

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]  
[REDACTED]

BOARD DATE: 13 April 2023

DOCKET NUMBER: AR20220008623

APPLICANT REQUESTS: through counsel:

a. reconsideration of his previous requests for:

(1) removal of the DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ), 10 September 2010, from his Army Military Human Resource Record (AMHRR);

(2) restoration of his rank/grade to sergeant (SGT)/E-5 effective his original date of rank;

(3) appropriate pay and allowances commensurate with his rank/grade restoration retroactive to the date of his reduction;

(4) removal of unspecified derogatory information from his DA Form 2166-8 (Noncommissioned Officer (NCO) Evaluation Report (NCOER)) covering the period 7 November 2009 through 9 September 2010 (presumed to mean removal of his NCOER from his AMHRR); and

(5) promotion to the rank/grade of staff sergeant (SSG)/E-6; and

b. award of the Combat Action Badge (CAB) for his service during Operation Enduring Freedom (OEF) – Afghanistan.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Counsel's Letter, 17 May 2022, with enclosures –
- Enclosure 1 – Power of Attorney, 31 October 2021
- Enclosure 2 – Applicant's Affidavit, 2 May 2022

- Enclosure 3 – DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 30 June 2009
- Enclosure 4 – DD Form 214 for the period ending 14 December 2010
- Enclosure 5 – Army Board for Correction of Military Records (ABCMR) Docket Number AR20160003587, 12 October 2017
- Enclosure 6 – Forensic Document Examiner's Letter to the Applicant (Regarding: Handwriting Analysis and Letter of Opinion), 29 January 2016, with auxiliary documents
- Enclosure 7 – two DA Forms 2823 (Sworn Statement), 20 July 2010
- Enclosure 8 – DA Form 2166-8 covering the period 7 November 2009 through 9 September 2010
- Enclosure 9 – Statement from C\_\_\_\_ T\_\_\_\_, undated

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20150000345 on 6 October 2015 and Docket Number AR20160003587 on 12 October 2017.
2. The applicant states he is innocent. The DA Form 2627 should be removed from his AMHRR and all punishment should be restored, including his reduction in rank/grade and forfeitures of pay. He should receive the appropriate back pay and allowances from the date of his reduction in rank/grade to the date of his separation.
3. Counsel states, in effect, the applicant requests reconsideration of his previous case on the grounds of new evidence to clarify and support his claim of innocence.
  - a. The applicant was a member of the Army National Guard (ARNG) from 2007 to 2010. He deployed to Afghanistan in support of Operation Enduring Freedom from November 2009 to November 2010. On 10 September 2010, he was reduced in grade from E-5 to E-4 following nonjudicial punishment (NJP) that he received for allegedly forging a sworn statement while downrange. He maintained his innocence, but he was found guilty.
  - b. The applicant is seeking relief in the form of removal of the DA Form 2627 from his AMHRR, restoration of his loss of rank to SGT backdated to the date of his reduction, appropriate back pay commensurate with the rank restoration backdated to the date of his reduction, and award of the CAB.
  - c. The previous board that denied his petition and misinterpreted facts that painted him as deserving of the NJP and the collateral follow-on actions. In his previous petition, he submitted a document from a handwriting expert opining that he did not forge

First Lieutenant (1LT) M\_\_\_\_ B\_\_\_\_'s signature on his DA Form 2823. In its discussion, the Board questioned why he was presenting evidence suggesting that he was a witness to a fraudulent act (forgery). He has now clarified under oath that he was not present when the forged signature was signed. Due to exigent circumstances downrange that did not provide for an opportunity for authentication, his DA Form 2823 was not intended to be submitted as a sworn statement but rather as an unsworn statement which does require an authenticating oath. He turned in his unsworn DA Form 2823 to a fellow service member, Specialist (SPC) C\_\_\_\_ T\_\_\_\_, as essentially a memorandum for record that he expected to convert to a sworn statement at a later time. It was SPC T\_\_\_\_ who forged 1LT B\_\_\_\_'s signature and he was not present during or involved in the forgery. In support of this petition, Mr. T\_\_\_\_ provided a statement in which he admitted to forging the lieutenant's signature without the knowledge or participation of the applicant. Based on this new evidence, his NJP should be set aside and he should be granted the requested relief.

d. On 31 May 2010 at approximately 1345 hours while serving as truck commander, the applicant came under fire from a rocket attack at or around Dīvālak Ridge near Combat Outpost Payne in the Helmand Province of Afghanistan. His commanding officer directed the unit to brace for impact. He observed a large plume of smoke coming from across a nearby river. This impact was within the danger-close range. The event was observed by several other Soldiers within the area. A Soldier named Private First Class P\_\_\_\_ confirmed the impact site as roughly 500 meters or greater behind his formation. The distance was later confirmed by the explosive ordinance disposal unit that examined the site and found remnants of three enemy rockets. Along with the other Soldiers, he believed this incident qualified for a CAB.

e. On 20 July 2010, the applicant provided his account of the incident on a DA Form 2823. This was intended to serve as an informal memorandum of record. Due to the operations tempo of the unit, he did not have time to prepare a sworn statement due to the unavailability of an officer authorized to administer the oath. The DA Form 2823 was, in effect, to serve as a memorandum for record or "unsworn" statement to memorialize the incident for further authentication. It was his specific intent to obtain a true sworn statement once an appropriate officer was identified. After signing his statement, he passed the statement to SPC T\_\_\_\_ for safekeeping as SPC T\_\_\_\_ was keeping all of the statements for future use. According to the applicant, the form was not intended to be a sworn statement. After submitting the statement, what happened next occurred outside of his presence and knowledge.

(1) Upon receiving the statements, SPC T\_\_\_\_ forged the signature of 1LT B\_\_\_\_ on the DA Form 2823 and signed his name as a witness to make it appear as if the form were an executed sworn statement. At some point, SPC T\_\_\_\_ presented this statement to the command as an executed sworn statement, which was denied by 1LT B\_\_\_\_.

(2) After submitting the informal statement, the applicant was accused by his command of forgery since it was his statement with 1LT B\_\_\_\_'s signature. He received NJP, but he was never allowed to consult an attorney for unknown reasons. Without the ability to consult an attorney, he had no choice but to accept the NJP. He maintained his innocence during the Article 15 hearing, but he was found guilty of forgery and was reduced by one grade to E-4. He never intended to submit a "sworn" statement and he was not present when SPC T\_\_\_\_ forged 1LT B\_\_\_\_'s signature.

(3) To prove his innocence, the applicant procured a handwriting expert opinion stating that it was SPC T\_\_\_\_ who signed the lieutenant's name. Although they are no longer in the Army, SPC L\_\_\_\_ attempted to contact SPC T\_\_\_\_ on multiple occasions over multiple platforms to obtain his cooperation. On or about 18 March 2022, Mr. T\_\_\_\_ responded to him and provided him with a short, undated statement acknowledging responsibility for the forgery and stating the applicant had no knowledge or participation in that matter.

f. The applicant was charged with one count of forgery in violation of Article 123, UCMJ, and the only evidence at the time was the DA Form 2823. There are three elements common to both aspects of forgery: a writing falsely made or altered, apparent capability of the writings as falsely made or altered to impose a legal liability on another or to change another's legal rights or liabilities to that person's prejudice, and an intent to defraud. These elements do not apply to his situation.

g. The applicant did not receive adequate legal advice. He had an affirmative right to consult counsel prior to electing whether to accept NJP and review the evidence. According to the applicant, he was not provided with the opportunity to consult with counsel and would have met with an attorney if so offered. If he met with an attorney, the attorney would likely have advised him to not accept the NJP based on the evidence of the case. By violating his right to counsel, the command also violated its duty to impose NJP in a fair and judicious manner in accordance with Army Regulation 27-10 (Military Justice) and the UCMJ.

h. In conclusion, as the evidence shows, the applicant did not receive appropriate legal advice prior to accepting his NJP. It is equally clear that even if he had received legal advice, he would have been acquitted. Accordingly, he requests that this Board grant the described relief in the interest of justice.

4. In a 2 May 2022 affidavit, the applicant states, in effect:

a. He believes the rocket attack on 31 May 2010 near Combat Outpost Payne in Helmand Province, Afghanistan, in which he was present deserves him being awarded the CAB.

b. He provided his account on a DA Form 2823, 20 July 2010. This was intended to serve as an informal memorandum of record. He wanted to keep a record of the event while it was fresh in his memory. He drafted and signed his name to the form and submitted the form to SPC T\_\_\_\_\_ for collection. This form was not intended to be a sworn statement since he did not have anyone with him at the time to administer the oath.

c. After submitting the informal statement, he was accused by his command of forgery. He learned that after submitting the statement, SPC T\_\_\_\_\_ forged a lieutenant's signature on the form and presented it as a sworn statement in his name. He never consented to this and had no knowledge of it. Had he known what SPC T\_\_\_\_\_ was about to do, he would have ordered him not to commit forgery and he would have reported the incident to his chain of command.

d. He received NJP and lost a rank, which resulted in this petition. He never intended to submit a "sworn" statement and he was not present when SPC T\_\_\_\_\_ forged 1LT B\_\_\_\_\_ 's signature. During the NJP process, he was not offered an opportunity to speak to an attorney. He was not aware of how much punishment could be imposed or what his rights were with respect to presenting evidence on his behalf. He was not aware that he could appeal or even seek advice from a civilian attorney. This process was done downrange and in a very rushed manner. He now understands that the DA Form 2627 wasn't even filed in his official record, which makes it incredibly hard to challenge.

e. In March 2022, Mr. T\_\_\_\_\_ replied to his correspondence and signed a letter admitting that he forged 1LT B\_\_\_\_\_ 's signature on two statements without his participation or knowledge. He fully realizes that his letter is not ideal since it is not dated or notarized, but this is the best Mr. T\_\_\_\_\_ was willing to provide.

f. He had no role, direct or indirect, in the forgery of his DA Form 2823. The action was taken without his knowledge and he is asking the Board to grant him relief in the interest of justice and fairness.

5. After having prior enlisted Regular and Reserve service in the U.S. Marine Corps, he enlisted in the ARNG on 1 November 2007 in the rank/grade of SGT/E-5.

6. Headquarters, Military Department, State of Washington, Office of the Adjutant General, Camp Murray, Tacoma, WA, Orders 274-032, 1 October 2009, ordered him to active duty as a member of his Reserve Component, the 204th Engineer Company, in support of OEF for a period not to exceed 400 days with a reporting date of 7 November 2009.

7. Headquarters, U.S. Army Garrison, Fort McCoy, WI, Orders MC-363-0144, 29 December 2009, ordered his deployment in support of OEF to Sharana, Afghanistan, with the 204th Engineer Company for a period not to exceed 343 days with a proceeding date of 2 January 2010.

8. In the applicant's initial request to the Board in October 2015, he provided an incomplete copy of his DA Form 2627. This DA Form 2627, 10 September 2010, shows:

a. The applicant was considered for imposition of NJP for misconduct on two occasions in that he wrongfully communicated (redacted) on or about (redacted) and 9 August 2010 at or near Camp Leatherneck, Afghanistan.

b. This form was signed "for" the 105th Engineer Battalion Commander. The signature dated 10 September 2010 is illegible.

c. This form was not signed by the applicant acknowledging his opportunity for counsel or understanding of his rights. This form does not show imposition of punishment or that it was appealed, nor does it contain any signatures other than the initial signature considering him for NJP.

d. Item 10 (Allied Documents and/or Comments) of the DA Form 2627 contains the following statement: "Paragraph 3-18(f)(1), AR [Army Regulation] 27-10 [Military Justice] complied with." (Note: This item contained other comments that were redacted).

9. The applicant's AMHRR does not contain the subject DA Form 2627, 10 September 2010.

10. Headquarters, Military Department, State of Washington, Office of the Adjutant General, Camp Murray, Tacoma, WI, Orders 268-907, 25 September 2010, reduced the applicant in rank/grade from SGT/E-5 to SPC/E-4 for misconduct in accordance with Army Regulation 600-8-19 (Enlisted Promotions and Reductions), paragraph 10-3b, and by verbal order from the Adjutant General, Washington, effective 10 September 2010.

11. The contested relief-for cause NCOER covering 10 months of rated time from 7 November 2009 through 9 September 2010 shows his rater as the Senior Motor Sergeant, Sergeant First Class C\_\_\_\_ J. W\_\_\_\_, and his senior rater as the Company Executive Officer, First Lieutenant (1LT) N\_\_\_\_ A. W\_\_\_\_. His principal duty title is shown as "Wheeled Vehicle Mechanic."

a. The contested NCOER further shows in:

(1) Part III (Duty Description), block f (Counseling Dates), an initial counseling date of 5 December 2009 and a subsequent counseling date of 8 May 2010;

(2) Part IV (Army Values/Attributes/Skills/Actions), the rater placed an "X" in the "No" boxes for Respect/Equal Opportunity/Equal Employment Opportunity, Honor, and Integrity and entered the following bullet comments:

- failed to treat others with respect
- lacked sound judgment to do what is right
- dedicated to mission accomplishment

(3) Part IVb (Competence), the rater placed an "X" in the "Needs Improvement – Some" block and entered the following bullet comments:

- failed to use sound judgement while dealing with others
- his highly innovative battlefield repairs abilities kept the RCP [route clearance patrol] on mission numerous times
- continually strived to make the right maintenance decisions

(4) Part IVc (Physical Fitness and Military Bearing), the rater placed an "X" in the "Needs Improvement – Some" block and entered the following bullet comments:

- has lost military bearing on several occasions
- has continually improved his fitness level throughout this deployment
- dedicated to the mission and places high emphasis on mission-related tasks

(5) Part IVd (Leadership), the rater placed an "X" in the "Needs Improvement – Much" block and entered the following bullet comments:

- was relieved as a maintenance supervisor of 5 maintainers and 13 pieces of equipment
- as a team leader, failed to set Be, Know, Do, standards
- consistently met standards in all maintenance facets with an overall readiness rate of over 90%

(6) Part IVf (Responsibility and Accountability), the rater placed an "X" in the "Needs Improvement – Some" block and entered the following bullet comments:

- showed irresponsibility for his actions by not doing the right thing
- always teaching subordinates while maintaining equipment
- always ready to support missions

(7) Part V (Overall Performance and Potential), block a (Rater), the rater placed an "X" in the "Marginal" block;

(8) Part V, block e (Senior Rater Bullet Comments), the senior rater entered the following bullet comments:

- Soldier declined to sign NCOER
- Soldier very knowledgeable and committed to his mission
- Soldier lost bearing under duress

(9) Part V, blocks c (Overall Performance) and d (Overall Potential for Promotion and/or Service in Positions of Greater Responsibility), the senior rater placed an "X" in the "Poor" boxes.

b. The rater and senior rater authenticated the form with their digital signatures on 16 November 2011 and 18 November 2011, respectively. The applicant did not sign the form.

12. There is no evidence indicating the applicant requested a Commander's Inquiry or appealed the contested NCOER. A review of his AMHRR shows the contested NCOER is filed in the performance folder.

13. He was honorably released from active duty on 14 December 2010 by reason of completion of required active service. His DD Form 214 shows he completed 1 year, 1 month, and 8 days of net active service during this period with 6 years, 4 months, and 28 days of total prior active service. His DD Form 214 further shows in:

- item 4a (Grade, Rate, or Rank) – SPC
- item 4b (Pay Grade) – E-4
- item 12f (Foreign Service) – 10 months and 3 days
- item 12i (Effective Date of Pay Grade) – 10 September 2010
- item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – no CAB
- item 18 (Remarks), in part – Service in Afghanistan from 3 January 2010 through 4 November 2010

14. U.S. Army Human Resources Command (HRC), Fort Knox, KY, Orders D-11-117859 honorably discharged him from the U.S. Army Reserve effective 1 November 2011.

15. On 6 October 2015, the ABCMR denied the applicant's request for removal of the DA Form 2627 from his AMHRR (the Board noted that no DA Form 2627 was present in his Official Military Personnel File (OMPF)), restoration of his rank, and receipt of back pay and allowances due to misrepresentation of facts and forged documents as he noted. The Board determined the overall merits of this case were insufficient and he failed to demonstrate the existence of probable error or injustice.

16. On 12 October 2017, the ABCMR again denied the applicant's request for removal of the DA Form 2627 from his AMHRR (this Board also noted that no DA Form 2627 was present in his OMPF), restoration of his rank with back pay and allowances, promotion to the rank/grade of SSG, removal of the NCOER covering the period 7 November 2009 through 9 September 2010 from his AMHRR, and award of the CAB. The Board reconsidered his request with the handwriting analysis opinion by a forensic document examiner and other new evidence submitted. The Board determined the overall merits of this case were insufficient and he failed to demonstrate the existence of probable error or injustice. Regarding award of the CAB, the Board took no action as he failed to exhaust his administrative remedies by submitting his request to HRC.

17. On 17 August 2021, the applicant petitioned the Board to reverse the decision of the HRC Awards and Decorations Branch that denied him award of the CAB on 5 May 2021. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. The Board found insufficient evidence to show the applicant was personally present and under hostile fire while performing satisfactorily in accordance with the prescribed rules of engagement in an area where hostile fire pay or imminent danger pay was authorized and/or performing his assigned duties associated with the unit's combat mission. The Board determined he did not meet the criteria for award of the CAB on 28 June 2022.

18. The applicant, through counsel provided:

a. his DD Form 214 for the period ending 30 June 2009 that shows he was honorably released from active duty while in the rank of SGT as a result of being ordered to active duty with his Reserve unit in an Active Guard Reserve status for a period of 1 year, 4 months, and 12 days;

b. a forensic document examiner's letter to the applicant (Handwriting Analysis and Letter of Opinion), 29 January 2016, with auxiliary documents, stating she examined the two DA Forms 2823, 20 July 2010, and opined the signatures of 1LT B\_\_\_\_ on both the applicant's and D\_\_\_\_ K\_\_\_\_'s forms were not genuine. The examiner noted there was a strong probability that C\_\_\_\_ T\_\_\_\_ signed for 1LT B\_\_\_\_ on both documents. She opined the applicant did not commit the forgeries on the sworn statements;

c. two DA Form 2823, 20 July 2010, one completed by the applicant and another completed by D\_\_\_\_ K\_\_\_\_, that describe the rocket attack on 31 May 2010; and

d. an undated statement from C\_\_\_\_ T\_\_\_\_, a fellow Soldier at the time, which he signed and noted: "I, C\_\_\_\_ T\_\_\_\_ while serving as HR [Human Resources] SPC for 204th EN (MAC) [Engineer Company (Mobility Augmentation Company)] Camp Dwyer,

Afghanistan. At this time [Applicant] brought me his pre-signed sworn statement dropped it off and left. On my own volition I forged Lt. M\_\_\_\_ B\_\_\_\_ signature on two sworn statements. At no time was [Applicant] present during the forgery."

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is not warranted.
2. The contested DA Form 2627 is not present in the applicant's AMHRR, and the Board determined there is no action to be taken in this matter.
3. The Board found insufficient evidence indicating the applicant's reduction in grade was improper or that he was deprived of any due process related to his reduction. The Board determined the evidence does not support restoration of his grade or payment of any associated pay and allowances. Absent a basis for restoring his grade, the Board determined there is no basis for considering him for promotion to SSG.
4. The applicant requests, in effect, removal of his NCOER for the period ending 9 September 2010 from his AMHRR. The Board found insufficient evidence that establishes clearly and convincingly that action is warranted to correct a material error, inaccuracy, or injustice present in the contested NCOER. The Board determined the NCOER should remain in the applicant's record.
5. The Board found insufficient evidence indicating the applicant met the criteria for the CAB. The Board determined the previous denials of his request for the CAB were not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Numbers AR20150000345 on 6 October 2015 and AR20160003587 on 12 October 2017.

■ [REDACTED]

■ [REDACTED]

---

■ [REDACTED]

■ [REDACTED]

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity; it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

2. Army Regulation 27-10 (Military Justice), prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial, United States, 2005, and the Rules for Courts-Martial contained in the Manual for Courts-Martial.

a. Paragraph 3-18a states the imposing commander will ensure the Soldier is notified of the commander's intention to dispose of the matter under the provisions of Article 15, UCMJ. The Soldier will also be notified of the maximum punishment the commander could impose under Article 15, UCMJ. The Soldier will be provided a copy of the DA Form 2627 with items 1 and 2 completed, including the date and signature of the imposing commander. The imposing commander may authorize a commissioned officer, warrant officer, or NCO (sergeant first class or above), provided such person is senior to the Soldier being notified, to deliver the DA Form 2627 and inform the Soldier of the Soldier's rights. The NCO performing the notification should ordinarily be the unit first sergeant or the senior NCO of the command concerned. If it is not possible or practical for an officer or NCO senior to the Soldier to deliver the DA Form 2627 and inform the Soldier of his rights, any judge advocate may complete the notification

process. In such cases, the notifier should follow appendix B as modified. The Soldier will be provided a copy of the DA Form 2627 and supporting documents and statements for use during the proceedings. The Soldier will return the copy to the commander for annotation. It will be given to the Soldier for retention when all proceedings are completed.

b. Paragraph 3-18(f)(1) states if the Soldier requests a decision period, the Soldier will be given a reasonable time to consult with counsel, including time off from duty if necessary, to decide whether to demand trial. The decision period will not begin until the Soldier has received actual notice and explanation of his/her rights under Article 15 and has been provided a copy of the DA Form 2627 with items 1 and 2 completed (see paragraph 3-18a). The Soldier will be advised that if the Soldier demands a trial, block 3a of the DA Form 2627 must be initialed and item 3 must be signed and dated within the decision period; otherwise, the commander will proceed under Article 15. The decision period should be determined after considering factors, such as the complexity of the case and the availability of counsel. Normally, 48 hours is a reasonable decision period. If the Soldier does not request a delay, the commander may continue with the proceedings immediately. If the Soldier requests a delay, the Soldier may, but only for good reason, be allowed an additional period, to be determined by the imposing commander, to decide whether to demand trial. If a new imposing commander takes command after a Soldier has been notified of the original imposing commander's intent to impose punishment, the Soldier will be notified of the change. The Soldier will again be given a reasonable decision period in which to consult with counsel. In either case, item 11 of the DA Form 2627 will contain the following remark: "Para[graph] 3-18f(1), AR [Army Regulation] 27-10 complied with."

c. Paragraph 3-28 (Setting Aside and Restoration) states:

(1) This is an action whereby the punishment or any part or amount, whether executed or unexecuted, is set aside and any rights, privileges, or property affected by the portion of the punishment set aside are restored. NJP is "wholly set aside" when the commander who imposed the punishment, a successor-in-command, or a superior authority sets aside all punishment imposed upon an individual under Article 15. The basis for any set aside action is a determination that, under all the circumstances of the case, the punishment has resulted in a clear injustice. "Clear injustice" means there exists an unwaived legal or factual error that clearly and affirmatively injured the substantial rights of the Soldier. An example of clear injustice would be the discovery of new evidence unquestionably exculpating the Soldier. Clear injustice does not include the fact that the Soldier's performance of service has been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on the retention or promotion potential of the Soldier.

(2) Normally, the Soldier's uncorroborated sworn statement will not constitute a basis to support the setting aside of punishment.

(3) In cases where administrative error results in incorrect entries on the DA Form 2627 or DA Form 2627-1 (Summarized Record of Proceedings under Article 15, UCMJ) the appropriate remedy generally is an administrative correction of the form and not a setting aside of the punishment.

(4) The power to set aside an executed punishment and to mitigate a reduction in grade to a forfeiture of pay, absent unusual circumstances, will be exercised only within 4 months after the punishment has been executed. When a commander sets aside any portion of the punishment, the commander will record the basis for this action according to notes 11 and 12, DA Form 2627; notes 9 and 10, DA Form 2627-1; or DA Form 2627-2 (see paragraph 3-38*b*). When a commander sets aside any portion of the punishment after 4 months from the date punishment has been executed, a detailed addendum of the unusual circumstances found to exist will be attached to the form containing the set aside action.

d. Paragraph 3-37 (Distribution and Filing DA Form 2627 and Allied Documents) states records directed for filing in the restricted folder will be redirected to the performance folder if the Soldier has other records of NJP reflecting misconduct in the grade of SGT or higher that have not been wholly set aside and recorded in the restricted folder.

3. Army Regulation 600-37 (Unfavorable Information) provides that once an official document has been properly filed in the OMPF, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.

4. Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. Paragraph 3-6 provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or other authorized agency.

5. Army Regulation 600-8-19 (Enlisted Promotions and Reductions) prescribes the enlisted promotions and reductions function of the military personnel system.

a. Chapter 7 (Enlisted Promotion of ARNG Personnel) prescribes policies, procedures, and systems to advance, promote, and laterally appoint all ARNG and ARNG of the United States enlisted Soldiers. The Enlisted Promotion System is designed to help fill authorized enlisted vacancies in the NCO ranks with the best qualified Soldiers who have demonstrated the potential to serve in the next higher rank. It provides for career progression in line with each Soldier's potential.

b. Paragraph 10-3 (Reduction for Misconduct) states upon receipt of documents establishing a sentence (imposed or vacation of a suspended sentence) or a finding of guilty with sentence to be established at a later date, action will be taken according to appropriate rule shown in table 10-2. A Soldier may be reduced even though an appeal is pending or has been filed.

c. Paragraph 10-14 (Restoration to Former Grade) states grade restoration may result from setting aside, mitigation, or suspension of NJP. Procedure and means of restoring grades and announcing these actions are set forth in Army Regulation 27-10, and action under Article 58a(b) or Article 75, UCMJ.

6. Army Regulation 623-3 (Evaluation Reporting System), prescribes the policies for completing evaluation reports that support the Evaluation Reporting System.

a. Paragraph 1-11 (Commander's Inquiry) states that when it is brought to the attention of a commander that a report rendered by a subordinate or a subordinate command may be illegal, unjust, or otherwise in violation of this regulation, that commander will conduct an inquiry into the matter. The Commander's Inquiry will be confined to matters related to the clarity of the evaluation report, the facts contained in the report, the compliance of the evaluation with policy and procedures established by Headquarters, Department of the Army, and the conduct of the rated Soldier and members of the rating chain. The official does not have the authority to direct that an evaluation report be changed; command influence may not be used to alter the honest evaluation of a rated Soldier by a rating official.

b. Paragraph 3-39 states an evaluation report accepted by Headquarters, Department of the Army, and included in the official record of a rated Soldier is presumed to be administratively correct, prepared by the properly designated rating officials, and represents the considered opinions and objective judgment of the rating officials at the time of preparation.

c. Paragraph 6-11a states the burden of proof rests with the appellant. Accordingly, to justify deletion or amendment of a report, the appellant will produce evidence that establishes clearly and convincingly that the presumption of regularity referred to in paragraphs 3-39 and 6-7 will not be applied to the report under consideration, and action is warranted to correct a material error, inaccuracy, or injustice. The evidence

presented must be of a clear, convincing, and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy.

7. Army Regulation 600-8-22 (Military Awards) prescribes Department of the Army policy, criteria, and administrative instructions concerning individual and unit military awards. On 2 May 2005, the Chief of Staff, Army, approved the creation of the CAB to provide special recognition to Soldiers who personally engaged, or are engaged by, the enemy. The CAB is intended to serve as a companion to the Combat Infantryman Badge (CIB) and Combat Medical Badge (CMB) to recognize the greatly expanded role of non-infantry Soldiers in active ground combat.

a. The requirements for award of the CAB are branch and military occupational specialty immaterial. Assignment to a combat arms unit or a unit organized to conduct close or offensive combat operations, or performing offensive combat operations, is not required to qualify for the CAB. However, the CAB is not intended to recognize Soldiers who simply serve in a combat zone or imminent danger area. Battle participation credit alone is not sufficient; the unit must have engaged or been engaged by the enemy.

b. Award of the CAB is not automatic and will not be awarded solely based on award of the Purple Heart. Specific eligibility requirements include:

(1) The CAB may be awarded to any Soldier.

(2) A Soldier must be personally present and under hostile fire while performing satisfactorily in accordance with the prescribed rules of engagement in an area where hostile fire pay or imminent danger pay is authorized. For all named conflicts beginning after the effective date of this publication, a Soldier must also be performing in an offensive or defensive act while participating in combat operations, engaging, or being engaged by the enemy. A Soldier must be performing their assigned duties associated with the unit's combat mission in an area where hostile fire pay or imminent danger pay is authorized. The requirement for hostile fire pay or imminent danger pay does not apply to cases determined to be eligible under the conditions described in paragraph 3-8c.

(3) A Soldier must not be assigned or attached to a unit that would qualify the Soldier for the CIB and/or CMB. For example, an infantryman (military occupational specialty 11B) assigned to a corps staff is eligible for award of the CAB. However, an infantryman assigned to an infantry battalion is not eligible for award of the CAB.

c. Retroactive award of the CAB is authorized for fully qualified individuals.

(1) The wartime command retains wartime awards approval authority for 12 months after redeployment and can approve award of the CAB for Soldiers who

deployed with their command and qualified for, but did not receive, the CAB during the deployment.

(2) Soldiers redeployed more than 12 months or reassigned to a command other than their wartime command and who qualified for the CAB while deployed may request award through command channels to the Commander, U.S. Army Human Resources Command (AHRC-PDP-A), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5408. Applications for retroactive award to active duty Soldiers and Reserve Component Soldiers will be forwarded through command channels to the first general officer (for endorsement) to HRC for processing. The first general officer in the chain of command of the Soldier recommended for award of the CAB may disapprove the recommendation.

(3) All Army National Guard requests, once endorsed, will be submitted to the Director, ARNG-HRH-A, 111 South George Mason Drive, Arlington, VA 22204-1373, prior to being submitted to HRC.

(4) Retirees and veterans should address their applications to HRC for processing. The DA Form 4187 with endorsement by the first general officer is not required. All other criteria must be met.

d. Requests for retroactive award of the CAB will not be made except where evidence of injustice is presented. For requests submitted under paragraphs 8-8g(2)(b) through 8-8g(2)(d) must include justification explaining why the CAB was not awarded in theater.

//NOTHING FOLLOWS//