are luxuries which create a distraction from the task at hand.¹³⁸ These fast food restaurants were situated just a few miles down the road from a location known to be the home of the Taliban.¹³⁹ Even with the real security threat, many service members felt the ban was an unnecessary, added burden on those who were on the base for extended deployment tours.¹⁴⁰

One Captain stated “when we were getting ready for what you knew would be a dangerous operation, many of my men would make a point of going to Pizza Hut right before they left. When you think about it, that’s quite significant psychologically.”¹⁴¹ Of course not all soldiers and Marines were affected by the ban, and many whom served in combat within the area of the ban felt civilians believe food plays a bigger role in their morale than it really does.¹⁴² These service members, both active duty and veterans, believed that the local cuisine they had become fond of as well as the care packaged filled with snacks sent by family and friends was much more of a morale booster.¹⁴³ In a CNN article, one Marine was quoted saying, “[t]he big things that improve morale in a combat zone are lots of letters and packages from loved ones.”¹⁴⁴

¹³⁶ See Jon Boone, *US commander in Afghanistan bans burger and pizza bars at Kandahar base*, THE GUARDIAN (Mar. 25, 2010), <https://www.theguardian.com/world/2010/mar/25/us-commander-afghanistan-bans-burger-pizza>.

¹³⁷ *Id.*

¹³⁸ See *U.S. General bans fast food for Dutch soldiers*, Dutch Daily News (May 1, 2010), <http://www.dutchdailynews.com/u-s-general-bans-fast-food-for-dutch-soldiers/>.

¹³⁹ Boone, *supra* note 136, at 16.

¹⁴⁰ *Id.*

¹⁴¹ Lee, *supra* note 40, at 6.

¹⁴² See John DeVore, *For troops, a happy meal is relative*, CNN (Apr. 20, 2010), <http://www.cnn.com/2010/LIVING/homestyle/04/20/military.food/>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

There were two differing views to General McChrystal's ban on fast food.¹⁴⁵ One side that didn't mind the ban and the other who felt that fast food was a "taste of home" and aided in keeping morale high.¹⁴⁶ Those affected by the ban were greatly relieved when General Davis Petraeus lifted his predecessor's ban and reopened fifty-seven eateries that had been closed eight months prior.¹⁴⁷ General Petraeus released a statement saying, "these quality-of-life programs remain important to soldiers for stress relief and therefore enhancing military readiness."¹⁴⁸ It can be inferred that, up and down the military ranks, food plays a significant role in the morale of American service members.¹⁴⁹

F. So Who is at Fault When the Member Chooses a Poor Diet? The Military or the Member?

During my interview with Allen, I asked whether he felt that the military has a responsibility in feeding its members a specific diet or to teach them about nutrition and how to properly eat, Allen stated "not their responsibility at all."¹⁵⁰ Allen believes that being an adult creates a responsibility in itself and when the member cannot obey the physical standards that they are told from the time they joined, the sole responsibility of their discharge rests on their own shoulders.¹⁵¹ Allen further stated that, "the only responsibility the military has is to provide the members with food."¹⁵² The responsibility then shifts to the member to decide what food they will consume."¹⁵³

During the interview with Captain Sharp, I shared with him my perspective that the average member is quite young when they join and if they've only ever known unhealthy food choices, and asked how can we expect them to make better choices, especially if we continue to allow them to eat so unhealthily? Sharp responded with his first-hand account of this issue saying that ignorance of good food choices is not

¹⁴⁵ See generally *id.*; Taylor Freitas, *Fast Food Returns To Military Bases In Afghanistan*, Neon Tommy (Oct. 7, 2010), <http://www.neontommy.com/news/2010/10/fast-food-returns-military-bases-afghanistan>.

¹⁴⁶ See generally DeVore, *supra* note 142, at 17.

¹⁴⁷ Freitas, *supra* note 145, at 17.

¹⁴⁸ *Id.*

¹⁴⁹ See generally *id.*

¹⁵⁰ Allen, *supra* note 74, at 10.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

what is at issue here; it's more of the issue that a lot of these individuals are young and want what they want.¹⁵⁴ I followed up his response by asking him if he thought better food should be a priority, specifically the preparation and what is being offered. Sharp responded by providing an in-depth, great insight.

Offering organic or less processed options would be ideal; the military is in the habit of saving money. That places more processed foods in the kitchen. There is still a great deal of food prep that goes on, from my discussion with the cooks, but a lot of the items they are working with have some element of processing, for shelf life or expediency of preparation. I think a greater factor related to weight management issues for today's service members is a general cultural ignorance of and acceptance to commercial foods in our day to day. It has become ingrained and hard to shake for many of them. I think the weight standards are more than fair and accurately related to what would be considered medically healthy. More weight means greater risk for cardiovascular disease, chronic diseases, and increase mortality. That's a solid fact. Changing the standards would only further ingrain a suboptimal standard. Most of the people who leave active duty associated with weight standards are likely to continue to have weight problems throughout their lifetime.¹⁵⁵

While it appears Sharp believes the fault falls on the service members for falling out of weight standards, in an article published by the Army, a registered dietician who participated in the implementation of the Soldier Fueling Initiative seemed to believe that the military does share some of the responsibility when it comes to service member's weight and the food they choose.¹⁵⁶ Being aware that it is a modern American endemic, and not just an Army problem that unhealthy food often is preferred, the dietician believed that the Army still "must find a way to make healthier choices available" and the soldiers dining facility was the place to start.¹⁵⁷ Furthermore, Army Regulation 40-25 Nutrition Standards and Education: Chapter 2-1f states, "the DOD installation and hospital dining facilities should serve as models to help military members, family members and DOD employees meet recommended nutritional guidelines."¹⁵⁸

¹⁵⁴ Sharp, *supra* note 113, at 14.

¹⁵⁵ *Id.*

¹⁵⁶ Vergun, *supra* note 9, at 2.

¹⁵⁷ *Id.*

¹⁵⁸ See U.S. ARMY, AR 40-25, NUTRITION STANDARDS AND EDUCATION, http://static.e-publishing.af.mil/production/1/af_sg/publication/afi44-141_ip/afi44-141_ip.pdf (last certified Jun. 14, 2010). (AR 40-25 Nutrition Standards and

If the actual members should be viewed as role models, surely the military in general would be the place to start in making that happen. “In 2008, over 4,500 service members were discharged for failing to meet weight standards, incurring a cost of more than \$183 million in annual recruiting and training expenses to the DOD.”¹⁵⁹ According to Accession Medical Standards Analysis and Research Activity, between recruitment, the process of enlisting, training through boot camp and initial schooling for the job, it is estimated that each service member costs \$75,000.¹⁶⁰ Additionally, another \$1.1 billion is incurred annually to assist active duty service members in maintaining their required body standards, as well as covering costs and expenses stemming from weight-related health issues.¹⁶¹

Over the past eight years the costs of recruiting and training service members has certainly increased.¹⁶² The military’s investment in service members should encourage them to ensure service members are healthy and consuming proper diets. After all, a service member could be discharged for falling out of weight standards within their first two years of service. That is a very significant amount of money to invest into a service member and then require them to eat somewhere (or pay out of pocket) that is not offering them the best food to assist in maintaining the required body standards.

G. Gain Weight; Lose My Job, That’s It?

Gaining weight and falling out of standards, or even failing any aspect of the PRT is not an automatic death sentence to the member’s military career.¹⁶³ In the Air Force, when an Airman receives an unsatisfactory PRT score, they must retest within ninety days of the failed test.¹⁶⁴ During a Navy PRT, in the event that the sailor fails the physical aspect of the PRT, a Commanding Officer (“CO”) may

Education: Chapter 2-1f is a procedure written in accordance with Army Regulations).

¹⁵⁹ Tanofsky-Kraff, *supra* note 90, at 11.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*; to include lost work productivity stemming from weight related issues.

¹⁶² See generally Brad Plumer, *America’s staggering defense budget, in charts*, THE WASHINGTON POST (Jan. 7, 2013), https://www.washingtonpost.com/news/wonk/wp/2013/01/07/everything-chuck-hagel-needs-to-know-about-the-defense-budget-in-charts/?utm_term=.9bbcd20fa881.

¹⁶³ See generally Navy PRT, *supra* note 14, at 3; Air Force PRT, *supra* note 14, at 3.

¹⁶⁴ Air Force PRT, *supra* note 14, at 3.

authorize the sailor to retest in order for them to successfully pass that PRT cycle.¹⁶⁵ It is the Navy member's responsibility to request a retake within twenty-four hours of the failed PRT, and retest within seven days.¹⁶⁶ Should the member not receive a retest for various reasons, and upon a failure, the member will be required to participate in FEP.¹⁶⁷

FEP is a mandatory program for any member who unsuccessfully completed any portion of the PRT.¹⁶⁸ However, this program is not only for those individuals who must participate.¹⁶⁹ It is within the CO's discretion to allow members who desire to improve their fitness to also participate.¹⁷⁰ For those members who are mandatorily required to participate, they will remain in the program until they successfully complete the following scheduled command PRT and meet a specific score in all PRT aspects.¹⁷¹ Airmen are required to participate in a unit FIP, to begin within ten days of the failed PRT will remain in the program until they also achieve a specific score.¹⁷² Marines whose fitness has degraded will be required to participate in the Remedial Conditioning Program for a minimum of thirty days and until they pass their PRT with a specific score, as pass the CFT.¹⁷³

To be administratively discharged from the Navy, the member must have failed to meet PFA standards three times in the most recent four-year period, unless a waiver of readiness has been approved.¹⁷⁴ In

¹⁶⁵ Sit-ups, push-ups, mile and a half run. BCA is not included, *See Navy PRT, supra* note 14, at 3 (explaining how retesting includes sit-ups, push-ups, and the mile and a half run. BCA is not included. One failed aspect of the PRT will be deemed a total failure of the PRT portion of that current PRT cycle, however, BCA retests are not authorized).

¹⁶⁶ *Id.*

¹⁶⁷ Fitness Guide, *supra* note 107, at 13; the Air Force refers to their comparable program as FIP- Fitness Improvement Program, *see Air Force PRT, supra* note 14, at 3.

¹⁶⁸ Navy PRT, *supra* note 14, at 3.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Air Force PRT, *supra* note 14, at 3.

¹⁷³ Marine CFT, *supra* at note 13, 3; Marines can have degraded fitness from a variety of reasons, including illness, pregnancy, low PRT scores or a failure of the CFT.

¹⁷⁴ Navy PRT, *supra* note 14, at 3 (explaining a waiver for readiness is a waiver of ADSEP processing and is granted for a specific PFA cycle only. The waiver is designed to address the adverse effect on unit, fleet, or community that would result from the loss of a specific individual).

regards to the Air Force, after four failures in a twenty-four month period, the Unit Commander must recommend the Airman be retained or discharged.¹⁷⁵ Should there be no medical reason for the inability to successfully complete the PRT, and the recommendation for discharge is accepted, discharge of the Airman will initiate.¹⁷⁶ After the second PRT or second CFT failure in the Marines, with no medical issues, the member will be processed out for administrative separation.¹⁷⁷

The military branches are not naïve to the fact that sometimes combat requirements, injuries, or medical issues occur, and in some instances, the service member may be unable or unfit to participate in the semi-annual physical fitness test.¹⁷⁸ Medical waivers are available and can be granted upon a showing of necessity.¹⁷⁹ Each branch has a medical waiver for members who are unfit to participate in all or part the official PRT.¹⁸⁰ These waivers must be approved by the appropriate authority prior to the PRT.¹⁸¹

During the official Navy PRT, if the member becomes ill or injured, the member will be sent to medical.¹⁸² If the illness or injury is determined to be from the member's lack of physical conditioning, a waiver will be denied.¹⁸³ The Navy also recognizes a BCA waiver for members whose measurements cannot be properly determined, a medical condition that is known to result in weight gain, and was recommended by a physician.¹⁸⁴ The Marines recognize exemptions

¹⁷⁵ Air Force PRT, *supra* note 14, at 3.

¹⁷⁶ *Id.*

¹⁷⁷ Marine CFT, *supra* note 13, at 3.

¹⁷⁸ See Navy Waiver, *supra* note 17, at 4; see Marine CFT, *supra* note 13, at 3; see Air Force PRT, *supra* note 14, at 3. (providing excusable medical issues and how they will be dealt with).

¹⁷⁹ See Navy Waiver, *supra* note 17, at 4; see Marine CFT, *supra* note 13, at 3; see Air Force PRT, *supra* note 14, at 3. (providing excusable medical issues and how they will be dealt with).

¹⁸⁰ See generally Navy Waiver, *supra* note 17, at 4 (providing various reasons for members to be unfit which include injury, illness, recovery from a surgical or medical procedure); Marine CFT, *supra* note 13, at 3; Air Force PRT, *supra* note 14, at 3. (providing various reasons for members to be unfit which include injury, illness, recovery from a surgical or medical procedure).

¹⁸¹ Navy Waiver, *supra* note 17, at 4; Marine CFT, *supra* note 13, at 3; Air Force PRT, *supra* note 14, at 3.

¹⁸² Navy Waiver, *supra* note 17, at 4.

¹⁸³ *Id.*

¹⁸⁴ *Id.* (stating medical conditions can include things such as the member had recent surgery on an area that measurements must be taken to calculate BCA, or there was a

when the member is deployed to a combat zone where they receive hostile fire pay, or are in a permanent or temporary limited duty status due to a medical issue deemed appropriate for exemption by the Appropriately Privileged Health Care Provider.¹⁸⁵ To exempt a Marine from the entire PRT/CFT, a Physical Evaluation Board (“PEB”) must find the exemption to be warranted.¹⁸⁶

Medical waivers are not a way for the service member to continually be exempt from participation in the PRT and are generally for that specific PRT cycle.¹⁸⁷ Specifically for the Navy, members with two consecutive medical waivers or three in a four-year period shall be referred to the military treatment facility for a medical evaluation board (“MEB”).¹⁸⁸ In the Marines, when a condition is determined to be permanent in nature, or becomes extended, there will be a formal MEB/PEB conducted in order to assess the member’s medical qualification to remain in active service.¹⁸⁹

The board is comprised of Active Duty physicians who determine whether the member is fit for full duty, should be placed on the temporary disabled/retired list, unfit for service and should be processed out, or should be medically retired.¹⁹⁰ The board bases their findings on comparisons of the published medical standards for continued military service and the member’s medical condition to determine if the member would be able to perform their military duties.¹⁹¹ The board’s recommendations are then sent to a central medical board, at which time the member is able to appeal.¹⁹²

newly diagnosed medical condition, such condition worsened in severity, or there was an increase in dosage for medicine in that six-month period).

¹⁸⁵ Marine CFT, *supra* note 13, at 3.

¹⁸⁶ *Id.*

¹⁸⁷ Navy Waiver, *supra* note 17, at 4 (explaining how often the waiver can be used and what happens if they waiver is used excessively).

¹⁸⁸ Navy PRT, *supra* note 14, at 3.

¹⁸⁹ Marine CFT, *supra* note 13, at 3.

¹⁹⁰ See Rod Powers, *Military Disability (Medical) Separations and Retirements*, The Balance (Nov. 9, 2016), <https://www.thebalance.com/military-disability-medical-separations-and-retirements-3356969>.

¹⁹¹ *Id.*

¹⁹² *Id.*

H. Give Me the Money

It is apparent there are great consequences to the weight issues for both Active Duty members and those who could potentially enlist.¹⁹³ However, these issues carry on beyond the service member's enlistment/commission.¹⁹⁴ There are multiple health issues that are associated with obesity such as diabetes, coronary artery disease, and higher rates of hypertension.¹⁹⁵ Not to mention, the increased health care costs, a shorter life span, and an overall poorer quality of life.¹⁹⁶ These medical issues can lead a veteran to receive disability compensation.¹⁹⁷ A veteran will not receive disability compensation if their only submitted claim is obesity.¹⁹⁸ However, a veteran may receive disability compensation if their obesity stems from their primary medical condition.¹⁹⁹ For instance, this scenario could arise when a veteran has Post Traumatic Stress Disorder ("PTSD").²⁰⁰ PTSD is Army Sue's primary medical condition and it leaves her

¹⁹³ See generally MILPERSMAN 1910-170, *Separation By Reason Of Physical Fitness Assessment (PFA) Failure*, U.S. NAVY (Feb. 2, 2013), <http://www.public.navy.mil/bupers-npc/reference/milpersman/1000/1900Separation/Documents/1910-170.pdf>. [hereinafter PFA Failure].

¹⁹⁴ See Karin Nelson, *The Burden of Obesity Among a National Probability Sample of Veterans*, US National Library of Medicine National Institutes of Health (Sep. 2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1831589/>.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Disability compensation is a tax-free benefit that a veteran will receive due to injuries or diseases the service member suffers while on active duty. See *What is VA Disability Compensation?*, U.S. DEP'T OF VETERANS AFFAIRS (ARP. 2015), (Apr. 2015),

<http://benefits.va.gov/BENEFITS/factsheets/serviceconnected/Compensation.pdf>.

Injuries or diseases that did not occur during the member's service but was aggravated by the service member's military service will also be compensated for.

Id.

¹⁹⁸ See generally U.S. DEP'T OF VETERANS AFFAIRS, *List By Symptom, Compensation*,

http://www.benefits.va.gov/COMPENSATION/dbq_ListBySymptom.asp (last updated May 15, 2014). (There are different levels to conditions, for example primary or secondary).

¹⁹⁹ See Cruiser's response, *Obesity can it be Secondary to Ptsd* (May 31, 2011), <http://vets.yuku.com/topic/59606#>. (provided thread comes from the VETERANS BENEFITS NETWORK under the specific topic of "VA Disability Claims").

²⁰⁰ *Id.*

unable to work-out.²⁰¹ The PTSD may contribute to and cause Army Sue to gain weight which could allow her to receive a secondary condition for being overweight.²⁰² Of course not all of these veterans are receiving disability payments for their weight issues, but it will put into perspective the amount of people who could potentially be eligible.

In 2003, a study was conducted to determine the obesity rate among veterans as found on the US National Library of Medicine National Institutes of Health website under the Title: The Burden of Obesity Among a National Probability Sample of Veterans.²⁰³ The study found that seventy-two percent of veterans who utilized the services offered by Veteran's Affairs ("VA") were overweight or obese.²⁰⁴ A different study that was published by the VA in 2013 found that more than 165,000 veterans utilizing VA health care were morbidly obese.²⁰⁵ Moreover, in 2013, researchers with the San Francisco VA Medical Center published a study that found veterans who suffered from PTSD or depression had the highest obesity rates.²⁰⁶ The researchers also found that out of all Iraq and Afghanistan veterans utilizing the VA health care, seventy-five percent of them were either overweight or obese at their first visit.²⁰⁷

Veterans deemed obese or morbidly obese have very high health expenses.²⁰⁸ Bariatric surgery is often a viable option for veterans due to its undeniable health benefits; however, it carries a hefty cost.²⁰⁹ In 2012, the VA conducted a study in which it found that three years after treating veterans surgically, the cost was similar to what it would cost to treat veterans who did not receive surgical treatment.²¹⁰

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Nelson, *supra* note 194, at 23.

²⁰⁴ *Id.*

²⁰⁵ See Office of Research & Development, *Obesity*, U.S. DEP'T OF VETERANS AFFAIRS (last updated Oct. 14, 2016), <http://www.research.va.gov/topics/obesity.cfm>.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ See generally *id.*

²⁰⁹ The general term for all surgical procedures designed to address obesity. See *id.*

²¹⁰ *Id.*

VII. RECOMMENDATIONS

The DOD/VA is consistently striving to improve the ways they can assist a service member or a veteran in maintaining a healthy lifestyle and remain within proper body standards.²¹¹ Should either service member or veteran fall out of body standards or suffer from weight related issues, there are various programs readily available to the service member or veteran.²¹² Besides mandatory command PT, the physical enhancement programs will be mandatory for the service member to assist them in getting back within military regulations.²¹³ For the veterans who will not be bound to mandatory PT, there are also numerous websites to assist them in maintaining a healthy activity level as well as guidance to making good food choices.²¹⁴ Most military bases have a gym that has a swimming pool, cardio equipment, weight lifting equipment, an indoor and outdoor track, as well as various fitness classes, all free to the service member.²¹⁵

The website *military.com* has a Military Fitness Center that provides multiple sources for service members and their families to get fit.²¹⁶ The Commissary Agency²¹⁷ provides information on their website

²¹¹ See generally Navy PRT, *supra* note 14, at 3 (there are various programs detailed immediately to follow); See *MOVE! Weight Management Program*, U.S. DEP'T OF VETERANS AFFAIRS, <http://www.move.va.gov/> (last updated Aug. 1, 2016). [hereinafter *MOVE!*]; See Military Fitness Center, *Military.com*, <http://www.military.com/military-fitness> (last updated 2016). (each of these websites provides the service member and veteran online support that can assist in gaining and maintaining a healthy lifestyle).

²¹² See generally Navy PRT, *supra* note 14, at 3, see *MOVE!*, *supra* note 211, at 25; see Military Fitness Center, *supra* note 211, at 25. (each of these websites provides the service member and veteran online support that can assist in gaining and maintaining a healthy lifestyle).

²¹³ See generally Navy PRT, *supra* note 14, at 3.

²¹⁴ See generally *MOVE!*, *supra* note 211, at 25. (This program is designed to encourage veterans to improve their eating habits, increase their physical activity, and ways to improve their quality of life).

²¹⁵ See generally *Whidbey Fitness Center*, *navylifepnw.com*, <http://whidbey.navylifepnw.com/programs/b968d371-8335-4f95-ae25-52db133820bf> (site last visited April 8, 2017). (providing an example of one such facility).

²¹⁶ Military Fitness Center, *supra* note 211, at 25. (to include various workouts, recipes, and general fitness information).

²¹⁷ The grocery store on base; see generally *Commissaries.com*, <http://www.commissaries.com/> (site last visited April 8, 2017). (Under the Healthy Living tab.)

regarding healthy eating and even has a section entitled “Healthy Living” that offers recipes with their nutritional.²¹⁸ The VA also offers a program called MOVE! which offers both physical and nutritional information to guide the veteran in achieving weight management skills.²¹⁹

Another significant attempt to assist service members in maintaining proper body standards is a new pilot program conducted by the Navy.²²⁰ Six locations are extending their gym hours and remaining open for twenty-four hours.²²¹ This allows sailors to work out during times that best fit their schedule, instead of limiting their opportunity to times that may not work due to, for example, an extended workday.²²² As of November 11, 2016, this is a brand new program and while it’s too early to receive determinative feedback, it appears that it will be beneficial based on results of a similar program that launched last year.²²³ That program had extended the base gym hours by four-hours and the response from sailors was extremely positive.²²⁴

I was active duty U.S. Navy for five years, and from day one, I knew the repercussions of failing a PRT and the impact it would have on me. My performance evaluations would be affected, I could lose advancing to the next paygrade and upon failing three consecutive PRT’s, I would be administratively discharged. I cannot say I was ever taught what a balanced meal was, or what that even meant, but I knew how much my food intake would affect my PRT scores. That was enough for me to ensure I ate properly, worked out regularly, and maintained the proper weight, not my maximum allowed weight. Generally, the nutrients we fuel our body with derives from the food we intake. The old saying “food is fuel” doesn’t resonate with everyone the same way, or, I feel, people would be more conscious of the food they put in their

²¹⁸ See generally Laura Hieronymus, Pamela Rickerson, *Diabetes in the Military*, DIABETES SELF MANAGEMENT, <http://www.diabetesselfmanagement.com/about-diabetes/general-diabetes-information/diabetes-in-the-military/> (last updated Nov. 5, 2015); see generally Commisaries.com, *supra* note 217, at 26.

²¹⁹ MOVE!, *supra* note 211, at 25; Office of Research & Development, *supra* note 205, at 24.

²²⁰ See David Larter, *The Navy’s got an obesity problem- here’s how they plan to fix it*, NavyTimes (Nov. 11, 2016), <https://www.navytimes.com/articles/navy-24-hour-gym-access-obesity-in-the-military>.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

mouth. Especially service members who know where a poor diet/physical level can lead them. Yet, so many fellow sailors, particularly the junior ones, were not the least bit concerned about the food they ate, even when they were close to failing their PRT, or did.

I am certain the weight issues and cost associated with that (manning, disability pay, discharges, and training) is obvious to the military and there is no doubt the effort that they are putting in to figuring out what the best method is to fix it. Ultimately, the real change will come with the individual service members. They cannot be force fed, nor does anyone have to time to ensure the member is making the right food decisions and staying physically active as much as the average person would need to, to stay within body standards. However, the cost associated with each service member just to send them through boot camp and initial training should carry some burden on the military in assisting in providing proper nutrient rich foods and even minimal training on portion control, how to understand food labels, etc. It is American tax dollars funding the military's pay.

VIII. CONCLUSION

It is clear that there is a weight epidemic within the United States and American service members are not an exception to this.²²⁵ Even with the weight regulations and mandatory fitness programs for American service members, having access to an endless amount of unhealthy foods and drinks does not assist in maintaining a combat ready military.²²⁶ While some service members receive a food allowance and ultimately cannot hold anyone else accountable for their poor food choices, those members who must eat at their bases dining facilities have a valid argument that they are receiving a disservice from the very organization who expects them to maintain a specific physical standard. Potential recruits being unable to enlist and the American military dwindling down as the current members reach retirement and those who are eligible to enlist do not fulfill the required billets to maintain a fully manned military is no doubt a subject to be concerned about.²²⁷ The current food programs definitely needed some work and the new G4G program is sure to produce great results, as long as the individual members do their part in making the

²²⁵ See Costello, *supra* note 94, at 12; Autonomous, *supra* note 96, at 12.

²²⁶ See generally Nimitz Galley, *supra* note 5, at 2.

²²⁷ See generally Tanofsky-Kraff, *supra* note 90, at 11.

best food choices, stay active, and the program works as intended.²²⁸ The food group identifiers seem to be the easiest route to have the greatest effect, so long as the members can understand them.

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²²⁸ See generally Larter, *supra* note 220, at 26.

²²⁹ J.D. Candidate, San Joaquin College of Law, 2017. Thanks to Amy Gale, Keith Allen, Jason Sharp, and J.D. Hubert for allowing me to interview you and receive such insightful opinions to the current and new food program.