

MILPERSMAN 5812-010

SETTING ASIDE NONJUDICIAL PUNISHMENT (NJP)

Responsible Office	BUPERS (BUPERS-00J)	Phone: COM	(901) 874-3166
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References	(a) 10 U.S.C. (b) Manual for Courts-Martial (MCM) (c) JAGINST 5800.7G (JAGMAN)
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1. **Policy.** This article applies to both officer and enlisted personnel. Per references (a), section 815, (b) through (c) nonjudicial punishment (NJP) may be set aside, in whole or in part, by the imposing NJP authority, a successor in command, or the next superior general court-martial convening authority (GCMCA) when it is determined the punishment resulted in a clear injustice. The action to set aside executed punishment should generally occur within 120 days.

2. **Effects of Improper Set Asides.** Commanders and commanding officers should be cognizant of the effects of improperly setting aside an NJP. Such effects will include:

a. Disadvantaging Sailors who have not committed misconduct, especially in promotion or advancement;

b. Denying detailers and gaining commands relevant information concerning the reliability of the affected Sailors;

c. Subjecting the Navy to financial reimbursement in the case of restored reduction of rate; and

d. Denying a statutory or administrative selection or screening board relevant information regarding the Sailor's fitness for selection or screening.

3. Action

a. To set aside NJP punishment, in whole or in part, the set aside authority will prepare and personally sign (not "by direction") a letter of notification (LON) in the format displayed in **exhibit 1**. If a set aside is directed by a command other than the command that imposed the NJP, the submitting set aside authority will send an information copy to the command that initially imposed punishment.

b. The LON will explain why the punishment is being set aside, including why the punishment has resulted in a clear injustice.

c. LONs directing a set aside outside the 4-month window will justify the unusual circumstances for the delay.

d. The LON must be sent via mail, encrypted e-mail, or Department of Defense DoD Secure Access File Exchange (SAFE) to the Bureau of Naval Personnel (BUPERS) Office of Legal Counsel (BUPERS-00J), at **BUPERS-00J@navy.mil**, copying the first flag officer in the set aside authority's chain of command. If the set aside authority is a flag officer, the latter requirement is waived.

e. Include as an enclosure to the LON all relevant disciplinary and administrative materials, including the applicable report of NJP, GCMCA appeal response, and or related administrative separation documentation. Failure to do so may cause significant processing delays.

f. After verifying the NJP set aside authority and conducting a review for legal sufficiency on the request, BUPERS-00J will compile the appropriate documents and assign action to the applicable Navy Personnel Command (NAVPERSCOM) codes for expungement and or correction of the subject Service member's records. These may include:

(1) NAVPERSCOM Enlisted Performance Separations Branch (PERS-832) for enlisted personnel,;

(2) NAVPERSCOM Officer Performance Separations Branch (PERS-834) for officers;

(3) NAVPERSCOM Records Management Policy Branch (PERS-313) for removal of documents from the Official Military Personnel File (OMPF);

(4) NAVPERSCOM Performance Evaluation Division (PERS-32) for performance evaluation actions, if applicable;

(5) NAVPERSCOM Enlisted Administrative Boards Branch (PERS-8031) for restoration of pay grade; and

(6) NAVPERSCOM Personnel Performance Security Branch (PERS-833) for cases involving service members in the pay grade of E-6 and above.

g. If a reduction in rate is set aside, the date of restoration must revert to the original date of advancement and time in rate, thereby entitling the member to full reimbursement of back pay.

h. BUPERS-00J will notify the NJP set aside authority once the applicable NAVPERSCOM codes have been tasked with appropriate corrective and restorative action. Although BUPERS-00J will monitor completion of assigned tasking and confirm updates to the Service member's record have been properly executed, it remains the responsibility of the subject member and his or her command to ensure all required follow-on actions, including pay adjustments, administrative updates, and local record corrections are properly completed in line with applicable policy.

i. The NJP set aside authority will ensure all local records are purged of any notations of NJP hearing and or punishments awarded that have been set aside.

j. BUPERS and NAVPERSCOM does not have the capability to correct or adjust pay and allowances. Correction of pay and allowances is to be accomplished by the command personnel office in coordination with the servicing transaction support center.

k. Performance evaluations and related correspondence may only be removed from the member's record if a special evaluation was issued as a result of NJP. Periodic or transfer reports with specific references to NJP, trait marks, and promotion recommendations may not be changed by set aside action. For records that may not be corrected by set aside action, the

subject Service member should be advised to petition the Board for Correction of Naval Records for relief.

Note 1: Mitigation of punishment is a reduction in either the quantity or quality of a punishment, its general nature, and the related charges remaining the same. To mitigate punishment per reference (b), use [NAVPERS 1070/607](#) Court Memorandum (**if pay is involved**) or [NAVPERS 1070/613](#) Administrative Remarks (**if no pay is involved**) to correct the original document. Reduction in pay grade may be mitigated to forfeiture of pay only within 4 months after date of execution, and forfeitures may not exceed the total amount of forfeitures that could have been awarded at NJP. Both original and corrected [NAVPERS 1070/607](#) will be filed as part of member's official record. **Do not issue an LON in a modified format to NAVPERSCOM (PERS-832) for mitigation.**

Note 2: See [MILPERSMAN 1430-020](#) for procedures regarding advancement after reduction in rate.

Exhibit 1

CUI
[command letterhead]

5812
[serial]
[date]

From: [position, command setting aside NJP]
To: Deputy Chief of Naval Personnel (BUPERS-00J)
Subj: [partial] SET ASIDE OF NONJUDICIAL PUNISHMENT ICO [rank/rate, name, USN]

Ref: (a) Manual for Courts-Martial (MCM)
(b) JAGINST 5800.G (JAGMAN)
(c) NAVPERS 15560D, Naval Military Personnel Manual
(MILPERSMAN)

Encl: (a) [GCMCA appeal response, if applicable]

1. As the [nonjudicial punishment (NJP) authority who imposed punishment, the imposing NJP authority's successor in command, or the next superior general court-martial convening authority of the imposing NJP authority], I hereby set aside [(state punishment being set aside) or (the NJP proceeding) in the case of [rank/rate, name]. All rights, privileges, and property affected by virtue of the execution of this [or if partial, this part of the punishment] punishment will be restored. Per references (a); (b); and (c), MILPERSMAN 5812-010; request you remove from [grade/rate, name]'s official record all references to [this punishment or NJP hearing], which has been set aside. Request copy-to addressees take appropriate restorative action in the case of [rank/rate, name] and notify me and the member concerned when completed.

2. Following information concerning this action is provided:

- a. Name: [grade/rate, name, full SSN]
- b. Date of NJP: [date]
- c. Imposing command: [If different from command setting aside, indicate by Standard Navy Distribution List long title and forward a copy to that command.]
- d. Offenses of which member was found guilty:
- e. Punishment awarded:
- f. Punishment being set aside:
- g. Rationale for set aside: [Describe why the punishment is being set aside, including the "clear injustice" warranting set aside.]
- h. Unusual circumstance(s): [If set aside is to take place greater than 4 months since punishment was executed, explanation as to the unusual circumstance(s) present.]

3. This letter will not be filed in [grade/rate, name]'s official record, but will be destroyed after your action is completed.

4. Point of contact: [name, e-mail address, telephone number]

Signature of NJP Set Aside Authority
(not "By direction")

Copy to:

(first flag officer in NJP set aside authority's chain of command)
(command that imposed NJP)
(cognizant personnel office)
(cognizant disbursing office, if pay affected)
(subject member)

[appropriate CUI markings]