

## MILPERSMAN 1616-040

### ENLISTED PERFORMANCE (E-6/7/8/9)

<b>Responsible Office</b>	NAVPERSCOM (PERS-832)	Phone:	DSN COM	882-4433 (901) 874-4433
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NAVPERSCOM CUSTOMER SERVICE CENTER	Phone: Toll Free	1-866-U ASK NPC
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<b>References</b>	(a) BUPERSINST 1610.10B (b) U.S. Navy Regulations, 1990 (c) Uniform Code of Military Justice (UCMJ) (d) JAGINST 5800.7D, Manual of the Judge Advocate General (JAGMAN)
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1. **General Provisions.** General provisions applicable to all enlisted (E-6/7/8/9) cases involving performance or conduct:

a. If it is expected that disciplinary action, military or civilian, may be taken against an enlisted member in pay grade E-6/7/8/9, the member should not be transferred until such action has been resolved. When a modification of orders is necessary, the below Navy Personnel Command (NAVPERSCOM) offices should be notified of the circumstances, provided with recommendations, and requested to issue orders as may be appropriate:

- NAVPERSCOM, Enlisted Performance and Separations Branch (PERS-832)
- NAVPERSCOM, Career Management Department (PERS-4) (applicable detailee branch, i.e., PERS-401, 402, 403, etc.)

b. Additionally, if it is expected that disciplinary action, military or civilian, may be taken against an enlisted Sailor selected for or currently in any Naval Nuclear Propulsion Program training pipeline, or if the Sailor possesses a current

Nuclear Navy Enlisted Classification (NEC) code, the below listed offices will also be notified of the circumstances:

- Office of Chief of Naval Operations, Nuclear Propulsion Program Manager (OPNAV (N133))
- NAVPERSCOM, Enlisted Submarine/Nuclear Power Assignments (PERS-403)

c. There is no authority to retain personnel beyond their normal release from active duty (ACDU) date unless court-martial charges have been preferred. A request to retain a member beyond the normal release from ACDU date in order to impose nonjudicial punishment (NJP) will not be granted. If it is not practicable to impose NJP prior to the release from ACDU, the reporting senior should make appropriate comments in the detaching evaluation report.

d. When misconduct or deficiencies in the performance are discovered after the submission of the evaluation report, a supplemental evaluation per reference (a) should be submitted as appropriate.

e. Except as provided in MILPERSMAN 1070-080, personnel must be given notice of, and an opportunity to respond to, all adverse matters which are being forwarded to NAVPERSCOM for inclusion in their official record. The member's intention not to make a statement shall be indicated in writing or by the expiration of a stated period of time within which the member, after having been so advised, was afforded such an opportunity and failed to submit a statement. Any doubt as to whether a particular matter is adverse will be resolved in favor of the member by referring it to the member. Direct the member's attention to reference (b), article 1122 for guidelines regarding submission of a statement.

f. NAVPERSCOM (PERS-832) shall be informed and kept apprised by appropriate means of communication (letter or E-Mail) of incidents involving performance or conduct which may be of widespread public interest, or those which will require action by NAVPERSCOM concerning the member's status. Unless indicated otherwise, these reports are intended for information and appropriate action and not for inclusion in the member's official record. Point of contact (POC) information should be provided.

g. When practical to do so with clarity and without prejudice to the member concerned, facts or details requiring reports to be classified should be omitted. Information should not be classified solely because it is embarrassing or derogatory to the member. Unless required for security reasons, reports of NJP should be designated "For Official Use Only" and transmitted in double envelopes. The outer envelope should be addressed to NAVPERSCOM (PERS-832) and the inner envelope marked "Enlisted Performance, For Official Use Only" as appropriate.

## 2. Misconduct - Courts-Martial

a. When court-martial charges have been preferred against a member, the commanding officer (CO) will immediately send a copy of the charges and specifications with explanatory information to NAVPERSCOM (PERS-832). The CO will keep NAVPERSCOM (PERS-832) informed of the status and disposition of the charges. Unless indicated otherwise, these reports are intended for information and appropriate action and not for inclusion in an official record.

b. At the conclusion of trial, the CO will forward a letter, Report of Results of Trial, to NAVPERSCOM (PERS-832). The report is to include as an enclosure a copy of the charges preferred and the disposition of each, as well as the final sentence adjudged.

c. If a discharge was not awarded, but a guilty finding was determined on any of the charges, the CO is to provide a recommendation whether the member should be processed for administrative separation. The letter shall be sent via the member if a recommendation for separation is included in the report.

## 3. Misconduct - NJP

a. When NJP is complete, the authority imposing punishment shall immediately notify NAVPERSCOM (PERS-832) by letter, Report of Nonjudicial Punishment, as soon as the results are final (i.e., when the member declines to appeal, does not appeal within the required time, or after the appeal has been adjudicated). Forwarding the Report of Nonjudicial Punishment via the first flag in the chain of command **is not required nor desired** in cases involving enlisted personnel.

b. If NJP is imposed upon an enlisted Sailor in the Naval Nuclear Propulsion Program training pipeline, or one who possesses a current nuclear NEC code, the Nuclear Propulsion Program Manager at the below listed offices will also be notified of the circumstances:

- OPNAV (N133)
- NAVPERSCOM (PERS-403)

c. The following documents shall be forwarded with the Report of NJP as enclosures thereto:

(1)	Offenses for which the punishment was imposed.
(2)	A brief description of the circumstances surrounding the offenses.
(3)	The punishment awarded.
(4)	A copy of the punitive letter, if one given.
(5)	A copy of the investigation and other documents which were considered at NJP, to include rights statements.
(6)	A copy of the NAVPERS 1626/7 Report and Disposition of Offenses.
(7)	A summary of any statement, if made by the member at NJP.
(8)	A copy of the appeal and the letter denying an appeal or the member's written declination to appeal.
(9)	A dated acknowledgment by the member that the member has reviewed the letter report of NJP, was advised of any adverse actions recommended by the command, and that the report will become part of the member's official record.
(10)	If an appeal is granted on only a portion of the NJP imposed, the report should be submitted with a copy of the appeal letter which will be included in the official record.

d. Upon receipt of the letter report, NAVPERSCOM (PERS-832) will review the report of NJP for completeness and accuracy and will submit the report to NAVPERSCOM, Personnel Information Management Department (PERS-3) for filing in the member's official record.

4. **Misconduct - Civil Offenses.** In civil cases where a member has been arrested in connection with, or charged with, a civil offense which would constitute an offense if charged under reference (c), the CO shall report to NAVPERSCOM (PERS-832) by

message initial pertinent information. This includes civil charges for drunk, impaired, or reckless driving. Subsequent status reports shall be submitted as appropriate. When the results of the civil action become final, the CO shall submit a Final Civil Action Report to NAVPERSCOM by letter. Since this letter may become a part of the member's official record, it shall include the following:

a.	A brief description of the incident for which the member was investigated/arrested/tried.
b.	A statement of the charges as filed, if applicable.
c.	A statement of the pleading or findings, if applicable.
d.	A statement of the sentence imposed, if applicable.
e.	A statement listing any diversionary actions (i.e., community service, attend Mothers Against Drunk Driving (MADD) meetings, attendance at a specified class, etc.) allowed by the court resulting in a dismissal of the civil charges.
f.	A copy of the civil court document reflecting final disposition of the matter.
g.	The command action being taken or recommended.
h.	A dated acknowledgment by the member that member may, within 5 days of the acknowledgment, make a statement concerning the matter

**NOTE:** A member's failure to submit a statement within the required time period shall not be cause for a delay in forwarding the letter report to NAVPERSCOM (PERS-832). If the member submits a statement after the letter report is forwarded, send the statement under separate cover or by letter of transmittal.

5. **Misconduct - Pay Matters**. COs or commanders will report, via their local Personnel Support Activity Detachment (PERSUPPDET) or disbursing officer, to the Defense Finance and Accounting Service, Cleveland Center (DFAS-CL), the results of all cases of unauthorized absences and any punishment from NJP or court-martial which involves a forfeiture, fine or reduction in grade. This report will be in addition to the aforementioned report. The report shall include the inclusive dates of the unauthorized absence and/or the details concerning the forfeiture, fine or reduction in grade.

6. **Nonpunitive Actions Administered Orally or by Letter of Caution**. Non-punitive actions administered orally or by letter of caution not intended for inclusion in the permanent record of the member are not considered punishment within the purview of

reference (c), but are considered nonpunitive measures as described in reference (d), section 0105b. Notation thereof shall not be made in a fitness report and a copy of such letter shall not be forwarded to NAVPERSCOM for inclusion in the member's official record. The performance of duty or facts upon which the action was based may properly be mentioned in the next evaluation report of the member concerned.

7. **Matter of Interest Holdings**

a. NAVPERSCOM determines whether records or reports of formal or informal investigations, or of courts of inquiry or other matters, should be held to contain matters of interest in the official records of any present or former member. A matter of interest, holding ensures that the entire report of a matter, rather than excerpts which might appear in either evaluations, letters of commendation, letters of censure, or other means; is available to future reviewing, examining, or selection authorities. Matters of interest are administrative actions by NAVPERSCOM and should not be recommended by commands in lieu of, or as a substitute for, commendatory or disciplinary action or appropriate markings and comments in an evaluation report.

b. In cases where additional information regarding a member's performance becomes available subsequent to their detachment and transfer to another command, or after an evaluation report for the period in question has already been submitted, a supplementary evaluation report is normally considered more appropriate than a request for a matter of interest holding. In those cases in which a matter of interest holding has been recommended and the information might be construed to reflect derogative on a member involved, the member shall be afforded the opportunity to review the matter and shall submit a signed statement, or declination to make a statement, to NAVPERSCOM. Final determination regarding the matter of interest holding shall be made by NAVPERSCOM after receipt of the entire case, including the member's statement.

8. **Adverse Evaluation Reports**

a. In case of an adverse evaluation per reference (b), adverse matter will not be placed in a member's record without the member's knowledge.

b. If an evaluation contains adverse matter, it shall be referred to the member, along with a Letter Referring Adverse

Report to Member for Statement, as the member may choose to make a reply. If the member does not desire to make a statement at that time, member shall state this officially by annotating the appropriate box on the evaluation report. The reporting senior shall forward the report directly to NAVPERSCOM, Performance Evaluations Division (PERS-32) following the guidance in reference (a).

c. If a report referred to a member for signature is not returned to the reporting senior within a reasonable length of time, the reporting senior shall enter an authorized explanatory phrase per reference (a) in the signature block and forward the report to NAVPERSCOM (PERS-32). If the member on whom an adverse report is made has been detached, the report shall be forwarded to the member directly and not via the new reporting senior, except when the member has been hospitalized. If the address of the member reported upon is not known, the report shall be forwarded to NAVPERSCOM (PERS-32) for referral.

d. In all cases in which a matter may be construed as possibly reflecting adversely against a member, Commander, Navy Personnel Command (COMNAVPERSCOM) resolves the issue in favor of the member concerned and gives the member the benefit of seeing the material with the opportunity to comment thereon.

**9. Information which Alleges Indebtedness, Nonsupport, or Paternity**

a. When a CO is in receipt of information which alleges a claim of indebtedness, nonsupport of the member's legal dependents, or paternity of a child born out of wedlock, or if it becomes apparent to a CO that a member under the command has

(1) flagrantly mishandled personal financial affairs;

(2) repeatedly disregarded a valid court order, current mutual support agreement, or MILPERSMAN 1754-030 and controlling directives requiring them to contribute to the support of their legal dependents; or

(3) after having admitted paternity or having been formally adjudicated to be the father of an illegitimate child, willfully neglected to meet the obligations that may attach thereto, in such a manner as to bring discredit upon the Naval Service, the CO shall take such action as indicated below.

b. Being guided by the merits of each case, a CO should consider

- (1) an appropriate notation in the member's next regular report of fitness or evaluation;
- (2) a CO's NJP; or
- (3) referral to court-martial.

c. The mere involvement of a member in any dependency, paternity, or indebtedness situation should not, of itself, be the sole factor for considering action outlined above. When a member's conduct in such cases does, in fact, bring discredit upon the Naval Service, a CO's action per this paragraph is considered to be appropriate since a member must be morally, as well as professionally, qualified for the present rate and for promotion to the next higher grade.

10. **Unauthorized or Unexplained Absence - Policy**

In all cases of unauthorized absence or unexplained absence (including failure to report in compliance with official orders, missing movement, or absence over leave or liberty) the CO shall follow guidance listed in MILPERSMAN 1600 series.