

ENCLOSURE 7: OFFICER DISABILITY REVIEW BOARD (ODRB) PROCEDURES

**PART 1 - DOCUMENTARY REVIEWS AND GENERAL BOARD REQUIREMENTS**

**7101 Introduction And Establishment**

a. 10 U.S.C. 1554 empowers and directs the Secretary of the Navy (SECNAV) to establish a board to review a limited class of disability cases wherein officers were retired or released from active duty without pay for physical disability. The Officer Disability Review Board (ODRB) hereby is established by the SECNAV as that statutory board to render opinions in such cases in which an affected officer requests review of the findings and decisions of a retiring board, board of medical survey, or disposition board. Forward ODRB advisory opinions and recommendations to SECNAV for final decision.

b. In performing its responsibility, the ODRB shall be guided by the Navy disability evaluation instructions effective at the time of the contested action as well as by statutes and directives of higher authority.

**7102 Oversight**

The ODRB shall function as an element of the Naval Council of Personnel Boards. The DIRNCPB shall exercise oversight and administrative control of the ODRB.

**7103 Functions**

a. To meet on an ad hoc basis, under 10 U.S.C. 1554, to review the cases of officers who have been retired or released from active service without pay for physical disability and to provide recommended findings regarding their fitness and disposition;

b. To evaluate on the basis of documentary review, or formal hearing attended by a petitioner and/or his or her counsel:

(1) the physical fitness of an officer petitioner for active duty;

(2) if found Unfit, the percentage of disability of the petitioner at the time of the officer's separation from active duty, or at the time of removal from the Temporary Disability Retired List (TDRL); and

(3) the entitlement to disability severance or retired pay of a petitioner at the time of separation from active duty, or at the time of removal from the TDRL.

**7104 Board Composition**

The board constituted to act in a given case shall be composed of five career military officers, selected on the basis of wide medical and/or military experience, proven performance and education.

a. President, ODRB shall be a Navy or Marine Corps line officer in the grade of 0-6 or above.

b. Two of the remaining officers shall be of the Medical Corps in the grade of 0-5 or 0-6 with preference given to the latter.

c. Individual membership may vary within the limitations of the prescribed composition.

d. When the petitioner is or was a member of the Navy or Marine Corps Reserve, at least one member of the board shall be a member of the Navy or Marine Corps Reserve.

#### **7105 Appointment of Officers**

Officers to constitute the ODRB, if not available at the Naval Council of Personnel Boards, shall be made available by CHNAVPERs, CMC (M&RA), and CHBUMED.

#### **7106 Convening**

a. Upon petition to the DIRNCPB by an officer retired or released from active duty without pay for physical disability, DIRNCPB shall designate and appoint the membership of the ODRB.

b. The petition for review shall contain a request for a documentary or formal hearing; a statement identifying the board whose error is sought to be corrected; a statement identifying the error(s) in the finding or decision; and the relief requested.

#### **7107 Recorder**

A Recorder for a board shall be designated by the DIRNCPB in the convening order. The Recorder may be a commissioned officer or a civilian employee of the government.

#### **7108 Conflict of Interest/Recusal**

No member or counsel of the board may have a personal interest in or have been a member of another board that ever considered the case under consideration. See paragraph 3108 for further guidance.

#### **7109 Adequate Information**

The board shall ensure that it has before it, within a reasonable time frame, all information necessary for competent review and opinion. The CHBUMED shall provide medical assistance upon request of the board. The board shall afford a petitioner a reasonable amount of time to provide evidence outside Navy possession.

#### **7110 Scheduling**

Hold documentary reviews or hearings within 30 days, and issue a report within 45 days of receipt of the case for review. Issue notification of formal hearings by mail to all concerned at least 30 days in advance of the hearing.

### **7111 Types of Board Meetings**

ODRB shall provide advisory opinions on the basis of formal, personal appearance hearings, unless waived by the petitioner, in which case a documentary review shall be conducted.

### **7112 Content Of Opinions**

The Board shall render advisory opinions, in a letter report, as to whether:

- a. the petitioner was, at the time of separation or retirement from the naval service, Fit to continue naval service or Unfit to continue naval service because of physical disability;
- b. if the petitioner was Unfit, such disability (was) (was not) (incurred ) (aggravated) while the petitioner was entitled to receive basic pay;
- c. such disability (was) (was not) the result of intentional misconduct or willful neglect, and whether such disability (was) (was not) incurred during a period of unauthorized absence;
- d. whether:
  - (1) such disability (was) (was not) the proximate result of active duty (because of aggravation, when applicable), or
  - (2) such disability (was) (was not) incurred in line of duty, in time of war or national emergency, or
- e. accepted medical principles indicate that such disability (is) (may be) permanent; and
- f. such disability was ratable at (percentage) in accordance with the Veterans Administration Schedule for Rating Disabilities (VASRD ) in effect at the time of retirement or separation .
- g. If a prior Navy board (PEB, BCNR, etc...) is being reviewed as part of a case, a statement as to whether the decisions or recommendations of the board being reviewed are affirmed or reversed.

### **7113 Basis Of Opinions**

In arriving at its opinions, the Board shall comply with:

- a. applicable statutes and directives in effect at the time of the contested separation or retirement without disability benefits; and
- b. the VASRD in effect at the time of the contested separation or retirement without disability benefits.

**7114 Majority Vote.**

Advisory opinions shall be formulated by vote of a simple majority of the five members.

**7115 Signatures.**

Advisory opinions of the Board shall be signed by the President, ODRB and the Recorder. See paragraph 7016.

**7116 Minority Opinions.**

If there is a minority vote, include a minority rationale in the record of proceedings. A minority rationale shall be signed by the member or members so voting.

**7117 Documentary Reviews.**

In connection with each review, the board shall consider:

- a. medical board reports and associated documents, together with endorsements of convening authorities and statements and medical evidence of petitioners;
- b. line of duty/misconduct investigations, when applicable;
- c. statements of service supplied by CHNAVPERs or CMC (M&RA);
- d. reports of physical examination;
- e. reports of special consultations, when applicable;
- f. fitness reports;
- g. statements of the petitioner, his or her counsel, guardian, or other witnesses (formal hearings); and
- h. any other pertinent matters.

**7118 Oaths**

- a. Members. Members of the Board shall be sworn as follows:

"Do you \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ solemnly swear (or affirm) that you will honestly and impartially review and report upon the case(s) now before the Board and about to be reviewed. (So help you God)."

- b. Recorder. The Recorder shall be sworn as follows:

"Do you \_\_\_\_\_ solemnly swear (or affirm) that you will keep a true record of the proceedings of this Board in the case(s) before the Board and about to be reviewed."

- c. Reporter. The Reporter shall be sworn as follows:

"Do you \_\_\_\_\_ solemnly swear (or affirm) that you will faithfully perform the duties of reporter in aiding the recorder to take and record the proceedings of the Board."

d. Witnesses . A witness to be sworn appearing before the Board shall be sworn as follows:

"Do you \_\_\_\_\_ solemnly swear (or affirm) that you will make true answers to such questions as may be put to you in the case of \_\_\_\_\_ now before the Board."

e. Challenged Member. Any member of a board who is challenged shall be sworn by Counsel for the Board as follows:

"Do you \_\_\_\_\_ solemnly swear (or affirm) that you will answer truthfully to the questions touching upon your competency to serve as a member of the Board in this case. So help you God."

**7119 Recording The Proceedings Of Documentary Reviews.**

Record the proceedings in summary form.

**7120 – 7199 Reserved**