

## **PART 2 - FORMAL ODRB HEARINGS**

### **7201 Legal Counsel**

a. An officer of the Judge Advocate's General Corps shall be assigned by the Commanding Officer, Naval Legal Service Office, North Central, Washington Navy Yard, when a formal hearing is conducted. The officer shall function as Counsel for the Board.

b. The petitioner may be represented by civilian counsel, provided by the petitioner, at no expense to the government.

### **7202 Conduct Of Formal ODRB Hearings**

a. Open Sessions. Conduct formal hearings in open session unless, in the opinion of the President, ODRB, an open session would be prejudicial to the objective of attaining a full and fair hearing, or a closed hearing is requested by the petitioner.

b. Interlocutory Issues. The President of the Board shall rule on all interlocutory issues except challenges. His or her rulings may be objected to by other board members, in which case the matter will be decided by a majority vote of the members in closed session.

c. Recesses and Continuances. The President of the Board may recess or grant a continuance where good cause is shown.

d. Presiding Officer . The President of the Board shall preside over all sessions and shall speak for the Board in announcing recommended findings and the result of any interlocutory vote.

e. Decorum. Board sessions shall be conducted with dignity and decorum and with the objective of eliciting all facts bearing on a case.

### **7203 Administration Of Oaths**

Once a formal hearing has been called to order by the President, the Legal Counsel for the board shall administer any required oaths.

### **7204 Evidence At Formal ODRB Hearings**

a. Before taking testimony, Legal Counsel for the Board shall, for the record, present all papers pertaining to the case to the Board in open session. These documents may be inspected by the petitioner and Counsel. The petitioner or Counsel may cross-examine the author of a document, record, or statement by calling the author as a witness, if reasonably available, or by taking a deposition.

b. The ODRB shall consider all documentary evidence transmitted to it by proper authority. The Board, in addition, may require and examine such records as may be in the files of the Department of the Navy that relate to the issues before the Board. All evidence

tendered to the Board having probative value as to the determination of issues before the Board shall be considered. In consideration of the weight or probative value to be accorded evidence, the members of the Board are expected to utilize their background and experience, their common sense, and their knowledge of human nature and behavior. In every case, the testimony of the petitioner concerned shall be considered in connection with all evidence adduced and given such weight as the Board may believe it merits. When the testimony presented at the hearing indicated that the petitioner claims to have disabilities not disclosed by the official medical records or presents evidence sharply in conflict with official medical records, and the issue thus drawn is not one that can be readily resolved by the observation of the Board, there shall be further development of the case by requesting further physical examination, special studies, or further investigation by appropriate agencies; and the hearing shall be adjourned until such development has been accomplished. Recommended findings of the Board shall be based upon evidence consistent with a reasonable probability of truth.

c. A petitioner at a formal hearing before the ODRB shall be permitted to introduce witnesses, depositions, documents, sworn or unsworn statements, or other evidence in their behalf and to question all other witnesses who testify at the hearing.

d. A petitioner may make oral or written arguments personally and through Legal Counsel.

e. A petitioner may elect not to offer evidence or testimony.

f. A petitioner may not be required to make any statement touching upon circumstances surrounding the origin or aggravation of any disease or injury (10 U.S.C. 1219).

g. A petitioner, subject to (e) and (f) above, may be questioned by members of the Board regarding evidence or testimony submitted.

h. Testimony of witnesses will be taken under oath or affirmation unless otherwise requested by the petitioner, Legal Counsel, or trustee (guardian).

### **7205 Objections**

Objections may be made to any action (other than a challenge) taken or proposed to be taken by the Board, as well as to the admission of evidence. Objections are recorded as part of the proceedings. The Board must note in the record its ruling on any objections that may be offered. Ordinarily, the objections are passed upon by the President of the Board. However, if any other member dissents from the President's ruling, the objection is ruled upon by the Board in closed session. The ruling is the decision of the majority of the Board and is announced on the reopening of the hearing.

### **7206 Challenges**

a. Any member of the Board may be challenged for cause at any time during the hearing. The Board will not receive a challenge to more than one member at a time. After

disclosing grounds for challenge, the petitioner may examine the challenged member. Counsel for the Board may cross-examine the challenged member. After such examination and cross-examination, any other evidence bearing on the member's Fitness to serve shall be heard.

b. The burden of sustaining the challenge is on the person who made the challenge. The challenged member shall withdraw when the Board is closed to vote upon the challenge. A tie or majority vote is sufficient to sustain the challenge. The Board shall decide the challenge according to the preponderance of the evidence. When a challenge reduces the Board below the required number of members, alternate members will be called by the President of the Board, or the senior remaining member, if the President is removed as a result of a challenge.

### **7207 Recording Proceedings And Transcript Requirements**

Record the entire hearing, and prepare a verbatim transcript

### **7208 Record Of Proceedings**

- a. Record votes of individual members in the report of proceedings.
- b. The record of proceedings shall include copies of the appointing order and any other communications from the convening authority. Where a formal hearing was conducted, include a verbatim transcript. A transcript of the proceedings is not required in the case of a documentary review. Include the advisory opinions of the Board, together with documents, testimony and other information presented to the Board for its consideration.
- c. Assemble documents constituting the remainder of the record of proceedings, if applicable, as follows:
  - (1) ODRB letter of transmittal with record of proceedings (formal) or (documentary review);
  - (2) Notification to petitioner of formal hearing;
  - (3) Rights letter to petitioner;
  - (4) SECNAV action;
  - (5) Any PEB actions;
  - (6) Medical Board Report (with copy of Health Record and Clinical Record);
  - (7) NAVMED 6100/2 - Statement of Patient concerning findings of medical board;
  - (8) Line of Duty Investigation with endorsements;

(9) Statement of Service.

- d. The President of the Board and the Recorder shall sign the record of proceedings.
- e. The President of the Board shall initial any corrections to the proceedings and advisory opinions.
- f. Provide a copy of the record of proceedings to the petitioner and his or her Counsel.

**7209 Transmittal of Proceedings**

In both documentary reviews and formal hearings, transmit the record of proceedings to the Judge Advocate General for review and for further forwarding to the Secretary of the Navy (ASN (M&RA)) for resolution.

**7210 – 7299 Reserved**