



Veterans' Review Board

When is it appropriate to raise the issue of bias of a Board member?

What is bias?

There are two types of bias: actual and perceived.

Actual bias

Cases of actual bias are rare. Proof of actual bias is onerous. Actual bias is established only if an applicant can prove that a decision maker was actually prejudiced against them, for example, the member had made their mind up before the hearing and will not change it no matter what the evidence.

Perceived or apprehended bias

Perceived or apprehended bias is related to whether there has been conduct or some event involving the Board member that means he or she might not bring an impartial mind to the resolution of the question they are required to decide.

For example the Board member may have:

- a social or personal relationship with an applicant, a witness or representative;
- an association or professional relationship, or
- a communication between a witness, the applicant or their representative – or a representative from the Commission.

Where one of the above examples arises it is likely that it will be declared by the Board member and they will advise the parties that they have made a decision to recuse.

What is a decision to recuse?

If a Board member makes a decision to recuse, that means they will stand aside and will no longer hear the case – because they feel there is a perceived prejudice or conflict of interest. The matter will be listed for a hearing before another Board member, or heard before a quorum of 2 members in some cases.

How do I make an application for a Board member to recuse?

If you think there is an issue of perceived or apprehended bias in relation to your matter, then you will need to make an application for the Board member or members to recuse themselves (stand aside) from the hearing.

You will need to make this request at the hearing to the member concerned, but you should also advise the Registrar in your state, in advance, that you will be making the application at the hearing.

In making an application for a member to stand aside you must clearly articulate how it is said that the existence of the relationship, association, communication, interest or particular view might be thought (by a reasonable observer) possibly to divert the Board member from deciding the case on its merits.

How can I find out more?

If you think there is an issue of perceived or apprehended bias, please ask the staff in your local VRB registry.

The Administrative Review Council has also published a document, “A Guide to Standards of Conduct for Tribunal Members”, which contains more information about bias and is published on their website: www.arc.ag.gov.au

The VRB’s Service Charter also sets out the standards of service you can expect from us and how to make a complaint if you are not satisfied with how we have dealt with your case. It is available on our website or you can ask us to send it to you.