

## **PART 2 - INFORMAL PHYSICAL EVALUATION BOARD**

### **4201 General Functions Of Informal PEB.**

The Informal PEB shall screen incoming cases for acceptance and, if accepted, perform the initial disability evaluation on the basis of documentary review of case records . The board shall follow the policies and procedures set forth in this instruction.

### **4202 Board Composition**

a. An Informal PEB shall be composed of three members: two line officers (normally a Navy line officer and a Marine Corps officer), and a Medical Corps officer. All members shall be senior military officers (O-6 preferred) selected on the basis of wide military experience, proven performance and education. All Medical Corps officers assigned shall possess a wide cross-section of clinical experience.

b. One of the two line officers shall be the Presiding Officer for each Informal PEB. While not mandatory, it is preferred that the Presiding Officer be the line officer of the same service as the member being considered.

c. All members of a board shall be assigned by the DIRNCPB and report to the President, PEB.

d. While not mandatory, it is strongly preferred that the Presiding Officer of a panel be a Navy line or Marine Corps officer in the grade of O-6 or above and that the Presiding Officer be of the same service as that of the member being considered. However, in every circumstance, the Presiding Officer shall be at least in the grade of O-5.

e. The composition of a board shall be consistent and shall not be altered by reason of the grade, status or organization of a member under disability evaluation, except as specified in paragraphs 3108 and 4204 or by specific direction of the DIRNCPB.

### **4203 Reserve Membership**

See paragraph 3110a.

### **4204 Alternate Members**

a. In the absence of a principal member, an alternate member may sit on a board.

b. Alternate members must be in the grade of O-5 or above. An alternate line member may be of the same service as the Presiding Officer . However, one of the line officers on a board will normally be of the same service as the member being evaluated.

c. CHNAVPERS, CMC (M&RA), and CHBUMED shall designate in advance and provide alternate board members including funding for Navy and Marine Corps reservists, as requested by the President, PEB.

**4205 Administrator**

A member of the PEB shall be assigned as Administrator of the Informal PEB, and is responsible to the President, PEB for the leadership and management of day-to-day board affairs.

**4206 Recorders**

The President, PEB shall assign to the Informal PEB at least one Recorder to assist with administrative processing. Recorders shall be Navy or Marine Corps officers. Recorders report to the Executive Secretary, PEB.

**4207 Oaths**

Each board member shall act under oath or affirmation.

**4208 Preliminary Findings**

- a. Preliminary findings shall be reached through a majority vote of board members.
- b. In arriving at preliminary findings, a board shall comply with this instruction.
- c. Each finding made, which is concurred in by a majority of a board, shall constitute the preliminary PEB findings or action of the board.
- d. Record votes of individual members in the board's records .
- e. Any dissenting member of a board shall make a minority report concerning those particulars in which he or she does not agree with the action of the board. The report will become part of the record. Reference will be made to its attachment in the space provided for minority findings.
- f. Preliminary findings as the result of record review shall be set forth in writing.
- g. The preliminary findings in each case shall be recorded in summary form and attached to the record. Detailed case analyses or rationales shall not normally be prepared, except in specific instances. In those specific cases, as defined by the President, PEB, justification will be recorded on the Informal PEB workcard.

**4209 Documents To Be Reviewed**

Base findings upon review of documents namely:

- a. Medical board reports and associated documents together with endorsements of convening authorities and statements of members referred for disability evaluation.
- b. Line of duty/misconduct determinations, when appropriate.
- c. Statements of service, when appropriate.
- d. Reports of periodic physical examination (TDRL), when appropriate.

- e. Reports of special consultations, when appropriate.
- f. Statements of non-medical information as to the observation by the reporting senior of performance of duty, see enclosure (11) (Non-Medical Assessment Form).
- g. Fitness reports and performance evaluations supplied by the CHNAVPERs or the CMC (M&RA), as they apply to disability evaluation, when appropriate.
- h. NOEs, when appropriate.
- i. Member's health record.
- j. Any other pertinent materials.

#### **4210 Eligibility Determinations**

Include certain eligibility determinations in the record, but they need not be published to the member in the findings. If the member is found to be Unfit to continue naval service, the determinations may be:

- a. The disability (was)(was not) (incurred)(aggravated) while entitled to receive basic pay.
- b. The disability (is)(is not) the result of intentional misconduct or willful neglect, and whether such disability (was)(was not) incurred during a period of unauthorized absence.
- c. Select appropriate finding:
  - (1) the disability (is)(is not) the proximate result of active duty or inactive-duty training (because of aggravation, when applicable), or
  - (2) the disability (was)(was not) incurred in line of duty in time of war or national emergency, or
  - (3) the disability (was)(was not) (incurred )(aggravated) after 24 September 1975;
- d. The disability (is)(may be) permanent; and
- e. The disability is ratable in accordance with the VASRD and this instruction.

#### **4211 Format Of Findings**

- a. Cases of Active Duty Members and Inactive-Duty Reservists who have been issued a Notice Of Eligibility, or are referred under the provisions of paragraph 3201b(3). A

board shall find that the member is Fit to continue naval service , or Unfit to continue naval service because of physical disability:

(1) If the member is Fit to continue naval service, board evaluation is complete.

(2) If the member is Unfit to continue naval service:

(a) the disability (was)(was not) (incurred ) (aggravated) while entitled to receive basic pay;

(b) the disability (is)(is not) the result of intentional misconduct or willful neglect, and whether such disability (was)(was not) incurred during a period of unauthorized absence;

(c) the disability (is)(is not) stabilized at the present degree of impairment;  
and

(d) the disability is ratable at (percentage)

(e) the disability (is)(is not) combat related as defined by section 104 of the Internal Revenue Code. See paragraphs 3501 through 3507.

b. Cases Of Inactive-Duty Reservists Not Eligible For Disability Benefits. When the member is an inactive-duty Reservist who has not been issued an NOE authorizing disability benefits and does not have an injury or illness incurred during a period of active duty of more than 30 days, the only findings to be made are:

(1) Physically Qualified, or

(2) Not Physically Qualified for active duty in the Naval or Marine Corps Reserve.

c. Cases Of Members On The TDRL Being Recommended For Administrative Removal From The TDRL (see enclosure (3), part 6).

d. Signatures. Preliminary findings following the Informal PEB shall be signed by the Executive Secretary (PEB), the Presiding Officer of the Informal PEB, or by officers designated by the President (PEB), "By direction of the President, PEB." A copy is sufficient for delivery to the member.

#### **4212 Completion of Evaluation**

Upon completion of review by a Informal Board:

a. The Informal PEB shall refer all cases to the President, PEB for further processing.

b. The President, PEB, upon written request of (1) the Medical Advisor PEB, (2) the Legal Advisor PEB, or (3) the Administrator PEB, may direct the Informal PEB to completely reconsider (with recorded votes) any case. The President, PEB may as a matter of discretion, direct reconsideration by an Informal PEB Board comprised of entirely new members.

c. President, PEB shall assign to a Formal PEB:

(1) all cases of members found Unfit to continue naval service in which the member demands a hearing;

(2) all cases in which a member having been found Fit to continue naval service, requests a hearing, and the request is granted by the President, PEB or DIRNCPB;

(3) TDRL members found Fit who demands a Formal PEB;

(4) such other cases as are deemed appropriate by the DIRNCPB.

d. President, PEB shall refer requests for PLD status in accordance with enclosure (6) of this instruction.

e. President, PEB shall process special interest cases in accordance with paragraph 4106.

f. President, PEB shall issue a Findings Letter in all other cases, which are not going to a Formal PEB.

#### **4213 Notification To Member And Options**

Findings following an Informal PEB will be transmitted to the member by certified mail, facsimile, hand delivery, or verbally, offering the following options, where applicable:

a. Fit To Continue Naval Service Findings:

(1) Accept the finding of Fit to continue naval service; or

(2) disagree with the finding of Fit to continue naval service and request reconsideration.

(a) The member shall provide new medical information or significant non-medical assessment not previously available or considered for reconsideration.

(b) If the member fails to submit new medical information or significant non-medical assessment that would alter the case, the Presiding Officer of the Informal PEB will deny reconsideration of the case.

(c) In those instances where new medical information or significant

non-medical assessment have been considered but results in no change to Informal PEB findings, then the Presiding Officer of the Informal PEB recommends to the DIRNCPB via the President, PEB whether a Formal PEB should be granted.

(d) The criteria the Presiding Officer is to use in determining whether to grant or deny reconsideration is whether the member has provided new or additional information and whether that new or additional information is beyond that previously considered by the Informal PEB; or is new medical information provided that would materially warrant a change to the previous findings. The member must also state whether or not a hearing is desired if the Fit to continue naval service finding remains unchanged.

(e) If the finding of Fit to continue naval service finding is confirmed upon reconsideration, there is no right to a hearing.

(f) Active duty and Reserve component members, see paragraph 3701.

(g) TDRL personnel will be given the option of either returning to active duty, being discharged from the naval service, or demanding a Formal PEB, see paragraphs 3625, 3627, and 4213a (2).

(h) The President, PEB, or DIRNCPB may grant a request for a hearing when deemed necessary to preclude an error or injustice, see paragraph 4109.

(i) If a member does not request a hearing or a hearing request is denied the Informal PEB findings become final.

(j) If upon reconsideration the finding is changed to Unfit to continue naval service then the member is entitled to receive a new notification and to be presented with his/her applicable options.

b. Unfit To Continue Naval Service Findings :

(1) Accept the findings and waive the right to a hearing. In this case, the Informal PEB findings then are referred to the President, PEB, who shall issue and promulgate them.

(2) Disagree with the findings and exercise the right to demand a full and fair hearing. In this case, the President, PEB, will refer the case to a Formal PEB. If the member disagrees only with the combat-related/taxability opinion, then the member may appeal that aspect of the case to the OJAG. The limited issue of combat-related/taxability does not affect the ultimate disposition of the case within the Department of the Navy and therefore does not prevent finality. Accordingly, such cases are treated as accepted and they shall be handled as described in subparagraph (1) above. In certain instances, members found Unfit may be reconsidered by the Informal PEB.

c. Physically Qualified For Continued Naval Service Findings:

(1) Accept the finding of Physically Qualified, or

(2) Disagree with the finding of Physically Qualified for continued naval service and request reconsideration. The member must provide new medical information not previously available or considered for reconsideration. The member also must state whether a hearing is desired if the Physically Qualified for continued naval service finding remains unchanged. If Physically Qualified for continued naval service finding is confirmed upon reconsideration there is no right to a hearing and case consideration is complete unless the President, PEB, or the DIRNCPB grants a request for a hearing when deemed necessary to preclude an error or injustice, see paragraphs 3701 and 4109. If upon reconsideration, the finding is changed to Not Physically Qualified for continued naval service, then the member is entitled to receive a new notification and to be presented with his or her applicable options. If a member does not request a Formal PEB or a Formal PEB request is denied, the Informal PEB findings become final.

d. Not Physically Qualified For Continued Naval Service Findings:

(1) Accept the findings and waive the right to a hearing. In this case, the Informal PEB findings are referred to the President, PEB, who shall issue and promulgate them.

(2) Disagree with the Informal PEB findings and demand a full and fair hearing. In this case, the President, PEB, will refer the case to a Formal PEB.

#### **4214 Reconsideration by Informal PEB**

a. If, subsequent to the dictation of the medical board and prior to issuance of preliminary findings, the member receives new medical diagnoses and/or undergoes relevant, new medical procedures which may have altered the severity of the condition (either positively or negatively), the member should forward this information to the President, PEB. Additional information submitted will be taken into consideration.

b. If, after issuance of the Informal PEB Preliminary Findings of Unfit or Not Physically Qualified and prior to the acceptance/non-acceptance of these findings the member has new and/or relevant medical information that may alter the findings, the member should forward this information along with his/her election of options. Upon review, if it is determined that the information submitted warrants a change in findings, reconsidered findings will be issued. If no change in the preliminary findings is warranted, the case will be forwarded to the Formal PEB or finalized per the member's election of options.

c. The President, PEB shall render final decision on reconsideration determinations. If after reconsideration the member has been found Unfit or Not Physically Qualified by the Informal PEB, the member still retains the right to demand a Formal PEB. If the member has been found Fit or Physically Qualified, the member may still request a Formal PEB.

d. If the Preliminary Findings have been issued, but further workup or procedures have been scheduled, this information must be forwarded to the President, PEB for review and determination of the proper course of action (e.g. suspension, termination, forwarding, finalization, etc).

#### **4215 Acceptance/Non-Acceptance Of Findings**

a. Following counseling as to available options, the member shall indicate acceptance or non-acceptance of the findings of the Informal PEB.

b. If, after the member receives the Preliminary Findings and prior to making an election of options, the member receives new medical diagnoses and/or undergoes relevant, new medical procedures, the member may submit this information to the President, PEB pursuant to the procedures referenced in paragraph 4214 of this instruction for possible reconsideration by the Informal PEB.

c. The President, PEB shall render final decision reconsideration determinations. If after reconsideration the member has been found Unfit or Not Physically Qualified by the Informal PEB, the member still retains the right to demand a Formal PEB. If the member has been found Fit or Physically Qualified, the member may still request a Formal PEB.

d. Incompetence. When the member has been determined to be incapable of managing his or her financial affairs by a board of medical officers convened and constituted in accordance with reference (f) (MANMED, Chapter 18), the member's court appointed guardian or next-of-kin will be counseled (in the above precedence order) and afforded the opportunity to exercise the member's options as discussed in paragraph 4213.

e. See paragraph 3414 for other special situations in which a member is mentally unable to comprehend and make elections concerning findings following records review.

f. Once a member elects to accept the findings, the PEB is authorized to issue a Notification of Decision to the appropriate service headquarters. When the Notification of Decision is issued the member's case is considered final. This finalization may occur prior to the end of those 15 calendar days depending on when the member signs the Election of Options form. If the member changes his/her mind after returning the signed Election of Options form, but before the 15 calendar days have run, action in accordance with the change of mind will be taken only if the PEB has not issued the En bloc. If the En bloc has not been issued, the most recent election of options made by the member shall be the decision upon which the PEB will proceed to process the member's case.

g. At any time prior to the convening on the record of the Formal PEB, members may withdraw their request for a Formal PEB and accept the Informal PEB findings.

#### **4216 Presumed Acceptance**

If no response to the Findings Letter is received by the PEB within 15 calendar days of hand delivery or receipt of certified mail by the member or legal representative concerned, acceptance of the Informal PEB findings is presumed. Receipt by a member's attorney of the written findings constitutes receipt by the member. In the case of personnel

on the TDRL only, acceptance also is presumed 15 calendar days after attempted unsuccessful delivery of certified mail to the last known address of the member. Once acceptance is presumed, the President, PEB, shall issue the findings.

**4217 Assignment Of Legal Counsel**

There is no right to legal counsel during the Informal PEB. However, a member may consult with legal counsel at no expense to the Government.

**4218 – 4299 Reserved.**