

CUI//SP-PRVCY
FPEB APPEAL
RULES OF PROCEDURE FOR OFFICE OF DISABILITY COUNSEL (ODC)
OR PRIVATE COUNSEL
1 Feb 23

PURPOSE: List rules of Formal Physical Evaluation Board (FPEB) Appeal Procedures for ODC or Private Counsel.

1. FPEB Appeal Timelines and Procedures

Weekends, family days and holidays shall be excluded from any suspense listed below. Any filing date falling on a weekend, family day, or holiday is required to be filed in Salesforce on the next duty day.

Note 1: All timelines are based on calendar days. If a suspense falls on a weekend, family day, or holiday, the requirement needs to be filed in Salesforce on the next duty day.

Note 2: The FPEB Appeal Board will review all FEB findings except for Line of Duty Determinations (LOD). LOD appeals, adjudicated by the Informal or Formal PEB, will be provided to the Air Force Personnel Board.

a. FPEB Appeal Election and Appeal Filing:

(1) The PEB gives the PEBLO or CC 3 days to notify the SM of their FPEB Determinations (AF Form 356). The PEBLO or CC must sign and date the AF Form 1180 documenting this notification.

(2) The Service Member (SM) will have 3 days to make an FPEB Appeal election following their FPEB AF Form 356 notification. The SM will sign and date their AF Form 1180 documenting this election. The AF Form 1180 should be loaded into Salesforce (Attachments Tab).

(3) The SM will then have 6 days from their FPEB election to work with Counsel to write and upload their signed contention memorandum and any exhibits into Salesforce. Counsel or SM can sign and date the contention memorandum. Private Counselors and Applicants without Counsel will work with the FPEB Case Manager to load the contention memorandum into Salesforce (Attachments Tab).

(a) Any request received after the deadline will be rejected, unless accompanied by compelling justification as to why the failure to timely file should be excused. Only Director or Deputy Director, SAFPC can excuse the failure to timely file.

(b) The contention memorandum must include:

(1) Applicant and Counselor's Rank/Title, Name, email address, and commercial telephone number.

(2) Request either a Virtual Hearing or Records Review, not both. The applicant does not need to attend the Virtual Hearing. If the SM attends, they do not need to testify.

(3) Possible Witness Rank/Prefix, Name, and Role. Note: it is the appellant's responsibility to secure the availability of witnesses.

(4) Contention(s) should align with at least one of the following criteria found in AFI 36-3212:

CUI//SP-PRVCY
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1 Feb 23

(i) New and compelling evidence not available to the Formal PEB that is material and relevant to the applicant's contention(s).

(ii) Evidence to substantiate allegations of fraud, misrepresentation, or abuse of discretion during the Integrated or Legacy Disability Evaluation System process.

(iii) Evidence of a mistake of law or policy. The appeal should clearly state what the mistake of law or policy is, and how it impacted the outcome of the case.

(c) Based on the current FPEB Appeal schedule, following submission of the written contention memorandum, ODC should have a minimum of 5 duty days to prepare for the virtual hearing with the SM.

(d) The FPEB Appeal Board will not accept additional evidence after the 6-days suspense to save the contention memorandum into Salesforce. Evidence that is unrelated to the contention(s) found in the contention memorandum can be submitted to the Air Force Board of Correction of Military Records (AFBCMR) for consideration.

b. The FPEB Case Manager will notify the Office of Disability Counsel (ODC) or Civilian Counsel, and PEBLO of:

(1) FPEB Appeal Withdrawal or Delay Memorandum:

(a) Any withdraw or delay request must be in writing and saved in Salesforce.

(b) Counsel will notify the FPEB Case Manager of this action.

(c) Only SAFPC Director/Deputy Director can approve a request for withdraw or delay and the FPEB Case Manager will notify ODC and PEBLO of the decision memorandum in Salesforce.

i. An approved withdrawal will result in acceptance of the original FPEB result.

ii. An approved Virtual Hearing delay for good cause will result in the rescheduling of the Virtual Hearing.

iii. A disapproved Virtual Hearing delay will result in a Records Review adjudication if the applicant/counsel fail to appear at the date and time of the originally scheduled hearing.

(2) FPEB Appeal Rejection Memorandum based on appeal viability.

(3) FPEB Appeal Virtual Hearing date, time, and Zoom information

(4) FPEB Appeal Findings will be documented on an FPEB Appeal AF Form 356 with analysis contained in the remarks portion.

(6) VA Rating Reconsideration coordination; if applicable

(7) FPEB Appeal Findings (AF Form 356) based on the VRR; if applicable

c. All administrative coordination should be addressed to the FPEB Case Manager. The ODC, Private Counsel, or SM will only communicate with the FPEB Appeal board during the virtual hearing orientation and virtual hearing.

2. FPEB Appeal Viability Check:

CUI//SP-PRVCY
FPEB APPEAL
RULES OF PROCEDURE FOR OFFICE OF DISABILITY COUNSEL (ODC)
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1 Feb 23

a. If a case is nonviable, an FPEB Appeal Rejection Memorandum will be placed in Salesforce for ODC/SM and PEBLO dissemination. The case will be sent back to the FPEB Case Manager for no action. The original FPEB Findings will be final.

b. Nonviability Basis:

(1) Submission received after suspense.

(2) Missing documentation in Salesforce such as: contention memorandum and exhibits.

(3) A new contention not adjudicated by the FPEB. These contentions can be submitted to the AFBCMR for consideration.

c. Nonviability determinations are final and can only be appealed to the AFBCMR.

3. Adjudication

a. Composition: The board will be comprised of 3 commissioned officers or civilian equivalents to include a Board President, Medical Officer, and Legal Representative.

b. Records Review: Cases requesting records only review will not include verbal testimony.

c. Virtual Hearing:

(1) Virtual hearings will be conducted via Zoom platform or in the absence of such technological support or upon request, via teleconference.

(2) Hearings are scheduled for one hour. If counsel anticipates the need to exceed a 1-hour hearing, they should request an exception to policy from SAFPC in the contention memorandum, providing justification for exceeding the allotted 1-hour period. Counsel or SMs may offer a brief opening statement, call witnesses to testify, or read aloud statements of witnesses unable to offer live testimony and may offer closing remarks. Witness offerings may be sworn or unsworn.

(3) Board members may question any witness testifying under oath. Board members will not question any unsworn witnesses.

(4) All hearing participants will observe the published FPEB Appeal Rules of Procedure for the Zoom.

(5) Pre-Hearing Orientation: 35 minutes prior to hearing start time Counsel, SMs, Witnesses and Observers will login to ensure adequate communications support, expected to be 15 minutes or less. Participants will enter a virtual Holding Room, then back to the Zoom when the hearing is ready to begin.

4. Post-Adjudication

a. FPEB Appeal 356 and/or SAFPC decision memorandum will be saved in Salesforce for dissemination by the FPEB Case Manager.

b. The decision of the FPEB Appeal Board is final. There are no provisions for appeal or reconsideration of the FPEB Appeal Board. Members who believe the decision of the FPEB

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1 Feb 23**

appeal board represents an error or injustice may appeal the decision to the AFBCMR IAW AFI 36-2603.