

## § 2.24

## 28 CFR Ch. I (7-1-08 Edition)

### § 2.24 Review of panel recommendation by the Regional Commissioner.

(a) Upon review of the examiner panel recommendation, the Regional Commissioner may make the decision by concurring with the panel recommendation. If the Regional Commissioner does not concur, the Regional Commissioner shall refer the case to another Commissioner and the decision shall be made on the concurring votes of two Commissioners.

(b) Upon review of the panel recommendation, the Regional Commissioner may also:

(1) Designate the case for the original jurisdiction of the Commission pursuant to § 2.17, vote on the case, and then refer the case to another Commissioner for further review; or

(2) Remand the case for a rehearing, with the notice of action specifying the purpose of the rehearing.

[68 FR 41529, July 14, 2003]

### § 2.25 Hearings by videoconference.

The Commission may conduct a parole determination hearing (including a rescission hearing), a probable cause hearing, and an institutional revocation hearing, by a videoconference between the hearing examiner and the prisoner or releasee.

[72 FR 53118, Sept. 18, 2007]

### § 2.26 Appeal to National Appeals Board.

(a)(1) A prisoner or parolee may submit to the National Appeals Board a written appeal of any decision to grant (other than a decision to grant parole on the date of parole eligibility), rescind, deny, or revoke parole, except that any appeal of a Commission decision pursuant to § 2.17 shall be submitted as a petition for reconsideration under § 2.27.

(2) The appeal must be filed on a form provided for that purpose within 30 days from the date of entry of the decision that is the subject of the appeal. The appeal must include an opening paragraph that briefly summarizes the grounds for the appeal. The appellant shall then list each ground separately and concisely explain the reasons supporting each ground. Appeals that do not conform to the above requirements

may be returned at the Commission's discretion, in which case the appellant shall have 30 days from the date the appeal is returned to submit an appeal that complies with the above requirements. The appellant may provide any additional information for the Commission to consider in an addendum to the appeal. Exhibits may be attached to an appeal, but the appellant should not attach exhibits that are copies of documents already in the possession of the Commission. Any exhibits that are copies of documents already in the Commission's files will not be retained by the Commission.

(b)(1) The National Appeals Board may: Affirm the decision of a Regional Commissioner on the vote of a single Commissioner other than the Commissioner who issued the decision from which the appeal is taken; or modify or reverse the decision of a Regional Commissioner, or order a new hearing, upon the concurrence of two Commissioners. The Commissioner first reviewing the case may in his discretion circulate the case for review and vote by the other Commissioners notwithstanding his own vote to affirm the Regional Commissioner's decision. In such event, the case shall be decided by the concurrence of two out of three votes.

(2) All Commissioners serve as members of the National Appeals Board, and it shall in no case be an objection to a decision of the Board that the Commissioner who issued the decision from which an appeal is taken participated as a voting member on appeal.

(c) The National Appeals Board shall act within sixty days of receipt of the appellant's papers, to affirm, modify, or reverse the decision. Decisions of the National Appeals Board shall be final.

(d) If no appeal is filed within thirty days of the date of entry of the original decision, such decision shall stand as the final decision of the Commission.

(e) Appeals under this section may be based upon the following grounds:

(1) That the guidelines were incorrectly applied as to any or all of the following:

- (i) Severity rating;
- (ii) Salient factor score;
- (iii) Time in custody;

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(2) That a decision outside the guidelines was not supported by the reasons or facts as stated;

(3) That especially mitigating circumstances (for example, facts relating to the severity of the offense or the prisoner's probability of success on parole) justify a different decision;

(4) That a decision was based on erroneous information, and the actual facts justify a different decision;

(5) That the Commission did not follow correct procedure in deciding the case, and a different decision would have resulted if the error had not occurred;

(6) There was significant information in existence but not known at the time of the hearing;

(7) There are compelling reasons why a more lenient decision should be rendered on grounds of compassion.

(f) Upon the written request of the Attorney General seeking review of a decision of a Regional Commissioner, which is received within 30 days of such decision, the National Appeals Board shall reaffirm, modify, or reverse the Regional Commissioner's decision within 60 days of receipt of the Attorney General's request. The National Appeals Board shall inform the Attorney General and the prisoner to whom the decision applies in writing of its decision and the reasons therefor. In the event the Attorney General submits new and significant information that has not previously been disclosed to the prisoner prior to a hearing under these rules, the National Appeals Board shall act within 60 days to reaffirm, modify or reverse the Regional Commissioner's decision, but shall also remand the case for a new hearing if its decision is adverse to the prisoner. The prisoner shall have disclosure of the new information, and the opportunity to dispute that information under § 2.19(c) of this part. Following the hearing, the case shall be returned to the National Appeals Board, together with a recommendation from the hearing examiner, to render a final Commission decision as to the disposition of the case.

[49 FR 44098, Nov. 2, 1984, as amended at 51 FR 32785, Sept. 16, 1986; 59 FR 40258, Aug. 8, 1994; 61 FR 55743, Oct. 29, 1996; 68 FR 41699, July 15, 2003]

### § 2.27 Petition for reconsideration of original jurisdiction decisions.

(a) A petition for reconsideration may be filed with the Commission in a case decided under the procedure specified in § 2.17 within thirty days of the date of such decision. A form is provided for this purpose. A petition for reconsideration will be reviewed at the next regularly scheduled meeting of the Commission provided the petition is received thirty days in advance of such meeting. A petition received by the Commission less than thirty days in advance of a regularly scheduled meeting will be reviewed at the next regularly scheduled meeting. The previous decision made under § 2.17 may be modified or reversed only by a majority vote of the Commissioners holding office at the time of the review of the petition. If a majority vote is not obtained, the previous decision shall stand. A decision under this rule shall be final.

(b) Attorneys, relatives, and other interested parties who wish to submit written information concerning a petition for reconsideration should send such information to the National Appeals Board, United States Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. Petitions and all supporting material are to be submitted thirty days in advance of the meeting at which such petitions will be considered.

(c) If no petition for reconsideration is filed within 30 days of the entry of a decision under § 2.17, that decision shall stand as the final decision of the Commission.

[61 FR 13763, Mar. 28, 1996, as amended at 61 FR 55743, Oct. 29, 1996; 68 FR 41530, July 14, 2003]

### § 2.28 Reopening of cases.

(a) *Favorable information.* Upon the receipt of new information of substantial significance favorable to the prisoner, the Regional Commissioner may reopen a case (including an original jurisdiction case), and order a special reconsideration hearing on the next available docket, or modify the previous decision. The advancement of a presumptive release date requires the concurrence of two Commissioners.