

ENCLOSURE 5: PETITIONS FOR RELIEF (PFR)

5001 Basis For PFR Within The Disability Evaluation System

a. Following a Formal PEB, when the findings of the PEB become final, and the member has exhausted all of the available options with the PEB, members who have not been discharged or separated, and TDRL personnel, may PFR to DIRNCPB. Members who have been separated or permanently retired may petition the Board for Correction of Naval Records (BCNR). The only basis for relief by means of PFR are:

(1) New Or Newly Discovered Evidence. Upon the presentation of new or newly discovered evidence which by due diligence could not have been presented prior to the effective date of disposition of the individual concerned, which related to a fact in existence at the time of such disposition, which is not merely cumulative or corroborative and not such as to merely affect the weight of evidence or credibility of witnesses or records; and which would have warranted a different finding or action had it been presented; new or newly discovered medical evidence to be accepted must be corroborated by competent medical authority.

(2) Fraud, Misrepresentation, Or Other Misconduct. Upon a showing that the directed disposition of an individual was based upon fraud, misrepresentation of material fact, or other misconduct of such nature that in the absence thereof a different finding would have been made or a different action taken.

(3) Mistake Of Law. Mistake of law is a basis for relief; e.g., failure to accord an individual found Unfit the opportunity for a formal hearing; a directed disposition which was without authority; a decision which is contrary to the great weight of evidence of record.

b. Appeals. Appeals concerning Notice of Eligibility (NOE) and combat-related determinations will not be addressed in the PFR.

(1) For appeals concerning NOEs, contact the appropriate service headquarters.

(2) Appeals concerning combat-related determinations should be directed to the Judge Advocate General of the Navy (Code 13), Washington Navy Yard, 1322 Patterson Ave SE, Suite 3000, Washington DC 20374-5066.

c. PFRs that cite to the basis for relief in a (1) through a (3) above, without justification or additional supporting evidence in the PFR, will not be considered to have met threshold requirements for consideration. Members are encouraged to consult with their Physical Evaluation Board Liaison Officer (PEBLO) or military counsel for assistance in filing a PFR.

d. When a PFR appeals a LOD/M determination, the DIRNCPB may make a final LOD/M decision in the matter, or, when appropriate, designate the matter as a special interest case, under paragraph 3105 for referral to ASN (M&RA).

5002 Who May Petition

Requests for relief on the grounds set forth in paragraph 5001 above may be made by the individual concerned or by legal representative or counsel.

5003 Format

No particular format is required. However, a petition must be in writing, set forth the grounds for requesting relief, and state the relief desired. If a petition is based upon evidence which is not on record in the Department of the Navy, forward the evidence upon which it is based as an enclosure.

5004 Where To File

a. For Members Who Have Not Been Discharged Or Separated. Make requests for relief by Petition For Relief to the Director, Naval Council of Personnel Boards, 720 Kennon Street SE, Suite 309, Washington Navy Yard, Washington, DC 20077-5513.

b. For Members Who Have Been Discharged Or Separated. Make requests for relief by Petition, using DD form 149, to the Board for Correction of Naval Records (BCNR), 2 Navy Annex Washington, DC 20370-5100.

5005 Time Constraints

a. File a Petition For Relief within 15 calendar days of the receipt of a Findings Letter. In that members are normally separated within 4 – 6 weeks of the date the President, PEB, issues the Notification of Decision, members should not delay in preparing and filing such a petition. Submit all requests for extensions for submitting PFRs in writing directly to the DIRNCPB. Include a statement detailing the reason an extension is necessary, the length of the extension, the date the Formal PEB hearing was held, and the date the member received the findings.

b. File Petitions to the BCNR in accordance with time limitations issued by that Board.

c. DIRNCPB will normally adjudicate a case within 45 days of PFR receipt.

5006 Principles Employed When Acting On A PFR

Action taken on PFRs by the DIRNCPB submitted in accordance with paragraph 5001 will not result in an adverse finding for the member and are subject to the following guidance:

a. The final physical disability percentage rating assigned by the PEB under the Informal PEB/Formal PEB process is final and cannot be reduced unless the member/former member is offered an additional appearance before a Formal PEB whose

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members have not previously ruled on the case. PFRs whose content contains demonstrable fraud will be referred to the NCIS at DIRNCPB's option.

b. A determination that material error has occurred during the PEB process cannot be used to reduce the member's assigned physical disability percentage rating, but the error will be noted and can be used to offset any increase in the physical disability rating which might result from the presentation of new evidence, fraud, or mistake of law submitted by the member in the PFR.

c. The DIRNCPB may direct a realignment of a diagnosis, or a finding of Fit/Physically Qualified (not to include PRESUMPTION OF FITNESS). These findings/determinations are not adverse and do not require offering the member another formal board before they can be implemented.

5007 – 5099 Reserved