



NVLSP

NATIONAL VETERANS LEGAL SERVICES PROGRAM

Torres v. Del Toro and the “Properly Referred Policy”
Frequently Asked Questions

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Torres v. Del Toro and the “Properly Referred Policy” **Frequently Asked Questions**

What is the “Properly Referred Policy?”

Between September 12, 2016 and June 11, 2018, Navy and Marine Corps servicemembers who were being processed through the Integrated Disability Evaluation System (IDES) to determine whether they were unfit for continued service were subject to the “Properly Referred Policy.” That policy explicitly barred the Physical Evaluation Board (PEB) from considering the disabling impact of any condition not included on a specific form drafted by the Medical Evaluation Board (MEB) when referring a case to a PEB.

What happened in *Torres v. Del Toro*?

On September 28, 2022, the United States District Court for the District of Columbia granted summary judgment in favor of a class of U.S. Navy and Marine Corps veterans who were wrongfully denied military disability retirement as a result of the Navy’s use of the “Properly Referred Policy.” The Court held that the policy was unlawful, vacated the PEB decisions of all class members, and remanded the matter for further proceedings.

How do I know if I am a member of the *Torres* class?

You are a *Torres* class member if:

1. Your final Physical Evaluation Board occurred between September 12, 2016 and June 11, 2018; AND
2. You claimed conditions that were listed on a form sent by the MEB to the PEB; AND
3. You were medically separated with a combined disability percentage of 20% or less.

I’m still unsure if I am a *Torres* class member, what should I do?

To verify whether you are a member of the *Torres* class, NVLSP recommends you reach out to the Navy PEB at peb_peblo_comms.fct@navy.mil.

What type of notice should I expect if I am a *Torres* class member?

In or around July 2023, the Navy began notifying *Torres* class members via United States Postal Service (USPS) standard mail of their right to have their case re-adjudicated. The Navy will notify additional class members each week until all *Torres* class members have been notified.

Importantly, the *Torres* notice will include a copy of a class member’s original PEB findings and an election of options form that MUST be completed and returned within 180 days in order for re-adjudication to occur.

A sample of the notice received by *Torres* class member’s can be found [here](#).

A sample of the election of options form can be found [here](#).

I’ve received the *Torres* notice from the Navy and I want my case to be re-adjudicated, what should I do?

In order to have your case re-adjudicated, you must submit an [Election of Options form](#) and all documentation that supports a revision of your original PEB findings to the Navy by e-mail or U.S. mail within 180 calendar days from the date written on your *Torres* notice. Supporting documentation may include service treatment records, post-discharge treatment records, letters from family, friends or fellow service members, or statements from your healthcare provider.

If you are unsure how to complete the Election of Options form or on what additional documentation to submit, NVLSP recommends you reach out to free Navy DES attorneys at DESCP_TorresUnit@us.navy.mil.

Do I need to wait for the *Torres* notice from the Navy?

You do not need to wait to receive notice from the Navy. All *Torres* class members interested in changing their PEB findings may submit an Election of Options form, along with the supporting documentation described above, by e-mail or U.S. mail. The only way to ensure that you can avail yourself of the rights and protections guaranteed by the *Torres* decision is by submitting an election of options to the Navy.

What happens if I don't respond to the *Torres* notice?

If you do not request reconsideration, your original PEB determination becomes final after 180 days.

I submitted my election of options what happens next?

Your case will be re-adjudicated and the Navy will issue a new Informal PEB (IPEB) determination.

What if I disagree with the IPEB's findings?

If you wish to appeal that decision, you will have 15 days to request a Formal PEB (FPEB) hearing or the IPEB's determination will become final. You may appear at the hearing video-conference or in person. All eligible veterans who request an FPEB hearing, will be provided with free military legal counsel. That legal counsel can be reached at DESCP_TorresUnit@us.navy.mil.

What if I disagree with the FPEB's findings?

Upon receipt of your FPEB decision, you will have 15 days to submit a Petition for Relief to the Navy's Council of Review Boards (CORB) before the FPEB's decision becomes final.

While waiting for review, is there anything I can do to improve my chance of success?

In order to demonstrate that an additional condition[s] is unfitting, a veteran is required to submit documentation to the PEB that demonstrates that the claimed condition made the veteran unable to reasonably perform the duties of their office, grade, rank or rating. To obtain such documentation, NVLSP recommends that all *Torres* class members immediately request the following:

1. All medical treatment records from the DoD, VA and/or civilian physicians that demonstrate why your original PEB findings should be changed.
2. Letters of support from your physicians and/or medical care providers.
3. Disability Evaluation System case file, which can be requested by:
 - a. Downloading Form 2870 at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2870.pdf>.
 - b. Completing DD Form 2870 and sending to *both* of email addresses listed below along with the following text: "I am writing to request my entire DES case file, to include my joint VA/DoD claim form, C&P exams, MEB, Non-Medical Assessment, PEB findings, PEB scorecard and VA ratings."
 - i. peb_peblo_comms.fct@navy.mil
 - ii. usn.ncr.dns.mbx.don-foia-pa@us.navy.mil.

Do I need to hire a lawyer?

You do not have to hire or find your own lawyer, but you have the right to retain independent counsel if you wish. The Navy has agreed to provide free legal counsel to all class members who are being reconsidered through the Disability Evaluation System Counsel Program (DESCP). The DESCP may be reached at (202) 875-1198 or DESCP_TorresUnit@us.navy.mil.

You may reach out to NVLSP at properlyreferred@nvlsp.org with any questions. You may contact NVLSP to see if you qualify for our free legal assistance with the IDES process. You may apply online at <https://www.nvlsp.org/what-we-do/lawyers-serving-warriors/>.

What are the benefits of a medical retirement?

A combined military disability rating of 30% or more entitles a service member to medical retirement benefits, which include lifetime monthly disability retired pay; lifetime military health care for the veteran, spouse, and minor children; access to military commissaries and post exchanges; and other retirement benefits.

If the Navy finds that an unfitting condition is also combat-related, that may enable you to apply for Combat-Related Special Compensation (CRSC) for that condition. CRSC provides an additional tax-free payment to retired veterans with combat-related disabilities.

I received a disability severance payment. Will I have to pay it back if I am granted a medical retirement?

Possibly. If you received a disability severance payment that has not been fully recouped by the VA or that was not recouped by the VA, you will need to pay the unrecouped portion back to the government in order to receive a medical retirement. However, the amount owed can be offset by Combat Related Special Compensation if the veteran is eligible.

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