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1910/1450

MEMORANDUM

From:

Convening Authority

To:

Board President

Subj: CONVENING ORDER – REDUCTION FOR INCOMPETENCY

Ref: (a) Enlisted Personnel Administrative Boards Manual, PSCINST M1910.1 (series)
(b) Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)

1. Appointment of Incompetency Reduction Board: You are designated as the board president for an incompetency reduction board convened under references (a) and (b). The other members of the board appointed by this convening order are:

a. _____.

b. _____.

See Article 3.A. of reference (a) for information about the board members' duties.

2. Purpose: The board shall conduct a hearing to gather relevant evidence, both in favor of and adverse to the following Respondent:

_____.

I am providing you, as enclosure (1), the notice I gave the respondent explaining the conduct and/or performance of duty that I believe may constitute a basis for the proposed administrative action.

Enclosure (2) is the respondent's exercise of rights related to this administrative proceeding, information you need to know to prepare for your hearing.

3. Warning: *Except for reviewing enclosures (1) and (2) and Coast Guard policy on administrative boards contained in references (a) and (b), you shall refrain from examining or discussing any substantive matters about this case prior to the hearing unless required by your regular duties. In addition, you shall refrain from speculation and shall not form opinions about matters that may arise at the hearing.*

4. Date/Time: As board president, you determine the date and time of the board’s hearing, which should be convened as soon as possible, provided that:

a. The hearing shall not begin sooner than 21 calendar days after the date of this convening order unless the respondent requests an earlier beginning date and you determine that the earlier beginning date is practical; and

b. The hearing shall not begin later than 45 calendar days after the date of this convening order unless the delay is approved by me.

c. You should contact the respondent (or respondent’s counsel if he or she has elected to be represented by counsel), the recorder, and your fellow board members as soon as possible to identify the earliest available hearing date consistent with the requirements of this order and reference (a). Contact information for the respondent’s counsel is identified in Paragraph 9 below.

5. Location: The hearing shall be conducted at the following location:

6. Notifying the Respondent: You shall notify the respondent of the date, time, and location of the hearing. See Article 4.C.1.a. of reference (a) for guidance on notifying a respondent about those matters along with other important facts about the hearing and a respondent’s rights during and after the hearing.

Appendix 4-1 of reference (a) contains an example of the notice you must give the respondent. A fillable template of the notice can be downloaded from the CG PSC-psd website: <http://www.uscg.mil/psd/fs>.

7. Recorder: The non-voting *recorder* for this administrative board is:

See Article 3.B. of reference (a) for information about the recorder’s duties.

8. Reporter: The non-voting *reporter* for this administrative board is:

See Article 3.D. of reference (a) for information about the reporter’s duties.

9. Respondent’s Counsel: (select one)

_____ The respondent elected to be represented by the following lawyer:

Unit Name (or, if a civilian lawyer, the mailing address):

Telephone: _____

See Article 3.C. of reference (a) for information about the Counsel’s responsibilities.

_____ The respondent *declined* and *waived* his or her right to be represented by a military or civilian lawyer.

10. Legal Advisor: (select one)

_____ The Staff Judge Advocate (SJA) has assigned the following Coast Guard lawyer to be the legal advisor to the board. You may request the legal advisor’s presence at the hearing if you deem it necessary.

Unit: _____

Telephone: _____

See Article 3.E.1. of reference (a) for information about the duties of a legal advisor detailed by the SJA.

_____ I have appointed the following Coast Guard lawyer to be the legal advisor to the board. The legal advisor shall be present during the board proceedings and is a non-voting member of the board.

Unit: _____

Telephone: _____

See Article 3.E.2. of reference (a) for information about the duties of a legal advisor appointed by the convening authority.

Contact the Legal Advisor: You shall contact the Legal Advisor as soon as possible; the Legal Advisor shall provide guidance to you before the hearing on board procedures, and throughout the board proceedings as you deem appropriate.

11. Hearing:

a. Procedure/Rights: The hearing procedures shall be conducted in accordance with reference (a); the respondent’s rights before the board are explained in Articles 1.C. and 1.K. of reference (a).

See Chapters 5 and 6 of reference (a) for guidance on how to conduct your hearing.

b. Witness Statements: Testimony of witnesses heard by the board shall be under oath or affirmation. Witness testimony shall be summarized and made a part of the hearing record in accordance with reference (a).

See Article 6.D.2. and Appendix 3-1 of reference (a) for information on how to summarize witness statements.

Appendix 6-2 of reference (a) is a sample witness testimony summary sheet. You may create your own witness testimony summary sheet, or a fillable template for a witness testimony summary sheet can be downloaded from the CG PSC-psd website: <http://www.uscg.mil/psd/fs>.

c. Electronic Recording / Verbatim Transcript: Video recording of board proceedings is prohibited; audio recording may be used by the board to assist in fulfilling its documentation requirements.

(select if applicable)

You shall ensure that: _____ an audio recording of the board proceedings is performed.

_____ a verbatim transcript is produced and attached to the record.

See Articles 5.B.2. and 5.B.3. of reference (a).

d. If You Discover Criminal Conduct: If, at any time during the proceedings, you become aware of the respondent’s involvement in criminal activity, you shall halt the proceedings and advise the respondent of his or her right against self-incrimination, the right to make no statement regarding a charged or suspected offense, and the right to warnings regarding these matters prior to custodial interrogation as provided by Article 31, UCMJ. If, at any time during the proceedings, you become aware of any witness’s involvement in criminal activity, see Article 1.C.5.k., Article 6.D.12, and Appendix 1-2 of reference (a).

e. Inquiry into Medical Records: If your hearing requires the use of medical records or other protected health information of the respondent or any other military member of the Coast Guard, you are authorized to receive and appropriately use the medical records or other protected health information as necessary to achieve the purposes of the board’s investigation. This authorization is pursuant to 45 C.F.R. § 164.512(k)(1), as implemented by Coast Guard Notice USCG-2003-15026 (See 68 Fed. Reg. 81, 22408 (April 28, 2003)).

All board members are responsible for complying with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Privacy Act of 1974.

See Article 6.B.1.b. of reference (a) for information on how to comply with HIPAA and the Privacy Act.

f. Summarizing the Hearing: You shall prepare a summarized record of the hearing in accordance with Article 6.G. of reference (a).

Appendix 5-2 of reference (a) is a sample summarized hearing record. You may create your own summarized hearing record following the example, or a fillable template for a summarized record can be downloaded from the CG PSC-psd website: <http://www.uscg.mil/psd/fs>.

12. Board Report: The board shall prepare a report and submit it in accordance with Chapters 7 and 8 of reference (a).

Appendix 7-1 of reference (a) contains an example of a board report. You may create your own board report following the example, or a fillable template of a board report can be downloaded from the CG PSC-psd website: <http://www.uscg.mil/psd/fs>.

a. You shall provide the following information in the board report:

(1) Findings of Fact: The board shall render findings of fact that are proved by a preponderance of the evidence presented and considered at the hearing. See Article 7.B.6.c. of reference (a) for information about writing findings of fact.

(2) Opinions: The board shall render opinions based on its findings of fact and the evidence presented and considered at the hearing. See Article 7.B.6.d. of reference (a) for information about developing opinions.

(3) Unqualified / Not Unqualified: The board shall determine whether the respondent is or is not unqualified by reason of incompetency for the duties of his or her rate.

b. Time Goal for the Board Report: Whereas you should take as much time as is necessary to complete the hearing, the board report shall be completed within 1-3 calendar days of the conclusion of the hearing. Therefore, after the hearing is closed, you should begin deliberations and the writing of the board report. In accordance with reference (a), the board report shall be completed before you resume your normal duties. If you are unable to complete your board report within **three calendar days** of the date the hearing concludes, you shall promptly report the reasons to me and include an explanation of the delay in the report of the proceedings of the board. See Articles 1.I.2. and 3.A.2. of reference (a).

13. Policy and Deviations: Refer to references (a) and (b) for policy and guidance. Any authorized deviations from the requirements of these references shall be identified in the Board Report.

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- Encl: (1) Notice of intent to take administrative action – w/ respondent's acknowledgement and initial elections
(2) Respondent's Exercise of Rights memorandum dated

Copy: