

Rights and Responsibilities 9-4.01 K

KNOW your rights and responsibilities as an enlisted member as they pertain to the following, as presented in the E-PME Study Guide.

- Extra Military Instruction (EMI)
- UCMJ Infractions
- Search and Seizure
- Rights of Accused
- Right to Appeal

Enlisted Rights

In the Coast Guard, we are provided a set of rights to protect us. But as is the case with most rights, we must meet certain responsibilities to show that we've earned these rights.

Specifically, the Coast Guard has assigned rights for the following areas:

- Extra military instruction
- Uniform Code of Military Justice infractions
- Search and seizure
- Rights of accused
- Right to appeal

These rights ensure that enlisted personnel are treated fairly and are given the benefit of due process when behavior problems arise.

Extra Military Instruction

Extra Military Instruction (EMI) is:

- Additional instruction in a phase of military duty where an individual is deficient
- Intended for, and directed toward, the correction of that deficiency
- A legitimate training technique to improve an individual's duty performance and efficiency

EMI is NOT punishment. It may be assigned only if it is genuinely intended to improve performance. It cannot be used as a substitute for judicial (court-martial) punishment or non-judicial punishment (NJP).

***Extra Military
Instruction
(continued)***

An enlisted member can be directed to:

- Attend EMI for no more than two hours per day
 - Attend EMI only for the period of time it takes to correct the performance deficiency for which it was assigned...no longer
 - Perform EMI on a day that is not his or her Sabbath
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***Uniform Code of
Military Justice
Infractions***

Commanding officers have the authority, under Article 15 – Uniform Code of Military Justice (UCMJ), to impose punishment without having to conduct a court-martial.

Enlisted members must be informed of the following:

- The right to demand a trial by court-martial instead of NJP if they are NOT attached to or embarked on a vessel.
 - The right to request a particular mast representative. A mast representative assists the accused in preparing a defense. If it is practical and reasonable, a requested mast representative should be appointed as mast representative. However, the requested mast representative cannot be otherwise involved in the matter that is the subject of the NJP.
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***Non-judicial
Punishment***

Article 15 of the Uniformed Code of Military Justices gives commanding officers or officers in charge the authority to award non-judicial punishment at captain's mast. UCMJ infractions not serious enough to warrant a court martial are generally disposed of at captain's mast, which is not a judicial proceeding.

Court Martial

A court-martial is a trial before a military court or judge.

- General Court-Martial. A general court-martial consists of a military judge and at least five members.
 - Special Court-Martial. A special court-martial consists of a military judge and at least three members. Except in capital cases, the accused may request a trial by military judge alone.
 - Summary Court-Martial. A summary court-martial consists of one member, rank 0-4 or above. The member does not need to be a judge.
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Search and Seizure

Searches and the subsequent seizure of items can be conducted under two different circumstances:

- When probable cause exists
 - When probable cause is not required.
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“Probable Cause” Search and Seizures

A probable cause search is conducted when a person of “reasonable caution” believes that something connected with a crime is:

- On an enlisted member’s premises
- In his or her direct possession

A person of “reasonable caution” is defined as an investigator or Military Police officer.

Enlisted members have the right to receive an inventory of any items seized during the probable cause search. Under probable cause circumstances, searchers are not required to obtain a search warrant when the property or evidence may be removed, destroyed, or concealed while searchers wait for the warrant.

“Probable Cause Not Required” Search and Seizures

Some types of searches do NOT require probable cause. A person being searched has limited rights of refusal when:

- The search is conducted in an emergency situation
- A member is placed under arrest, incarcerated, or crossing borders.

In a consent search, members have the right to refuse the search.

Other types of searches that do not require probable cause are:

- Border searches
 - Searches upon entry to or exit from United States installations, aircraft, and vessels abroad
 - Searches of government property
 - Consent searches
 - Searches incident to a lawful stop
 - Searches incident to a lawful apprehension
 - Searches within jails, confinement facilities, or similar facilities
 - Emergency searches to save life or for related purposes
 - Searches of open fields or woodlands
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Rights of the Accused

The United States Constitution has many protections for enlisted members accused of a crime. These rights differ according to whether the accused will face a non-judicial punishment hearing or summary court-martial.

Non-judicial Punishment

The accused enlisted member may:

- Not incriminate himself or herself
 - Consult an attorney
 - Demand trial of court-martial if at a shore command
 - Have a mast representative at a non-judicial punished hearing
 - Be informed of his right against compulsory self-incrimination
 - Be informed orally or in writing of the information presented against him or her
 - Ensure all relevant information is presented concerning his/her case
 - Request not to appear personally at proceedings held against him or her
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Summary Court-martial

The accused enlisted member has the right to:

- Refuse trial by summary court-martial
 - Consult with an attorney
 - Remain silent and plead not guilty
 - Have the summary court-martial call, or subpoena witnesses to testify on behalf of the accused
 - Confront and cross-examine all witnesses testifying against the accused
 - If found guilty, present matters that mitigate the offense or extenuating circumstances as to why the accused committed the offense
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Right to Appeal

A Coast Guard member punished under Article 15, UCMJ, may appeal the punishment if he or she considers it “unjust” or “disproportionate” to the acts of misconduct punished.

A Coast Guard member receiving a punitive letter may appeal. This appeal must be submitted:

- Based on a claim that a matter raised in the letter is “inaccurate” or “not relevant” to the offense committed or the punishment imposed
- In writing within 5 calendar days after the punishment is imposed, or the right to appeal is waived
- When received by the person’s supervisor or any more senior individual in his or her unit chain of command

Submitting an appeal will not suspend any punishment awarded. However, if an appeal has not been acted upon by the Commanding Officer, the member may request the remainder of the punishment be suspended until a decision is made on the appeal.
