

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20220011780

APPLICANT REQUESTS: removal of the Article 15, Uniformed Code of Military Justice (UCMJ) from his performance file of his Interact Personnel Electronic Records Management System (iPERMS).

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Memorandum addressed to the Department of the Army Suitability Evaluation Board (DASEB)

FACTS:

1. The applicant states, via memorandum:

a. He is requesting to have the DA form 2627 (Record of Proceedings Under Article 15, UCMJ) removed from his performance file due to threat and coercion tactics he encountered by captain (CPT) D.H. prior to signing the DA 4856 tied to this matter. He signed it under duress because CPT D.H. told him that if he did not agree with CPT D.H.'s statements nor sign the development counseling form, he would be court martialed. In addition, he would never be able to obtain employment from a government entity. He was manipulated and intimidated by CPT D.H. into signing the DA Form 2627 against his will.\

b. CPT D.H.'s decision to enforce Article 15 proceedings has caused severe anxiety and heartache. He has dealt with these feelings internally from 2005 to present date, and it has affected my health. As he winds down his military career, he is requesting to have this document removed from his performance file because it has haunted him for nearly eighteen years. He would like to retire with dignity, honor, and with a prestigious record and because he has this blemish in his file, his dignity and livelihood remains tarnished.

2. A review of the applicant's service record shows:

- a. Having had prior enlisted service, he was appointed a Reserve commissioned officer and executed an oath of office on 18 May 2004. He was assigned to A company, 554th Engineer Battalion, Fort Leonard Wood, MO for training.
- b. On 3 February 2005, the applicant's commander informed the applicant he was considering whether he should be punished under Article 15, UCMJ, for violating Article 90, UCMJ, in that on or about 4 January 2005, he disobeyed an order from his superior commissioned officer to have direct physical contact with his spouse or children without an escort coordinated through and provided by the company cadre.
- c. The applicant consulted with counsel. He declined trial by a court-martial and opted for a closed hearing. He also elected to have matters in his defense presented in person.
- d. On 7 February 2005, the imposing commander found him guilty of disobeying a lawful order. His punishment consisted of restriction to post until 7 February 2005. The imposing officer ordered the original DA Form 2627 filed in the performance section of his AMHRR. The contested Article 15 is filed in the performance section of his AMHRR. The applicant was advised of his right to appeal; however, on 9 February 2005, he elected not to appeal.
- e. The applicant served in a variety of assignments, including Active Guard Reserve service, and attained the rank of major in February 2016. He currently serves with the 412th Theater Engineer Command, Vicksburg, MS.
- f. On 5 July 2023, he was issued a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).

3. Army Regulation (AR) 600-37 (Unfavorable Information) sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's Army Military Human Resource Record (AMHRR).

4. Army Regulation 600-8-104 (Army Military Human Resource Records Management), effective 7 May 2014, prescribed policies governing the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to: the OMPF, finance-related documents, and non-service related documents deemed necessary to store by the Army.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board

carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board considered the severity of the actions that lead to the applicant receiving an Article 15. The Board agreed that the evidence supported the findings and that the investigation was conducted in accordance with applicable regulatory guidance. The Board also noted that the applicant continues to serve. After due consideration of the request, the Board agreed that the Article 15 had served its purpose and moving the contested document from the performance section to the restricted portion of his Army Military Human Resource Record is in the best interest of the Army

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
█	█	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends moving the DA Form 2627 and all affiliated documents to the restricted portion of the applicant's Army Military Human Resource Record.

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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:

2. Army Regulation 600-8-104 (Army Military Human Resource Records Management), effective 7 May 2014, prescribed policies governing the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to: the OMPF, finance-related documents, and non-service related documents deemed necessary to store by the Army.

a. 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 Army Board for Correction of Military Records or other authorized agency.

b. Appendix B (Documents Required for Filing in the AMHRR and/or Interactive Personnel Electronic Records Management System) shows the original DA Form 2627 will be filed locally in unit NJP or unit personnel files for Soldiers in the rank/grade of specialist/E-4 or corporal/E-4 and below (prior to punishment). Such locally filed originals will be destroyed at the end of 2 years. For all other Soldiers, the original will be sent to the appropriate custodian for filing in the OMPF. The decision to file the original DA Form 2627 in the performance folder or the restricted folder will be made by the imposing commander. Records of NJP presently filed in either the performance or restricted folder of the OMPF will remain so filed, subject to other applicable regulations.

3. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's Army Military Human Resource Record (AMHRR).

a. Paragraph 3-2a states unfavorable information will not be filed in the official personnel file unless the recipient has been given the chance to review the documentation that serves as the basis for the proposed filing and make a written statement or to decline, in writing, to make such a statement.

b. Paragraph 6-2e states, the Department of the Army Suitability Evaluation Board (DASEB) makes determinations upon appeal of unfavorable information filed in a Soldier's AMHRR. The DASEB may determine to revise, alter, or remove such unfavorable information if it is determined to be untrue or unjust, in whole or in part (see chap 7).

c. Paragraph 6-2f states, the DASEB makes determinations, upon appeal, on requests to transfer unfavorable information from the performance to the restricted portion of the AMHRR (see chap 7). The DASEB may recommend the transfer of those administrative memoranda of reprimand when such transfer would be in the best

interest of the Army. Transfer of such memoranda is further subject to the stipulations stated in paragraph 6–1d, paragraph 6–1e, and chapter 7.

d. Paragraph 7 states, the DASEB is the initial appeal authority and makes recommendations for removal, alteration, or transfer of unfavorable information entered in the AMHRR. This chapter sets forth the policies and procedures whereby a person may seek removal of unfavorable information from his or her AMHRR, or transfer of unfavorable information from the performance file to the restricted file of his or her AMHRR.

e. Paragraph 7-2d(2) (Removals) states:

(1) There is no time restriction for submitting an appeal for removal of unfavorable information from the AMHRR.

(2) The recipient has the burden of proof to show clear and convincing evidence to support an assertion that the document is either untrue or unjust, in whole or in part.

(3) Evidence submitted in support of the appeal may include, but is not limited to: an official investigation showing the initial investigation was untrue or unjust, decisions made by an authority above the imposing authority overturning the basis for the adverse documents, notarized witness statements, historical records, official documents, and/or legal opinions.

//NOTHING FOLLOWS//