



NATIONAL HEADQUARTERS CIVIL AIR PATROL

CAP REGULATION 35-8

13 July 2020

Personnel Procedures

MEMBERSHIP ACTION REVIEW PANEL

This regulation creates a Membership Action Review Panel (MARP) to review cases where members are removed from command of a region or wing, are demoted, have their membership suspended for more than 60 days due to regulatory infractions or misconduct not giving rise to a criminal investigation or criminal charges or proceedings, or have their membership terminated. In accordance with this regulation, members who have been subject to such adverse membership action, and have exhausted all administrative remedies shall have the right to appeal the action to the MARP. This regulation does not apply to removal of the National Commander or the National Vice Commander.

SUMMARY OF CHANGES.

This revision incorporates recent changes to the CAP Constitution and Bylaws concerning MARP procedures and updates the title of Director, Personnel and Member Actions. **Note: Shaded areas identify new or revised material.**

AUTHORITY: Constitution of the Civil Air Patrol, Article XVI, amended, 26 June 2020.

1. POLICY.

1.1. The Membership Action Review Panel is independent from the Civil Air Patrol (CAP) volunteer chain of command. It was created to ensure compliance with CAP regulations and appropriate practices. The MARP does this by adjudicating member appeals of final adverse membership actions.

1.2. The MARP shall accept an appeal of a final adverse membership action only if the MARP, by majority vote, determines after its initial review of the materials that there exists sufficient credible evidence and documentation within the appellant's material that, if true, would establish that the action was motivated by retaliation, reached without due process, or involved a material failure to follow applicable CAP regulations.

1.3. Meetings of the MARP shall convene as needed at the direction of the Chairman at a time and manner determined by the Chairman.

1.4. If a member has designated a representative in a signed written statement, all correspondence regarding the case shall be solely with the representative until the member

Supersedes: CAPR 35-8, 13 September 2016.

Distribution: National CAP website.

OPR: DP

Pages: 8

Notice: CAP publications and forms are available digitally on the National CAP website at: <http://www.capmembers.com/publications/>.

notifies the MARP in writing of any changes.

1.5. The Chairman of the MARP may revoke, amend, or waive any provision of this regulation for good cause unless Article XVI of the CAP Constitution requires application of the provision. The Chairman of the MARP must give notice of the waiver to all parties, but is not required to give the parties an opportunity to respond.

1.6. In cases where the MARP accepts the appeal, the decisions and any written opinion and/or ruling of the MARP are final and not subject to further appeal or proceedings within CAP. The Board of Governors may direct the MARP to rescind a decision or a portion of a decision, or reverse a decision of an appeal heard by the MARP as outlined in Article XVI, paragraph 7 of the CAP Constitution and Bylaws. In cases where the MARP determines that it will not hear the appeal, the determination not to accept or hear the appeal is final and not subject to further appeal or proceedings within CAP.

2. DEFINITIONS.

2.1. "Due process" means notice of the adverse action, an explanation of the adverse evidence and an opportunity to present the member's position or a legitimate CAP interest or regulatory provision that results in an unfair or arbitrary treatment of an individual. Commanders have discretion in matters of demotion or removal from command. Those matters will be considered arbitrary or unfair only when shown to be retaliatory.

2.2. "Material failure to follow applicable CAP regulations" means an error which is likely to have caused the commander(s) to reach a conclusion different from the one the commander(s) would have reached in the absence or cure of the error.

2.3. "Member" unless referring to a member of the MARP, refers to the member who is appealing a final adverse membership action under this regulation.

2.4. "Quorum" means a majority of the voting members of the MARP.

2.5. "Retaliation" means taking or threatening to take an unfavorable membership action or withholding or threatening to withhold a favorable membership action from a member because of an action taken or not taken by the member, where such action or inaction did not violate any CAP regulation.

3. MARP MEMBERS.

3.1. The Membership Action Review Panel shall consist of:

3.1.1. The Chief of the CAP Legal Officer Corps or his/her designee, who must be a duly appointed CAP legal officer, serves as non-voting Chairman and

3.1.2. Eight active senior members, in the grade of colonel, not serving as commander or vice commander at any level.

3.1.2.1. The eight active senior members specified under paragraph 3.1.2. will be appointed by the National Commander, from a list of candidates provided by each region commander. Qualifications of the appointed candidate will be submitted to the Board of

Governors for confirmation. Members will serve a term of 4 years. Terms will be staggered with two new members appointed each year. If a MARP member is removed or resigns prior to the end of his or her term, a new representative will be selected to complete the original term in order to preserve the staggered terms. Only the Board of Governors may remove a member from the MARP prior to the expiration of his or her established term.

3.2. A designee may serve as a member of the MARP only in the event the named member is unable to participate due to a conflict of interest. The region commander of the MARP member unable to participate will select the designee. The designee must meet the membership requirements of the MARP.

3.3. Members of the MARP will receive initial and recurrent training on their role and responsibilities.

4. SUPPORT. The Office of the Director of Personnel and Member Actions:

- 4.1. Enters petitions for review onto the MARP's docket and monitors their processing.
- 4.2. Provides information on the status of cases.
- 4.3. Distributes copies of MARP decisions and publications.
- 4.4. Manages the MARP's records, and correspondence.
- 4.5. Forwards documents to the MARP, parties, and others (if any) as required.

5. JURISDICTION AND DECISIONS.

5.1. The MARP has jurisdiction over appeals from unit commanders' final adverse membership actions, which concern

- 5.1.1. Demotion in grade;
- 5.1.2. Removal from command of a region or wing;
- 5.1.3. Suspension of membership in excess of 60 days due to regulatory infractions or misconduct not giving rise to a criminal investigation or criminal charges or proceedings; or
- 5.1.4. Termination of membership.

5.2. Failure to pursue all available administrative appeals shall be a waiver of appeal to the MARP.

5.3. For cases in which the MARP determines that it will not hear the appeal, a written statement of that determination shall be provided. Further written findings, rulings and/or opinions may be rendered, but are not required.

5.4. The MARP shall render a written decision in properly filed cases which it accepts for hearing brought by an aggrieved member or ex-member when the MARP determines the final adverse membership action against the aggrieved member or ex-member was motivated by retaliation, reached without due process, or involved a material failure to follow applicable CAP regulations. The MARP may affirm, reverse, or modify in favor of the member the final adverse membership action. At the discretion of the MARP, the case may be remanded to any commander(s) to correct any failure of due process or material failure to follow applicable CAP regulations.

5.5. A MARP member shall not consider a review from an applicant from the region he/she represents. If the individual appealing to the MARP is assigned at the National level, all eight voting members will participate in the appeal. Five voting members shall constitute a quorum. Decisions shall be made in all cases by majority vote. In the event of a tie vote on any appeal action, the MARP will automatically sustain the commander's action.

5.6. The member shall have the burden of convincing the MARP that it is more likely than not that the action was motivated by retaliation, reached without due process, or involved a material failure to follow applicable regulations.

6. INITIAL PROCEDURES.

6.1. All correspondence with the MARP may be filed by mail, email, facsimile, commercial delivery, or personal delivery to the Office of the Director of Personnel and Member Actions.

6.2. A member or his/her designated representative must file an appeal of a final adverse membership action within 60 days of the date of the adverse membership action, or the effective date of the adverse membership action, whichever is later. Appeals may be in any format, including letter form, but must contain:

6.2.1. The name, address, and telephone number of the member and designated representative, if any.

6.2.2. If filed by a designated representative, a statement of designation signed by the member.

6.2.3. A copy of the adverse membership action, any and all appeals, and all relevant supporting documentation.

6.2.4. A statement of why the member believes the adverse membership action was motivated by retaliation, reached without due process, or involved a material failure to follow applicable CAP regulation.

6.2.5. A statement of the relief requested.

6.2.6. The signature of the member or designated representative.

6.3. The MARP shall perform an initial review of the appeal filed by the member or his/her representative. The MARP will make a determination that the filing is a result of a final adverse membership action and that:

6.3.1. The filing is complete.

6.3.2. The filing is timely.

6.3.3. There is an allegation that the adverse membership action was motivated by retaliation, reached without due process, or involved a material failure to follow applicable CAP regulations.

6.4. If the MARP determines that any of the requirements stated in items 6.3.1. through 6.3.3. above are not met, the MARP, in its sole discretion may:

6.4.1. Return the submission to the member with leave to amend or cure the submission;

6.4.2. Dismiss the appeal, with finality; or

6.4.3. Elect to decide the case.

7. GENERAL CASE PROCEDURES.

7.1. Once an appeal has been accepted for hearing by the MARP, the MARP will advise the Director of Personnel and Member Actions who will forward a copy of the appeal, with all supporting documentation, to the commander who took the adverse membership action and the commander(s) to whom an administrative appeal was made. The commander(s) shall have 30 days from the date documents were forwarded in which to respond to the allegation that the action was motivated by retaliation, reached without due process, or involved a material failure to follow applicable CAP regulations.

7.2. A response from the current incumbent of the position held by the commander who took the adverse membership action or the commander(s) to whom an administrative appeal was made shall be treated as if made by the person who took the action or received the administrative appeal.

7.3. In the event that any of the commanders do not respond, the MARP shall proceed on the basis of the member's submission and any responses received.

7.4. The commanders' responses, if any, will be forwarded to the member who shall have 30 days to respond.

7.5. Deliberations.

7.5.1. The MARP shall grant relief only if it determines that the member has proven that more likely than not, the final adverse membership action:

7.5.1.1. Was motivated by retaliation or

7.5.1.2. The decision was

7.5.1.2.1. Reached without due process or

7.5.1.2.2. Involved a material failure to follow applicable CAP regulations.

7.5.2. If the MARP grants relief, it may

7.5.2.1. Reverse the membership action;

7.5.2.2. Modify the membership action in favor of the member; or

7.5.2.3. Remand to any commander(s) to correct any failure of due process or material failure to follow applicable CAP regulations.

7.6. The MARP will normally decide the appeal on the basis of the submitted documentation. However, the MARP may request an administrative hearing solely for the purpose of obtaining evidence to support the allegation that the action was motivated by retaliation, reached without due process, or involved a material failure to follow applicable CAP regulations. If the MARP, in its discretion, decides to hold a hearing:

7.6.1. Appearances at the hearing are voluntary and shall be without cost to CAP.

7.6.2. The hearing will be informal. Procedure shall be at the discretion of the Chairman.

7.6.3. Parties may present witnesses and/or documentary evidence. There is no requirement that a witness list or documents be provided to the MARP or to the other parties prior to the hearing. There shall be no formal rules of evidence and the Chairman shall have discretion to allow or deny the presentation of evidence.

7.7. At the request of the MARP, the Chairman may initiate attempts to settle appeals informally at any time before the MARP renders a decision. If the parties agree on a settlement, the settlement agreement is the final and binding resolution of the appeal and the Chairman of the MARP will dismiss the appeal with prejudice after entering the agreement in the case record.

7.8. The MARP must follow administrative and procedural instructions provided by the General Counsel to the extent that the same are not inconsistent with the CAP Constitution and Bylaws or regulations. If the MARP disagrees with the administrative or procedural instructions and consensus with the General Counsel cannot be reached, the issue must be presented to the BoG Governance Committee for administrative and/or procedural determination. MARP deliberations must be stopped until a determination from the BoG Governance Committee is received.

7.9. If the Chair seeks legal advice from, or legal advice is otherwise provided to the MARP by the CAP General Counsel, a decision not to follow the legal advice must be documented and briefed to the Board of Governors in accordance with Article XVI, paragraph 4 of the CAP Constitution and Bylaws.

8. DISQUALIFYING A MEMBER OF THE MARP.

8.1. If participation by a member of the MARP presents a conflict of interest, he or she shall withdraw from the case, by immediately notifying the Chairman of the MARP and stating the reasons for doing so in the case record.

8.2. Any party to the case may file a written request with the Chairman of the MARP asking for the disqualification of any member of the MARP on the basis of a conflict of interest as soon as the party has reason to believe there is a basis for disqualification. If the Chairman denies the request, the party may file the request within 10 days to the full MARP and the matter will be decided by a majority vote.

8.3. If any party files a written request with the Chairman of the MARP asking for a withdrawal of the Chairman on the basis of a conflict of interest, and the Chairman refuses to disqualify himself/herself, the remaining members of the MARP shall determine if the Chairman shall be disqualified.

9. ACTIONS AND REPORTS.

9.1. The Director of Personnel and Member Actions shall keep records of all MARP cases for 5 years.

9.2. All MARP decisions that affirm the final adverse action shall be forwarded to the General Counsel for statistical and risk management purposes.

9.3. If the MARP has not accepted the legal advice of the General Counsel during their deliberations, a report outlining the reasons for not accepting must be prepared and submitted

to the Board of Governors (see para 7.9 above) no later than the next scheduled Board of Governors Meeting.

9.4. The Chief of the CAP Legal Officer Corps shall provide an annual written report to the Final decisions of the MARP, including the names and units of the parties, a brief description of the case and the decision of the MARP shall be published periodically on CAP.News or another publication of general CAP circulation. The names of cadets will be withheld from publication. A copy of the final MARP decision will also be sent to each commander in the member's chain of command.

9.5. MARP cases settled before the MARP renders a decision shall not be published.



MARK E. SMITH
Major General, CAP
Commander

Attachment 1**COMPLIANCE ELEMENTS**

There are no compliance elements to this regulation.