WEST VIRGINIA CODE: §15-1B-6

§15-1B-6. Dismissal of officers.

a. No officer of the National Guard shall be dismissed unless by reason of resignation, approval of findings of an efficiency or medical examining board, withdrawal of federal recognition, the sentence of a court-martial, or for cause as provided in subsection d of this section.

b. The efficiency, moral character, incompetency, inability to properly perform his duty, and general fitness for retention in the National Guard of any officer may be investigated and determined by an efficiency examining board.

c. The physical fitness for further service of any officer of the National Guard may be investigated by a medical examining board of officers.

d. Efficiency and medical examining boards consisting of three or more officers shall be appointed by the Adjutant General upon recommendation of the commanding officer of the officer under investigation. All members of such boards shall be senior in grade to the officer under investigation, unless unavailable. Such boards shall be vested with the powers of courts of inquiry and courts-martial. Any officer ordered to appear before such a board shall be allowed to appear in person or by counsel, to cross-examine and to call the witnesses in his behalf. He shall at all stages of the proceedings be allowed full access to records pertinent to his case and be furnished copies of the same. If the officer shall fail to appear at the time and place set for the hearing by the board, the board shall proceed to consider the evidence presented to it and make such findings as shall be warranted. If the findings of the board are unfavorable to an officer and are approved by the Governor, the Governor shall dismiss the officer, transfer him to the state retired list or the honorary militia, or make such other order as may be appropriate.

e. Any officer who permanently moves from the state or who is absent without leave from drill, training and other duty for two months, or whose federal recognition is withdrawn may be dismissed automatically.

f. In any case in which the Adjutant General shall have ground to believe an officer unfit, incompetent, or incapable of performing his duties, he may be dismissed or transferred to the reserve list or honorary National Guard, if appropriate, without reference to an efficiency or medical examining board, unless the officer so dismissed or transferred shall, within thirty days after being notified thereof, serve upon the Adjutant General notice in writing demanding a hearing and examination before an appropriate board.

WV Legislature