

GENERAL RULES GOVERNING AN APPEALS BOARD

- A. A NOAA Corps officer who appeals the findings and recommendations of a U.S. Public Health Service Medical Review Board (MRB) is entitled to a reconsideration of the matter by a NOAA Corps Appeals Board (hereinafter referred to as "Board") and a final adjudication by the Director.
- B. The findings and recommendations of the MRB shall be presumed valid and the burden will be on the NOAA Corps officer concerned to rebut the presumption.
- C. An appeal shall have the effect of suspending the findings of the MRB.
- D. The NOAA Corps officer making the appeal (hereinafter referred to as the aggrieved officer) may utilize any desired counsel at personal expense to assist with the development and presentation of the appeal. There is no statutory authority that permits the Government to reimburse the aggrieved officer for any expenses incurred in the appeals process.
- E. The aggrieved officer will submit the appeal, in writing, to the Director. It must contain all matters, materials, and facts to be considered by the board (i.e., issues not stated in the appeal will not be considered by the board except upon motion by the aggrieved officer and ruled on by the chair of the board).
- F. Strict rules of evidence will not apply to the proceedings. However, the hearing will be conducted in such a manner as to ensure an equitable result.
- G. Medical and other pertinent information considered by the MRB shall be incorporated into the board record. This may be accomplished by reference.
- H. Board membership consists of at least two medical officers who have not previously examined the aggrieved officer in connection with the findings of disability, and at least three active-duty NOAA Corps officers who, whenever feasible, shall be senior to the aggrieved officer. The Director appoints board members. The Director will also appoint one member to serve as Chair of the Board.
- I. The board may request and receive any pertinent material, facts, or expert technical advice that it feels will aid in achieving an equitable result.
- J. The aggrieved officer and the board members will be provided with copies of pertinent records:
 - (1) The board members will be provided reasonable time to review the records prior to the hearing date; and
 - (2) the aggrieved NOAA Corps officer may request additional records, in writing, pursuant to the Privacy Act of 1974.

- K. If the aggrieved NOAA Corps officer fails to appear before the board on the date and at the time specified, the board will proceed and make a determination on the record. However, in the event of a bona fide emergency (e.g., acute illness or injury) the hearing may be postponed to a later date with the approval of the Director.
- L. Direct contact between board members, the aggrieved officer or his/her counsel, and MRB members is deemed inappropriate. Therefore, all matters regarding MRB actions that are being appealed are to be referred to the Director, CPC.
- M. The Director, CPC, or the Director, Office of Health Services and Pastoral Care (OHSRC) may discuss with the aggrieved NOAA Corps officer, his/her counsel, or board members, procedural matters relating to the hearing. However, the merits of the case may not be discussed with the above parties prior to the hearing.

RESPONSIBILITIES OF THE AGGRIEVED OFFICER

- A. Timely action is essential in order to provide expeditious resolution of the matter. Therefore, the aggrieved officer is required to:
 - (1) file a statement of intent to appeal within seven calendar days of receipt of notice of the MRB findings;
 - (2) notify the Director, CPC, of the name, address and telephone number of any person who has been retained as counsel in the appeal;
 - (3) file a complete statement of appeal, which addresses all matters, materials or facts at issue, within 30 calendar days from the date of receipt of the MRB report; and
 - (4) arrange for witnesses to appear at the hearing on his/her behalf at no expense to the Government.
- B. The Director, CPC, in coordination with the Director, OHSPC, will establish a hearing date no later than 30 days after receipt of the statement of appeal. The Director, under extenuating circumstances, may grant an exception to this deadline.

BOARD PROCEDURES

- A. The Chair shall convene the board and administer the oath to the members. One of the members shall administer the oath to the chair.
- B. The aggrieved officer or his/her counsel may make a statement regarding dissatisfaction with the MRB findings. Supporting evidence by written or oral statements from expert technical witnesses may also be presented to the board.

- C. The Board members may question the aggrieved officer, and/or witnesses in order to obtain more information and/or clarification.
- D. The Director, OHSPC, shall, be present at the hearing to make statements for purposes of clarifying the record, applicable statutes, directives, and policies, and to respond to questions by the aggrieved officer, his/her counsel, or members of the board. In addition, the board may request the presence of counsel from the Department of Commerce's Office of General Counsel to assist the board with respect to NOAA Corps directives and policies with regard to disabilities.
- E. The Chair of the board shall ensure that the hearing is conducted in an orderly manner. The Chair may limit any statements to material or information that the Board finds to be pertinent or helpful to an equitable resolution. If the aggrieved officer, his/her counsel, expert witnesses, or any other party to the proceedings is not present, the Chair may decide whether or not to continue the board proceedings or temporarily adjourn the board.
- F. A verbatim transcript of the hearing shall be prepared when practicable. When this is not practicable the recorder will maintain a record of all sessions of the board, including times of convening and adjourning, names of persons appearing before the board, a résumé of their statements, and a description of all documentary material introduced. In the event no verbatim transcript is made, the aggrieved officer and/or his/her counsel, if any, shall be given an opportunity to verify the record and to certify to its correctness. Such certification must be postmarked no later than seven calendar days from date of receipt of the record. Use of a tape recorder is authorized; however, its use does not constitute a verbatim transcript.
- G. After the hearing has adjourned, the board members will:
- (1) consider the record and all information obtained during the hearing; and
 - (2) based on the applicable provisions of 10 U.S.C. Chapter 61 and the material presented to the board, prepare a report to the Director that will include a recommendation as to whether or not the aggrieved officer should be retained on active duty, retired for disability, or separated from the NOAA Corps, and the reasons therefore, and as appropriate, rate the disability in accordance with the Department of Veterans Affairs Schedule for Rating Disabilities as modified by DOD Directive 1332.18.