

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 September 2023

DOCKET NUMBER: AR20230001720

APPLICANT REQUESTS:

- restoration of his rank/grade to sergeant (SGT)/E-5 vice specialist (SPC)/E-4
- retirement in the rank/grade of SGT/E-5
- Correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 26 December 2022, to show his primary Military Occupational Specialty (MOS) as 11B (Infantryman) his secondary MOS as 12Y (Geospatial Engineer) vice 92Y Unit Supply Specialist

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Enlisted Record Brief (ERB)
- DA Form 1059 (Service School Academic Evaluation Report) Infantryman
- DA Form 1059, Warrior Leader Course (WLC)
- DA Form 1059, Geospatial Engineer Course
- DA Forms 2166-9 (Noncommissioned Officer Evaluation Report (NCOER))
- Soldier Record Brief (SRB)
- Memorandum for Record (MFR), Subject: 92Y20 MOS Qualification of the Applicant
- MFR, Subject: Applicant MOS Status
- Orders Number 257-1101 MOS Orders
- MFR, Subject: Validation of 92Y20 Non-MOS Qualification, Applicant
- On-The-Job Training (OJT) Request
- Email OJT Signed Request
- MFR Nurse Care Coordinator
- Text Messages
- DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ))
- MFR, Subject: Medical Statement for Applicant
- Memorandum, Subject: Medical Support Letter
- Letter of Support

- Memorandum, Subject: Servicemember Evaluation
- Memorandum, Subject: Medication Management
- DA Form 3349 (Physical Profile Record)

FACTS:

1. The applicant states, in his application and self-authored letter, in effect:

a. He was demoted from SGT to SPC due to retaliation. He is requesting correction of his MOS 92Y to 11B and secondary MOS to 12Y on his DD Form 214 and SRB. His retirement rank should be SGT due to successfully holding the rank since 25 November 2013.

b. He was reduced in rank due to incompetence, bias, slander, libel, retaliation, and racism. The California Army National Guard (CAARNG) is partly to blame due to the lack of proper bookkeeping. They moved people around on the Modified Table of Organization and Equipment and Unit Status Report to make their numbers look better than they were, and the Soldiers suffered for it on their SRBs and DD Forms 214 when they got out or transferred to another branch.

c. He was placed in the 18th Field Artillery (FA) on 17 November 2017 and from the moment he got there he was incorrectly assigned. He was called incompetent and stupid because he was prior service from the ARNG and not MOS qualified. He had many issues involving his transfer that he was not allowed or given the proper time to address in reception. Instead, he was told his unit would handle the matters and resolve them accordingly. Yet every time he addressed his MOS issue, he was told that no matter what he was stuck at the 18th FA because they were seriously lacking supply NCO's. He was told that regardless of whether he was MOS qualified or not, the unit would look good as far as numbers by the Brigade Command Sergeant Major (CSM) and Brigade Commander.

d. For years he fought to fix this issue along with many other issues he had with pay and leave that his unit refused to help him with because they stated it was an ARNG problem and something he should have fixed prior to arriving at the unit. Even though he was incorrectly assigned. It took over two years to resolve his pay and leave issues with the help of finance who were reluctant to help him until he went in for the thousandth time and finally, they decided to help due to the lack of support and headway he was making at the unit level.

e. He was eventually able to volunteer and get approved, without the support of his unit, for the Airborne course in July 2019 and Explosive Ordnance Disposal (EOD) school in January 2020. Once it was discovered he was hard slotted by his command

team, he was treated even worse by the command team because according to them he had no right to volunteer or even be in the Army. This is despite the fact since his arrival, he was never the official supply SGT due to his MOS issue which they admitted was an issue for them. Luckily when in the CAARNG, he was Active Guard/Reserve (AGR) and had years of experience as a training NCO, which was helpful for the S4 and Soldiers of all ranks that refused to correct their Defense Travel System vouchers.

f. He was given an ultimatum to help with the change of command (CoC) if he wanted to participate in OJT with an EOD unit prior to his departure for school at the beginning of the year. He was told in verbatim that the incoming and outgoing commander did not trust the supply SGT or clerk due to their ethnicity and work ethic. They said that even though he was not MOS qualified that they needed a responsible NCO to manage the transition of power. They also stated that if he wanted to benefit from the EOD OJT, he would have to do this favor.

g. He was tasked with helping unofficially and did not even have a counseling statement that showed what his duties and responsibilities were. He was not even given access to the supply room, training room, motor pool, or any part of the entire unit's footprint. He also had to be chaperoned since he was not given access as per regulation. This created multiple issues but despite them they were able to complete the CoC and his OJT was reluctantly approved.

h. This is when the real problems started because while he was gone for OJT in October 2019 through March 2020 for EOD school, he was being told by the headquarters training NCO that the unit had misplaced and lost a lot of equipment and were throwing multiple people under the bus, so while in a high stress school, he was already being told he was going to have a rough return.

i. When he finally returned from training in March 2020, he was officially greeted by his command team with 22 Financial Liability Investigation of Property Loss (FLIPL) inventories, a flag and bar to reenlist. When he asked how he was responsible, they told him they knew he stole the equipment and that they would ensure his career and life were over. He asked for legal counsel and they said he had to figure it out on his own they could not help him because they were investigating him. He asked if he could use the open-door policy and they told him they did not have an open-door policy. He asked if he could see any of the evidence against him since he was apparently defending himself and they told him he was not allowed to know what was happening and to prepare for his impending arrest and humiliation. He talked to his peers and some of his Soldiers who told him that leadership was spreading a rumor that he stole the equipment for his terrorist friends due to his ethnicity.

j. Even after taking the advice of his senior peers from the ARNG and friends outside the 18th FA, he played that game and just kept his head down and kept his

mouth shut. He still ran Physical Training (PT) for the headquarters and remedial PT and was doing his best to stay positive because he knew this was bogus and justice would prevail. Unfortunately, while doing PT he suffered a herniated disc rupture in his cervical spine from a long-standing injury he sustained during his deployment to Iraq. He was in extreme pain and was unable to use his left arm. When he went to seek medical treatment, he was denied by his command team because they stated he was faking his injury to garner sympathy and a lighter sentence.

k. He had to go to the Emergency Room (ER) because his own primary care manager, a mere physician's assistant, said he had to follow the commander's orders and that the command had the ultimate say. He was lucky to be informed by outside sources to go to the ER where he was quickly assigned to an Orthopedic Surgeon and pain management. They tried helping him treat his injury through rehab and multiple medications, but this sadly was not helping him physically or mentally. The harassment from his unit intensified to the point where they started saying he was abusing his medications and using his injury to get out of work.

l. They even went so far as to take him away from his home, the rationale was that he was a burden on his wife, who is an active service member, and his children. He was confined to the barracks, that were infested with black mold, for his health and so they could monitor his medications and his transportation to his appointments. They never helped him get to his appointments, he had to call Ubers or have other friends help him. They never even made him take a drug test after accusing him of abusing his medications because they knew he did full urinalysis testing with Pain Management. The unit accused him of missing appointments and abusing drugs only to harass him.

m. His command team stated that his nurse coordinator, Ms. C- T- informed them of his malingering, missing appointments, and abuse of medications. Ms. C- T- was the nicest person within the 18th FA hierarchy who constantly was checking on him because she already knew how bad the unit was at helping Soldiers. He informed the nurse coordinator what his unit leadership had said, and she immediately wrote him a memorandum stating the commander was lying. She defended him and had been his only source of hope for emotional support for the unit. Ms. C- T- also protected him from his unit who were constantly telling him to violate his no driving, walking, and standing profile. She ensured the unit would stop stealing his doctor's notes from him and his wife which violated HIPAA.

n. Event after his surgery, he was told he was faking his situation and the threats got worse. They went after his wife who was the Signal NCO for the Psychological Operations command team. He was still being slandered to the Soldiers and was still having his medical care affected. His unit ignored the request of Orthopedics and pain management to place him in the Warrior Transition Unit (WTU) to help him recover physically and mentally. His unit leadership said they never received the request. They

later went on to say the request was forwarded to the wrong place, even though the medical staff gave them simple instructions. It was later discovered by his Orthopedic Surgeon that his unit contacted the WTU and told them it would be ill advised to accept him into their program because he was a criminal that was playing the system. He had another request submitted to enter the WTU and that one was also lost. It was ultimately decided by his doctors that a medical discharge would be more beneficial to his health and sanity, due to the harassment from his unit.

o. He was told he was going to be given an Article 15 for missing appointments, abusing drugs, and misconduct. All of which were verifiably false. Even after he was cleared of any wrongdoing whatsoever, his unit command team, to include the legal section, was still accusing him of theft. The only justice he received came from an outside XVIII Airborne Corps Investigator. He was still being threatened by his command team and legal who were adamant that they would end him and his career. He did not receive adequate legal help and was told by the remote legal counsel in Hawaii, during one phone call, that no matter what he did or the proof he had, he was going to be charged with something. He asked the legal counsel if there was any way he could have counsel present due to his physical situation and the number of medications he was on, and the legal counsel said no COVID was preventing proper legal help throughout the Army.

p. He went into his Article 15 reading without proper legal help or guidance and under heavy medications and in extreme pain. His wife, who was a witness and eager to call out his leadership for attacking her, was not allowed to be present or help him. She helped him get his sworn statements from all the witnesses he had and he was laughed at and told it did not matter, he was going to be reduced and would have pay taken away. They also said he was going to be given an NCOER based on the circumstances.

q. He served for 15 years total and had never once been in trouble or broken any law. He had never even received a negative counseling or bad NCOER since becoming an NCO on 25 November 2013. Yet for some reason, he was evaluated by his rater and reviewer who had a clear bias against him and who were not even present, during his rating period. He had no support from any leadership enlisted or otherwise. He was ostracized and still being harassed. The only good that came from the Article 15 reading was that due to the severity of his medical condition, he would no longer have to report to the unit.

r. For 15 years, he had maintained a perfect record despite the struggles of being a first generation American of Iranian and Mexican descent. He had experienced racism and ignorance throughout his service. He had overcome the racism and ignorance by performing at a high standard and educating his peers. He had never let ignorance or intolerance affect him emotionally, but this was the worst treatment he had ever

experienced bar none and it was emotionally taxing. Not once was he given the benefit of the doubt by his leadership or supported during his recovery. Instead, he was accused of being a thief and terrorist, which is the equivalent of being called the N-word. He volunteered to join the ARNG, deploy to Iraq, and later joined the Regular Army to give his children hope and show them that this country is the best there is. He wanted to show them that hard work and justice always prevailed. He did not want them to feel like victims nor has he ever encouraged that. Despite his best efforts to tell them to never give into the stupid actions taken against him by ignorant vindictive so-called leaders, he is fighting on because this is what has become of our once great Army. You have command teams versus everyone that does not roll over and accept false accusations. Leaders that treat you different because you served in another capacity or treat you like a criminal based on your ethnicity and the movie Aladdin.

s. He asks the Board to look at his evidence and help him restore his rank and honor. He may be disabled but he would never not stand up for the right thing despite the lack of support he received from this one unit. He still believes the facts matter and that good people will always help.

2. The correction of the SRB is a local unit personal action. The Board does not correct service members SRB. This portion of the applicant's request will not be addressed by the Board. The remainder of the applicant's requests will be considered.

3. The applicant's service record contains the following documents for the Board's consideration:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) dated 3 July 2007 shows the applicant enlisted in the ARNG for a period of 8 years.

b. DA Form 1059, dated 2 November 2012, shows the applicant completed the Geospatial Engineer Course (12Y).

c. Army Training Requirements and Resources System (ATRRS) screenshot shows the applicant had a reservation for the Unit Supply Specialist Course starting on 11 March 2013 and concluding on 25 March 2013.

d. DA Form 1059 dated 10 March 2013 shows the applicant achieved course standards in the Unit Supply Specialist Course. DA Form 1059, dated 25 March 2013, shows the applicant achieved course standards in the Unit Supply Specialist Course, Phase 2.

e. Orders Number 357-1061, published by the CAARNG, dated 23 December 2013, promoted the applicant to SGT in the primary MOS 92Y, secondary MOS 11B, and additional MOS of 92G (Culinary Specialist). The effective date of promotion was 25 November 2013.

f. DA Form 2823 (Sworn Statement) of First Lieutenant (1LT) J- P-, 18th FA, dated 16 September 2016 [sic], states in effect, the applicant had made multiple statements to her that he was never trained in supply operations, nor had he attended 92Y MOS training. The 1LT was made aware that the applicant had worked in the Battalion S4 NCO position and held supply SGT roles and she had documents previously signed by the applicant while he was working on supply administrative actions. When the 1LT questioned the applicant about the documents he had previously signed, the applicant dismissed it and said he had never had access to the system, nor had he ever been trained as a 92Y. The second page of the sworn statement, with the 1LT's signature, is not available for the Board's consideration.

g. Orders Number 83-1058, published by the CAARNG, dated 24 March 2017 awarded the applicant the primary MOS of 92Y, secondary MOS of 11B, and additional MOS of 92G effective 1 February 2017.

h. Orders Number 257-1101, published by the CAARNG, dated 14 September 2017 awarded the applicant primary MOS 11B, secondary MOS 12Y, and additional MOS 92G and withdrew primary MOS 11B, secondary MOS 92Y, and additional MOS 92G.

i. DD Form 214 shows the applicant, as a member of the ARNG, entered active duty on 1 December 2012 and was honorably released for completion of required active service on 6 November 2017. The applicant was in the rank of SGT and had the MOSs of 92Y, 11B, and 92G. Block 18 (Remarks) states released from active duty to continue on active duty in another status.

j. DD Form 4, dated 7 November 2017, shows the applicant enlisted in the Army for a period of 3 years and 2 weeks in the rank of SGT.

k. Orders Number 321-1002, published by the CAARNG, dated 17 November 2017 honorably discharged the applicant from the ARNG in the rank of SGT, effective 6 November 2017.

l. Self-Authored MFR, dated 12 September 2018, states in effect, as a member of the CAARNG, he did not attend MOS qualification for the Unit Supply Specialist Course from 24 February 2013 through 10 March 2013 or 10 March 2013 through 25 March 2013. During that period, he was at Camp Roberts, CA, being fielded the new M2A1 (Heavy Machine Gun).

m. MFR from Sergeant Major (SGM) T- D-, dated 2 November 2018, states in effect as the applicant's active duty supervisor, the SGM can attest to the fact the organization never sent the applicant to the 92Y MOS course from 24 February 2013 to 10 March 2013 or 10 March 2013 through 25 March 2013. During this period, the unit was being fielded new equipment at Camp Roberts. The applicant was the acting supply SGT at the time and was on temporary duty on that mission. During the applicant's time with the organizations AGR program, he only served as a temporary supply NCO and the unit training NCO. His evaluation reports reflect that he was in a 92Y paragraph/line slot but was rated as an 11B.

n. MFR from First Sergeant (1SG) C- F-, dated 7 November 2018, states in effect, the applicant was accepted into the AGR program in the state of California as the Unit Supply SGT. The 1SG was the squadron schools NCO and did not process an ATRRS application for the applicant to attend the 92Y MOS qualification course. The applicant served as the supply SGT as a qualified 11B. ATRRS shows inaccuracies the 1SG had attempted to correct. Even his own ATRRS showed incorrect information.

o. MFR from Chief Warrant Officer Two T- B-, dated 10 November 2018, states in effect the applicant did not attend 92Y MOS qualification school from 24 February 2013 through 10 March 2013 or 10 March 2013 through 25 March 2013. During the time period of the school, the applicant was fielding new equipment at Camp Roberts, CA.

p. MFR from 1SG E- V-, dated 13 May 2018 recommended the applicant for future challenging assignments. The applicant had been a great leader and asset to the 18th FA during the 1SG's 14 months serving there. The applicant outperformed his peers and worked above his paygrade. During the 1SG's tenure, the applicant served numerous critical positions to include Supply SGT.

q. Memorandum, Subject: Remission or Cancellation of Indebtedness - Applicant, dated 17 June 2019, states in effect, the application for remission or cancellation of indebtedness for the applicant in the amount of \$11,202.67 had been reviewed and approved. If the remitted monies were found at a later date to be public funds that were obtained or converted to own use through fraud, larceny, embezzlement, or any other unlawful means, the debt would be reinstated.

r. Orders Number 19240-385, published by Headquarters, U.S. Army Maneuver Center of Excellence, dated 28 August 2019 announced award of the parachute badge for the applicant in MOS 92Y.

s. MFR, EOD OJT, dated 17 September 2019, states in effect the applicant had been approved to attend EOD training with a report date for phase one on

3 January 2020 and a report date for phase to on 15 March 2020. The intent of OJT was to ensure the applicant succeeded at EOD school. The applicant's place of duty would be the EOD OJT Monday through Friday 0630-1700. The applicant completed an OJT Training Request wherein he stated he would maintain accountability with his first line supervisor at his home unit.

t. DD Form 4, dated 8 October 2019, shows the applicant reenlisted in the Regular Army for a period of 5 years.

u. DA Form 4856 (Developmental Counseling Form), dated 17 March 2021, shows the applicant was counseled for failure to report, failure to obey an order, and insubordinate conduct towards an NCO. The second page of the counseling statement is not available for the Board's consideration.

v. DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), dated 17 March 2021 shows a flag was initiated against the applicant for adverse action.

w. DA Form 4856, dated 9 April 2021, shows the applicant was counseled for his command referral to Substance Use Disorder Clinical Care (SUDCC) and his move into the barracks until his profile expired or he was authorized to drive due to his use of pain medications and missing appointments. The applicant disagreed with the counseling stating he spoke with brigade medical and explained he stopped taking the medication. All appointments he had missed were directly after ER visits. He refused to stay in the barracks.

x. DA Form 4856, dated 12 April 2021, shows the applicant was counseled for failure to report and failure to obey an order. The applicant had been seen in the ER on the evening of 11 April 2021 and was released at 0300 on 12 April 2021. At no time did the applicant report to his platoon sergeant regarding his status or that he had been placed on 24-hour quarters. The applicant disagreed with the counseling stating reasons he had stated before.

y. MFR, Subject: Applicant, dated 20 April 2021, which states in effect:

(1) The applicant was the Supply NCO in charge when the captain (CPT) began his (CoC) inventories prior to taking command of the unit. The applicant was either unprepared or not present during the inventories. After seeing the state of the supply room and the FLIPL amount, the CPT informed the applicant he would no longer be the supply NCO.

(2) While the applicant was in EOD school, he remained on the CPT's books. The CPT was informed the applicant did not return some equipment he had signed out from the brigade aid station.

(3) The CPT was informed the applicant failed phase two of the EOD course and would be returning to the unit. The CPT allowed the applicant to take leave and while the applicant was on leave the CPT was contacted by the Criminal Investigation Division (CID) regarding the applicant being brought up in an investigation of missing equipment that was sold to an Army Surplus store. The CPT informed CID the applicant was on leave but that he had been contacted by the brigade aid station regarding the applicant not returning equipment.

(4) When the applicant returned from leave, the CPT counseled him regarding the information he had received from CID and the applicant was flagged pending an investigation. The CPT was interviewed by CID and the CPT informed them the applicant was being removed as the Supply NCO due to having no command supply discipline.

(5) The applicant continued to seek medical attention for multiple reasons that he would not disclose to his NCO Support Channel nor the CPT or 1SG between November 2020 through December 2020. The CPT was informed by the brigade medical the applicant was being seen by an orthopedic doctor and was scheduled for surgery. The applicant had his first surgery in early January and was given convalescent leave for 30 days. When the applicant returned to duty, he had slurred speech and was swaying when standing up. He was ordered to seek medical treatment. He was then given 14 additional days of convalescent leave.

(6) During this period, the applicant would not answer text messages or phone calls from his platoon sergeant. The applicant had been instructed to keep his platoon sergeant informed of his appointments and if he went to the ER. The applicant failed to do as instructed. The applicant had provided sick call slips that looked falsified, but his orthopedic surgeon stated he gave the applicant quarters three times in a row that had been pre-stamped with his signature. The applicant's Licensed Practical Nurse stated the applicant had missed and canceled appointments stating pain management did not work and he overslept or did not have a ride for the appointments.

(7) Due to the missed appointments and repetitive profiles, the CPT recommended the applicant for the Soldier Recovery Unit (SRU) in mid-February. On 10 March 2021, the CPT was informed the applicant was denied in SRU and that he was not eligible for the Medical Evaluation Board process because he did not complete his recovery phase. The applicant was counseled for failure to report, failure to obey an order, and insubordinate conduct towards an NCO. The CPT also recommended the applicant receive a field grade Article 15.

(8) At the same time, the applicant was placed under administrative investigation due to multiple flaws and red flags in his administrative paperwork. ATRRS confirmed the applicant had been to school certifying him as a 92Y. The applicant denied he had

been to the 92Y course. Retention confirmed the applicant held multiple MOSs 92G in the Marine Corps, 11B, 12Y, and 92Y within the Army. The applicant denied he was ever a geospatial engineer. The applicant texted a staff sergeant multiple times asking on the status of his MOS returning to 12Y, and his top secret clearance.

(9) The CPT counseled the applicant regarding the amount of medication he was taking and his demeanor. The CPT recommended the applicant to SUDCC for help and that he was moving the applicant into the barracks. The applicant stated he was no longer on the medication and did not need SUDCC or to live in the barracks. The CPT and another Soldier escorted the applicant to SUDCC. They were informed the applicant did not need SUDCC due to no drug related incident and because his urine sample showed no trace of any medication he had been prescribed.

z. DA Form 4856 dated 20 April 2021 shows the applicant was counseled for failure to obey an order for going to his home instead of his barracks room when he was put on quarters and for not informing the acting platoon sergeant of his whereabouts. The applicant disagreed with the counseling and stated the miscommunication between he and his wife was not intentional nor was it intended to take advantage of his barracks situation.

aa. MFR, Subject: applicant's whereabouts unknown incident from the 1SG, dated 4 May 2021, which states in effect, on 17 March 2021, the applicant's NCO could not get in touch with him, and he was supposed to have returned from convalescent leave that day. The NCO had attempted to contact the applicant several times the previous night to inform him of his reporting requirements, but the applicant would not respond to her. She continued trying to contact him on 17 March again without success. The 1SG talked to the acting CSM who stated he would try to call the applicant, at which point the applicant answered the call. The applicant was told to call the 1SG for accountability which he did 30 minutes later. The 1SG asked the applicant why he had not responded to his NCOs calls to which he responded he had been at the ER the previous night and it did not cross his mind to inform his supervisor. The applicant further explained he had been put on quarters and went home from the ER to sleep.

bb. MFR, Subject: erroneous MOS notification from the applicant, dated 4 May 2021, from the 1SG which states in effect sometime between the months of June and July 2020 the applicant requested a meeting with the 1SG to discuss a discrepancy with his assigned MOS. The applicant explained to the 1SG he was not a 92Y and the MOS was awarded to him erroneously. The applicant explained he had been trying to fix the issue for some time but was not provided assistance from his previous company or battalion chain of command. After receiving documents from the applicant and ATRRS it appeared the applicant was a certified 92Y and was awarded the MOS when he enlisted in the Active Army. The applicant insisted the information in ATRRS was an erroneous entry and wanted to change his MOS back to either 11B or 12Y.

cc. MFR from the acting CSM, dated 6 May 2021, describing the circumstances of his phone call with the applicant when his 1SG and NCO were trying to get in contact with him.

dd. MFR from the applicant's platoon SGT, dated 6 May 2021, which states the applicant had reached out to the platoon SGT via text to get information about his real MOS 12Y. The applicant explained he needed to know if he still had his top-secret clearance so he could get his 12Y MOS back. On multiple occasions the applicant informed the platoon SGT that he never went to school to become a 92Y.

ee. MFR from the battalion CSM, dated 12 May 2021, which states the applicant provided fraudulent documentation as evidence that he was not trained to hold the 92Y MOS. The applicant requested to see the battalion commander to advocate for himself that he should not be financially liable as part of a FLIPL into missing items while he served as the Unit Supply Specialist. The applicant provided the CSM with several memorandums stating he did not attend the MOS course to obtain the 92Y MOS. Upon review of the documents, the CSM noticed several discrepancies in the dates and handed them to the brigade legal office for situational awareness. Upon further investigation into the documents, the applicant's official record to include his ATRRS it was found he received a DA Form 1059 stating he had successfully completed the course and obtained the necessary qualifications for the 92Y MOS.

ff. DA Form 2627, dated 13 May 2021, shows the applicant accepted an Article 15 for multiple occasions of failing to go to his appointed place of duty, disobeying a lawful order, and making false official statements. The applicant did not request trial by court-martial and was found guilty of all of the specifications. His punishment was reduction to the rank of SPC and forfeiture of pay for two months. The applicant appealed the punishment, and it was granted in that the forfeiture of pay was suspended for 180 days. With the applicant's appeal he provided character statements for the imposing commander's consideration, which are available for the Board's review.

gg. MFR from the Brain Injury Department, dated 21 May 2021, which states in effect the applicant had been evaluated within the clinic for residual symptoms following his mild-concussive event on 16 March 2021. The applicant had been cleared of persistent concussion related symptoms and could return to full activities with no restrictions or limitation from a concussion standpoint.

hh. DA Form 199 (Informal Physical Evaluation Board Proceedings), dated 22 December 2021 shows the board found the applicant to be physically unfit and recommended a rating of 40 percent and that he be permanently retired for disability. The applicant concurred with the finding and waived a formal hearing in his case. He requested reconsideration of his Department of Veterans Affairs ratings.

ii. DD Form 214, for the period ending 26 December 2022, shows the applicant in the rank of SPC was transferred to the U.S. Army Reserve Control Group (Retired). Item 11 (Primary Specialty) shows MOS 92Y.

4. The applicant provides the following documents, not previously considered, for the Board's consideration:

a. ERB, dated 11 May 2011, which the applicant's MOS as 92G.

b. DA Form 1059 dated 24 September 2011 which shows he achieved the course standards for the Infantryman Course.

c. DA Form 1059 dated 16 December 2011, which shows he achieved the course standards for WLC.

d. DA Forms 2166-9-1, which shows he was rated in the rank of SGT from:

(1) 1 May 2015 through 1 March 2016, Duty MOS 11B, he met standards and was rated as qualified by his senior rater. Primary MOS shows 11B

(2) 2 March 2016 through 1 March 2017, Duty MOS 11B, he met standards and was rated as highly qualified by his senior rater. Primary MOS shows 92Y.

(3) 2 March 2017 through 17 November 2017, Duty MOS 11B, he met standards and his was rated as qualified by his senior rater. Primary MOS shows 11B.

(4) 2 March 2019 through 1 March 2020, Duty MOS 92Y, he did not meet standards in presence, intellect, develops, and achieves and met standards in leads. His senior rater rated him as not qualified and stated do not promote at this time. Primary MOS shows 92Y.

e. SRB dated 31 October 2017, which shows his primary MOS as 92Y and his secondary MOS as 11B.

f. Email from the applicant, dated 6 September 2020, which states he had attached a memorandum which released him to start OJT on 18 October 2019. By that point all the equipment was signed over to SGT C- and he was not part of or near his unit until his return on 3 March 2020. He did not sign for equipment nor was he allowed in the supply room without supervision. The email includes a statement from a legal advisor stating the applicant was a client at the legal assistance office and any and all communications related to his legal representation was considered confidential and protected by attorney client privilege.

g. MFR, from the applicant's Nurse Care Coordinator, dated 26 March 2021, which states in effect the applicant had informed her of recent counseling statements in which his commander specifically named the author and information the commander claimed she provided. Multiple statements documented in the counseling statements were untrue and the author never provided the information to the commander or the applicant's command team. Fortunately, the author had all email traffic regarding the applicant as well as multiple medical encounter notes to validate her statement.

h. Text messages dated 14 April 2021, wherein the applicant was requesting transportation and was informed he needed to make an appointment or go to sick call. The doctor had been expecting to see him during sick call hours.

i. MFR from the applicant's orthopedic surgeon, dated 19 May 2021, which states in effect the applicant was a patient in the Orthopedic Clinic and under the surgeon's care. He underwent cervical spine surgery on 17 December 2020. After the surgeon's recommendation to extend convalescent leave and admission to the SRU were denied, the applicant was placed on 72 hour quarters slips from 19 February 2021 until his emergency room visit on 16 March 2021. The quarters slips were given in 72 hour increments as a protective measure, while they awaited reconsideration of his admittance into the SRU.

j. MFR from Interdisciplinary Pain Management Center Staff Physician, dated 19 May 2021, which states in effect, the applicant was first seen in the clinic on 25 November 2020 for evaluation of neck pain and left arm numbness and tingling with pain. He tried physical therapy and medication, which did not provide significant relief. He went on to have cervical epidural steroid injection and cervical spine surgery to help with his pain. He reported he was doing well until a hard fall on a table in March 2021 which resulted in increased neck and concussion symptoms. Due to the applicant's chronic pain symptoms which had not improved despite numerous treatments, it was the physician's opinion that the applicant's overall prognosis to recover was poor, and he would soon reach maximum medical benefit. If his medical condition prevented him from performing his duties as required by his MOS, the physician recommended he be considered for Medical Board reevaluation.

k. A letter of support from a retired Soldier, dated 20 May 2021, which states the Soldier had known the applicant since 2019. The applicant was conditionally placed in supply to help a Soldier, who was getting out of the Army, to help with the CoC. The applicant was released to EOD OJT after the CoC as per the agreement. Upon the applicant's return, he was immediately placed under investigation for equipment that went missing, while he was away for 6 months in OJT and EOD school. After his return, the applicant was treated like a private. He was put on every detail and when he went to sick call smart comments were made by the command team. The Soldier felt the applicant was in a toxic environment. As far as she could remember, the applicant had

not been to the 92Y MOS course. Schools in the ARNG are very different from active duty schools. The entire letter is available for the Board's consideration.

l. A letter from Neurology, dated 25 May 2021, which states the applicant had been evaluated in the neurology clinic for residual symptoms of Concussion Syndrome, sustained on 16 March 2021. He had undergone Auricular and Occipital Nerve blocks for the condition.

m. A letter from the Interdisciplinary Pain Management Center, dated 28 June 2021, which states the applicant was being treated in the Interdisciplinary Pain Management Center for a chronic pain condition. He had been directed to take the medication dronabinol, a medication from the family of cannabinoids starting on 28 June 2021. As such, they would expect to find evidence of cannabinoids (marijuana) in his urine. Their records and evaluation indicated he was taking the medication appropriately.

n. DA Form 3349 dated 30 September 2021, which is a temporary profile for the applicant, and he was unable to perform any of the army physical fitness test activities. The profile shows his MOS as 92Y. The entire profile is available for the Board's consideration.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board considered the frequency and nature of the misconduct. The Board agreed that a portion of the applicant misconduct, specifically the use of a medication from the family of cannabinoids which he was directed to take should not be considered misconduct. However, the Board found insufficient evidence of any further mitigating circumstances to overcome the totality of the misconduct or his performance and determined documentation available for review insufficient to warrant a recommendation for relief.

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 does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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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:

1. Army Regulation (AR) 27-10 (Military Justice) provides that any commander is authorized to exercise the disciplinary powers conferred by UCMJ, Article 15. Regarding reductions in grade, the grade from which reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. For the purposes of this regulation, the imposing commander or any subordinate commander has "promotion authority" within the meaning of UCMJ, Article 15 if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade. Paragraph 3-20 describes setting aside of punishment and restoration of rights, privileges, or property. This is an action whereby the punishment or any part or amount thereof, whether executed or unexecuted, is set aside and any property, privileges, or rights affected by the portion of the punishment set aside are restored.

a. 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.

b. "Clear injustice" means there exists an un-waived 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. Normally, the Soldier's uncorroborated sworn statement will not constitute a basis to support the setting aside of punishment.

2. AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Physical Disability Evaluation System (PDES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. Paragraph 3-1 contains guidance on the standards of unfitness because of physical disability. It states, in pertinent part, that the mere presence of impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of his or her office, grade, rank, or rating.

3. AR 635-8 (Separation Processing and Documents) prescribes the transition processing function of the military personnel system. It provides principles of support, standards of service, tasks, rules, and steps governing required actions in the field to

support processing personnel for separation and preparation of separation documents. It states for block 11 (primary specialty) of the DD Form 214 enter the titles of all MOSs or areas of concentration (AOC) awarded and held for at least 1 year during the current period of service and include for each MOS or AOC the number of years and months held. For time determinations, 16 or more days counts as a month. Do not count time in training. Primary specialty MOS or AOC is awarded by service school completion or by publication of orders awarding the MOS or AOC.

4. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. It states, the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//