



DEPARTMENT OF THE NAVY
SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS
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IN REPLY REFER TO:
1850
CORB: 003
24 Jan 23

SECNAVCORB POLICY LETTER 2023-1

From: Director, Secretary of the Navy Council of Review Boards (SECNAVCORB)

Subj: FORMAL PEB APPEALS

Ref: (a) DODI 1332.18 of 10 Nov 22
(b) ASN M&RA Memo for DIRSECNAVCORB re “Interim Guidance IAW DoDI 1332.18” of 2 Dec 2022
(c) SECNAVINST 1850.4F
(d) JAGINST 5800.7G CH-1
(e) SECNAVINST 1770.5
(f) SECNAV M-1850.1

Encl: (1) Formal PEB/MRR Appeals Petition

1. Purpose. This Policy Letter provides further interpretation, guidance, and clarification on Department of the Navy (DoN) Formal Physical Evaluation Board (PEB) Appeals. See references (a) and (b).
2. Background. Reference (b) designates Director, SECNAVCORB as the DoN’s Formal PEB Appellate Authority and redefines Director, SECNAVCORB’s responsibilities under reference (c) from considering “Petitions for Relief” to considering “Formal PEB Appeals.” This Policy Letter is issued pursuant to reference (b) and enclosure (2) paragraph 2.(a) of reference (c).
3. Discussion. With the findings of a Formal PEB hearing, the President PEB will inform Service members in writing that they are entitled to appeal their Formal PEB fitness for duty determination to the Director, SECNAVCORB as the Formal PEB Appellate Authority. Service members will be advised that they may appeal in writing, or they may request a hearing. Service members will make an election as to whether they desire to appeal their Formal PEB determinations via a post-Formal PEB Election of Options (EOO).
 - a. Formal PEB Appeal Timelines. The post-Formal PEB EOO must be returned to the PEB by the Service member or detailed counsel within fifteen (15) calendar days of receiving their Formal PEB findings. If the fifteenth day falls on a non-business day, the EOO is due on the first business day after the fifteenth calendar day. If the post-Formal PEB EOO requests a written appeal, the written appeal must accompany the post-Formal PEB EOO. A FPEB Appeal Submission Guide, maintained by SECNAVCORB and posted on the SECNAVCORB website, provides specifics on how and where to submit Formal PEB and Formal PEB Appeal EOOs and petitions.

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b. New Documentation from the Service member. If the Formal PEB Appeal is based on new documentation that was not considered by the Formal PEB, the new documentation must be submitted with the post-Formal PEB EOO. No material new evidence/documentation may be submitted at the Formal PEB Appeal Hearing.

c. Presumed Acceptance. If a post-Formal PEB EOO is not received by the PEB within fifteen (15) calendar days of receiving the FPEB findings, then the PEB will presume that the Service member accepts his/her Formal PEB findings and finalize the case. In the case of personnel on the TDRL, acceptance may only be presumed fifteen (15) calendar days after attempted delivery of the Formal PEB findings via certified mail to the last known address of the member.

4. PEB/DES Case File. Upon a Service member's request for a Formal PEB Appeal, the President PEB will provide access to the case file to the Director, SECNAVCORB. The President PEB will also ensure ongoing access to the PEB/DES case file to the Service member via the Service member or counsel. The PEB/DES case file will include the Impartial Medical Review (if one was conducted), the IPEB/FPEB decisions, and any documentation submitted by the Service member.

5. Legal Counsel. Service members are entitled to legal counsel for the Formal PEB Appeal. Detailed counsel from the Service member's Formal PEB hearing is available through the Office of the Judge Advocate General (OJAG) Disability Evaluation System Counsel Program (DESCP). The right to counsel applies for hearings and written appeals.

6. Formal PEB Written Appeal. The Formal PEB written appeal submission is submitted with the post-Formal PEB EOO pursuant to enclosure (1). The written appeal must be in writing and signed by either the Service member or the Service member's legal counsel. For guidance purposes, the requirements of the written appeal should be consistent with chapter 4 paragraph 8 of reference (f).

7. Formal PEB Appeal Hearings. Formal PEB appeal hearings will normally be scheduled to occur within 15 calendar days of the Service member's request for a hearing. Hearings will be conducted by a hearing official. The hearing official may be the Director, SECNAVCORB or his designee. Designees will be in the paygrade of O-5, civilian equivalent (GS-14), or higher. Formal PEB appeal hearings are non-fact finding. No witness testimony will be taken. No new evidence, beyond the new documentation submitted with the post Formal PEB EOO, will be received at the Formal PEB Appeal hearing. The following applies at Formal PEB appeal hearings:

a. Formal PEB Appeal Hearing Petition. Enclosure (1) contains Formal PEB Appeal Petitions: a Petition for Integrated Disability Evaluation System (IDES) cases, Temporary Disability Retirement List (TDRL) cases, and Medical Retention Review (MRR) cases. The Service member will submit the Formal PEB/MRR Appeals Petition with the post-Formal PEB/MRR EOO. Service members are encouraged to submit a legal brief, memo, or letter with

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the Formal PEB Petition that outlines reasons why s/he does not agree with the Formal PEB fitness determination with the Petition.

b. Formal PEB Appeal Hearing Time Limits. To ensure timely and efficient hearings, Service members will be allotted 15 minutes at the hearing to explain, and guided by the grounds for relief in chapter 4 paragraph 8(e) of reference (f), why the Service member does not agree with the Formal PEB fitness determination and why the desired relief should be granted. The 15 minutes may be allocated, in whole or in part, to the Service member and/or their legal counsel. Additional time may be granted by the hearing official at their discretion. Only one legal counsel may orally advocate for the Service member at the hearing. At their discretion, the hearing official may ask questions of the Service member or legal counsel to clarify issues, however, should there be a question as to whether the Service member's medical condition was incurred outside the line of duty or was the result of misconduct, the Service member will not be questioned about the origin, incidence, or aggravation of any medical condition, absent appropriate warnings. See reference (d).

c. Formal PEB Appeal Hearing Appearance. At the choice of the Service member the hearing will be conducted telephonically or by video-teleconference (MS Teams or other platform). The Service member's petition will state how they wish to appear.

d. Formal PEB Appeal Hearing Observers. Observers may attend the Formal PEB/MRR Appeal hearing with the Service member's consent. However, the Hearing Official may exclude any observer who interfere or attempts to interfere with the hearing or exhibits conduct that in the Hearing Official's discretion is believed to be inappropriate or disruptive.

8. Formal PEB Appeals Issues. The following issues are considered determinations of fitness for duty issues that are ripe for Formal PEB Appeals: fitness for continued service, the percentage of disability (in Legacy DES or Temporary Disability Retired List cases only), stability/permanence of the disability, and administrative determinations pursuant to references (a), (c), and (f).

9. Issues Not Relevant for Formal PEB Appeal Issues. The following issues shall not be considered during a Formal PEB Appeal: appeals of Reserve Component (RC) Line of Duty (LOD) Benefits and combat-related/combat-zone determinations. RC LOD Benefits are adjudicated and subject to appeal pursuant to references (c) and (e). Combat-related determinations have been delegated to the Office of the Judge Advocate General of the Navy, Administrative Law Division (Code 13). See references (c) and (f).

10. Material Issues of Fact. If, during, the course of a Formal PEB/MRR Appeal, there is a material issue of fact that requires further fact finding or investigation, the Formal PEB Appellate Authority may remand any case to the President, PEB with instructions for further case development or handling consistent with references (a), (c), and (f).

11. Formal PEB Appeal Extensions of Time. All requests for extensions in submitting a post-Formal PEB EOO must be in writing and sent directly to the Formal PEB Appellate Authority

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via SECNAVCORB legal counsel. Extensions will be granted for good cause. Circumstances that may constitute good cause include: unavailability of the Service member or legal counsel due to death, illness, or other extenuating circumstances. Obtaining new documentary evidence does not constitute good cause for an extension of time. The request will include a statement detailing the reasons why an extension is necessary, the length of the extension, the date the Formal PEB was held, and the date the Service member received the findings.

12. Formal PEB Appeal Determinations. Formal PEB Appeal determinations will be issued by the Formal PEB Appellate Authority in writing. Written determinations will comply with 10 U.S.C § 1222(a). With the Formal PEB Appeal determination, and assuming there have been no prior Service member requested VA rating reconsideration, Service members in the Integrated Disability Evaluation System may elect a one-time Department of Veterans Affairs rating reconsideration only for conditions determined unfitting, which the PEB will initiate on the member's behalf.

13. This policy letter is subject to ongoing review and may be revised or rescinded at any time.

J. A. RIEHL

Copy to:
President PEB
SECNAVCORB Counsel
Office Administrator
Program Manager, DON Disability Evaluation System Counsel Program