

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 January 2024

DOCKET NUMBER: AR20230003852

APPLICANT REQUESTS:

- In effect, the Board to set aside his nonjudicial punishment (NJP), administered under the provisions of Article 15, Uniform Code of Military Justice (UCMJ)
- Permission to appear personally before the Board

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

- Online DD Form 149 (Application for Correction of Military Record)
- DA Form 1574-2 (Report of Proceedings by Board of Officers) with associated findings and recommendations and verbatim administrative separation board findings and recommendation transcript
- Memorandum for Record (MFR)

FACTS:

1. The applicant states that, in January 2022, his battalion commander gave him a field grade NJP based on false allegations and without providing the applicant legal counsel.

a. The applicant personally appeared before his battalion commander and presented matters in defense, extenuation, and mitigation; however, the battalion commander failed to fairly consider any of the applicant's evidence and punished the applicant with an oral reprimand, 45-days' extra duty, and 2 1/2 months' forfeiture of pay. Additionally, the command initiated separation action against him.

b. The applicant declares, "It took an administrative separation board to look at the evidence that directly contradicted the allegations made in the Article 15 (NJP) hearing to find me not guilty of all offenses except (a) failure to report. (The command showed) implicit bias and (conducted) a haphazard 15-6 investigation where my statement wasn't considered or investigated."

2. The applicant provides the following documents:

a. DA Form 1574-2, indicating that, on 21 September 2022, an administrative separation board convened to determine whether the applicant should be retained or discharged; the applicant was present and with counsel. The form further states the board recommended the applicant's retention.

b. The administrative separation board's findings and recommendations states the following:

(1) Findings:

(a) "The allegation that you wrongfully engaged in an extramarital sexual relationship with a junior enlisted Soldier who was not your spouse is not substantiated by preponderance of the evidence."

(b) "The allegation that you falsified an official Vaccination Record Card for COVID-19 is not substantiated by preponderance of the evidence."

(c) "The allegation that you provided false information on a Security In-Processing Packet (SIP) is not substantiated by preponderance of the evidence."

(d) "The allegation that you provided a falsified Medical Discharge Form to your chain of command is not substantiated by preponderance of the evidence."

(e) "The allegation that you failed to report to your appointed place of duty is substantiated by preponderance of the evidence."

(f) "The findings do not warrant the elimination of [applicant]."

(2) Recommendations: "In view of such findings, the board recommends that [applicant] be retained in the United States Army."

c. MFR dated 20 June 2023 and with subject, "Supplemental Information Request Response (SIRR) [Applicant]." The applicant states, "BLUF: In a memorandum dated 25 April 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) requested supplemental information to determine my access to classified information. The supplemental information is provided below:"

(1) "22-23 February 2023. For context, I have sole custody of my son E__, and I have since September 27, 2022. I am not, and have never been married to his mother, K__ P__. This has contributed to ongoing custody issues, especially when our relationship was no longer romantic. I reported domestic violence against K__ P__, the mother of my child on July 22, 2022. She also fled the state with E__ on 21 September 2021 and was ordered to return him. In response to the aforementioned SIRR

paragraph 3.a., please see Enclosure A (Maryland Trial Summary; not provided with the MFR). I was acquitted of all allegations on June 15, 2023. On February 22, 2023, I was arrested on a false counter claim of Domestic Violence. I was released within 24 hrs on unsecured Bond. She has since vandalized my home, stalked me, and, as a result, has been imprisoned. I have been granted an order of protection against her. She is currently under house arrest for her actions towards me."

(2) "Incident with 1SG (first sergeant) and Company Commander 28 September 2022. I was found not guilty of this incident by a panel at a Special Court-Martial. Please see Enclosure B (Statement of Trial Results; available in the applicant's service record), the Statement of Trial Results in response to SIRR Paragraph 3.b. I did not assault the 1SG or lie to the Company Commander. There had been ongoing issues with the company command team that culminated in this court-martial. Additional context will be addressed in (the next paragraph)."

(3) "October 29, 2021 Incidents. Please see Enclosure C (Administrative Separation Board Findings and Recommendations) in response to SIRR Paragraph 3.c. An administrative separation board determined that all of these allegations were unsubstantiated. The relationship between my command and I was such that I knew I had to have the allegations heard before an impartial body. The board was held on 22 September 2022."

3. A review of the applicant's service record reveals the following:

a. On 26 May 2010, the applicant enlisted into the Regular Army for 3 years and 30 weeks. After serving as a hometown recruiter, the applicant attended advanced individual training (AIT) for military occupational specialty (MOS) 91F (Small Arms/Towed Artillery Repairer). In July 2011, the applicant married a fellow Soldier who was also attending AIT (Ms. A__ K__). Upon completion of AIT and the award of MOS 91F, orders assigned him to a combat support battalion at Fort Bragg, NC (now renamed Fort Liberty); he arrived, on or about 8 August 2011.

b. On 22 September 2011, the applicant deployed to Afghanistan; on 2 September 2012, the applicant redeployed to Fort Liberty. On 13 May 2013, the applicant immediately reenlisted for 4 years. As his reenlistment option, the applicant elected reclassification to MOS 35F (Intelligence Analyst); on 26 November 2014, after completing MOS training, the Army awarded him 35F as his primary MOS.

c. After a brief reassignment to Fort Liberty, a one-year tour in Korea, and multiple assignments at Joint Base Lewis-McChord, WA, permanent change of station (PCS) orders returned the applicant to Fort Liberty, and he arrived, on 16 October 2018. On 20 April 2019, the applicant deployed to Iraq; on 18 November 2019, he redeployed to Fort Liberty. Based on PCS orders, the applicant subsequently transferred to Fort

Meade, MD, and orders further assigned him to the headquarters and headquarters company of a military intelligence brigade; he arrived at his new duty station, on or about 10 December 2020.

d. On 28 September 2021, the applicant and his spouse (now Captain (CPT) A__ Y__) obtained court approval for a marital settlement agreement; in the agreement, both parties acknowledged they had been living separately since 10 December 2020 with the intent of ending the marriage.

e. On 30 September 2021, Sergeant Major (SGM) N__ A. P__, Operations SGM for brigade S-3, issued the applicant a DA Form 4856 (Developmental Counseling Form) because the applicant had failed to keep the unit and the S-3 section informed of his whereabouts. The applicant indicated he agreed with the counseling and offered no comments.

f. The applicant's available service record includes a medical center document with handwritten entries, titled, "Report of Birth"; the document shows the 27 October 2021 birth of the applicant's son (E__ J. Y__), and lists the mother as, "A__ Y__."

g. On 1 November 2021, the applicant's brigade commander appointed Major M__ V. I__ as an investigating officer (IO), under the provisions of Army Regulation (AR) 15-6 (Procedures for Administrative Investigations and Boards of Officers). In the appointment memorandum, the brigade commander directed the IO to perform the following:

(1) "Please explore and describe the circumstances surrounding [Applicant's] COVID-19 vaccination status."

(2) "Please list any and all violations of the UCMJ, specifically Article 107 (False Official Statement), the subject may have committed related to the question above. Describe the statement made by the subject, why it was false, why the subject knew it to be false, and how/why the document or statement was made with the intent to deceive. (Statements can be made orally or in writing)."

(3) "Please list any instances the subject failed to be at his appointed place of duty at the time and location prescribed. (Article 86, UCMJ, Absent Without Leave)."

(4) "Detail the nature of [Applicant's] marriage with his lawful spouse, CPT A__ Y__."

(5) "Did [Applicant] engage in extramarital sexual conduct, a violation of the UCMJ (Article 134)? Did he engage in genital to genital sexual intercourse that resulted in the birth of a child with someone other than his spouse, CPT Y__? Was that conduct

prejudicial to good order and discipline or of a nature to bring discredit on the Armed Forces."

(6) "Did [Applicant] lie on his Standard Form (SF) 86 (Questionnaire for National Security Positions) or during his recent polygraph examination?"

(7) "During the course of your investigation did you uncover any additional misconduct by [Applicant] or any other party? If so, explain." "Is there anything else the command should be aware of?"

h. Between 3 and 17 November 2021, the IO obtained the below-listed sworn statements:

(1) CPT L__ T. F__, commander of the brigade's headquarters and headquarters company (HHC), stated:

(a) In September 2021, when the unit was trying to validate the vaccination status for its Soldiers, MEDPROS (Medical Protection System) indicated the applicant was "RED"; the applicant had told 1SG E__ O. M__ that he had gotten his COVID vaccination back in April 2021. Between 23 and 24 September, 1SG M__ advised the applicant that he (the applicant) was the only individual with a "RED" status on MEDPROS, and that the applicant had not yet provided a copy of his vaccination card. The applicant then told the 1SG that he actually had not received a COVID shot in April but subsequently obtained a different version of the vaccine; he could not offer proof of this vaccination because he had lost the vaccination card.

(b) On 24 September 2021, the applicant came to the company, and with 1SG E__ O. M__ present, the applicant stated he was fully vaccinated, and he provided a PDF copy of a vaccination card (the original card was lost). The applicant indicated he had received his first vaccine dose in South Carolina and the second at the Baltimore Convention Center. Both CPT F__ and 1SG M__ questioned the copy's validity because of the following reasons: the placement of applicant's name on the card; both vaccine doses had the same lot number; they could not see the month that the vaccine had been administered; one sticker contained two different lot numbers; and "M__ Family Practice" was written in both locations for the two vaccine doses, despite the applicant's claim that he had received the shots in two different states.

(c) On 27 September 2021, the applicant did not show up for PT formation. When the unit called him, he said he was in Baltimore to get another copy of his vaccination card; the applicant later submitted a vaccination card that proved to be legitimate. (On 28 September 2021, Lieutenant L__ S__ contacted "M__ Family Practice," who verified the applicant was not in their database; their office did not use the lot number listed on the applicant's vaccination card; and that they identified

themselves as "MFP" on vaccinations cards, not as "M__ Family Practice"). Based on LT S__'s findings, CPT F__ believed the applicant's claim that he had received two vaccinations (one in South Carolina and one at the Baltimore Convention Center) was false.

(2) SFC A__ R. P__ stated he had been working with the applicant since the applicant's arrival to the unit (December 2020); while he did not typically have direct contact with the applicant, he noticed the applicant's "lack of accountability." "He (applicant) had a history of making excuses not to go to PT with 1SG M__; we rarely saw him at formation and could rarely find him at work. On 4 OCT 21, he missed formation, and I gave him a formal counseling on 7 OCT 21, as I was the acting 1SG."

(3) CPT A__ Y__ (applicant's spouse) affirmed she and the applicant had married while they were in AIT at Fort Lee, VA (now Fort Gregg-Adams).

(a) After they married, CPT Y__ went to officer candidate school and was commissioned in 2015. Upon the applicant's redeployment from Iraq, in 2019, the applicant began to act differently, but he did not seek any treatment from behavioral health. CPT Y__ subsequently learned the applicant had had an affair while deployed; CPT Y__ was not certain, but she believed the female Soldier was a member of the South Carolina Army National Guard (SCARNG).

(b) When CPT Y__ PCS'd from Fort Bragg to Fort Meade, she opted to live separately from the applicant, and they had not been intimate for more than a year. At one point, the applicant called her to explain about his new baby from the other woman; the applicant expressed doubts the child was even his.

(c) The applicant also disclosed that the other woman was threatening to tell the applicant's chain of command about their relationship, and the only reason she was in Maryland was because the healthcare was better than what was available in South Carolina. CPT Y__ advised the applicant to be "upfront" about his situation with his chain of command. From their shared history, CPT Y__ observed that, apart from the affair, it was not typical for the applicant to lie about things.

(d) CPT Y__ acknowledged she had been born in Latvia, immigrated to the U.S., and obtained her U.S. citizenship prior to entering the Army; she did not have a National Security Agency (NSA) badge.

(4) Lieutenant Colonel (LTC) M__ L. A__ (applicant's battalion commander) stated, on 25 October 2021, the applicant was at the hospital because his wife was having a baby; on 28 October 2021, LTC A__ learned the woman having the baby was not the applicant's spouse.

(a) That night, the command team had the applicant report to the battalion and offer proof of his son's birth; the applicant provided a handwritten document on hospital letterhead that identified the mother as "A__ Y__." The 1SG read the applicant his rights, and the applicant asked for a lawyer; the applicant appeared very stressed and incoherent. The command team ordered the applicant to report to work the next day.

(b) On 29 October 2021, the applicant's company commander (CPT K__ I. K__) called the battalion commander and stated the applicant had requested to see the battalion commander under the Open Door policy. On 1 November 2021, the applicant came to LTC A__'s office; LTC A__ read the applicant his rights, and the applicant waived his rights.

(c) The applicant began by explaining why he had faked his vaccination card; LTC A__ stopped him, stating, because the applicant was pending UCMJ action that the battalion commander may be addressing, they could not discuss this matter any further. The applicant went on to confirm his current wife had not had his recently born child; the applicant and his wife were in the process of getting a divorce and it was supposed to be finalized by December (no specific date).

(d) The applicant also admitted he had had a sexual relationship with the baby's mother while he was still married, and the baby's mother was claiming the applicant was the father; the applicant asked for regular leave so he could take a paternity test to verify he was the baby's father. Additionally, the applicant stated the baby's mother intended to move back to South Carolina, and, if he was the baby's father, he wanted to assert his parental rights; he additionally expressed concern about the mother's family because they were "known drug users." The battalion commander approved leave for the applicant until 10 November 2021.

(5) CPT K__ I. K__, commander for the battalion's HHC, stated the applicant had transferred to his company after the command had initiated UCMJ action. When they learned the applicant's wife (CPT A__ Y__) did not have the baby, CPT K__ called the applicant and ordered him to report to the battalion.

(a) After the applicant presented a handwritten document on hospital letterhead showing the baby's birth and the mother as "A__ Y__," and the 1SG read the applicant his rights, they instructed the applicant to return to the company the next day. Instead of returning as instructed, however, the applicant saw the chaplain and then went to the hospital.

(b) That afternoon, the applicant called CPT K__ and acknowledged "he and his wife were separated and (were) getting a divorce, and that he had had sex with another woman"; the applicant talked about needing leave to get a paternity test and

expressed concerns about the mother's family. CPT K__ stopped the applicant from saying anything further and indicated they could talk more if the applicant elected to waive his rights; the applicant asked to speak to the battalion commander.

(6) GG-12 C__ I. C__ stated, on 24 August 2021, the applicant started filling out his Security In-Processing Packet (SIP); the applicant later filed his online portion of the application, on 10 September 2021. On or about 21 October 2021, the applicant came to Mr. C__'s section, and Mr. C__ told the applicant his SIP contained several errors; the applicant had answered, "No" to whether he had undergone a polygraph test before; "No" to having had a background check in the past; and "No" to having no foreign-born family members (the applicant's spouse was born in Latvia). Additionally, the applicant gave the wrong date of birth for his spouse, and he claimed he and his spouse "lived together, spoke every day, were intimate, and they met at Fort Bragg, NC." The applicant subsequently took his polygraph test and passed.

(7) 1SG E__ O. M__, 1SG for the brigade's HHC, stated:

(a) The applicant told the unit he had gotten a COVID-19 vaccination, on or about 24 September 2021, from Maryland's Department of Health; he also showed a copy of a vaccine administered in South Carolina, but CPT F__ (CPT L__ T. F__, HHC company commander) later determined the South Carolina vaccination never happened.

(b) The applicant additionally claimed he had received a second vaccine dose in Maryland, but the unit learned that the way the shot was reflected on the card was not how the state recorded its vaccinations. The applicant then produced a printout indicating a vaccination on 27 September 2021 (after the 24 September date he had initially claimed). The 1SG believed the applicant had falsified numerous COVID-19 vaccination cards and made many false statements about where and when he had received the vaccinations.

(c) 1SG M__ affirmed the applicant was known to miss 0630 Physical Training (PT) formations, claiming that he had stomachaches or was stuck in traffic. On 20 August 2021, the company had its Organizational Day; the applicant was supposed to help set it up, but he said he had to go to marriage counseling. The applicant never showed up for Organizational Day; he failed to report to his place of duty and was reported as absent without leave (AWOL).

(8) GG-13 S__ C__ stated he met the applicant in December 2020 when the applicant in-processed to Fort Meade.

(a) During their conversation, the applicant indicated he was a geographical bachelor, but his wife (CPT A__ Y__) would be joining him and then assume command

of a company. Sometime in September, Mr. C__ learned the applicant's wife was pregnant; the applicant said he had a lot of appointments because the pregnancy was "high risk."

(b) Mr. C__ continued, "On the morning of 27 September 2021, I was shown two pictures of vaccine cards that were sent from [applicant] to SGM P__ (Operations SGM). The first vaccine card picture I was shown...looked like someone had tried to doctor the name line of the vaccine card and had left artifacts behind showing photo doctoring had occurred. The second also had some visible signs of manipulation where the name line was not fully intact where someone had possibly erased a name and then written another name, "(applicant's name)" on the right side of the line."

(9) SFC T__ L. T__ stated he took PT accountability on Monday, Wednesday, and Friday for his section, and to which the applicant was also assigned; the applicant often failed to show for PT formation and had numerous excuses as to why. Over time, the applicant became untrustworthy for simple accountability tasks, and, although the leadership tried to develop him as a senior noncommissioned officer (NCO), the applicant demonstrated an unwillingness to collaborate and unreceptive to constructive feedback.

(10) On 17 November 2021, the applicant provided his sworn statement.

(a) Regarding his COVID vaccination cards, the applicant stated he had received a COVID vaccination, on 27 September 2021, and two other shots, one at the Bank of America Stadium in Charlotte, North Carolina, and the other at the Baltimore Convention Center.

(b) While at the Baltimore Convention Center, the applicant's original vaccination card became damaged. "I was still able to receive the second dose at the Baltimore Convention Center; they added the stickers for the batch and lot to the card instructing me to take a photo and reach out to the originator of the card to get it replaced and updated. After I received the vaccination, I took a photo of the card and attempted to repair the damage by cropping the image of a blank vaccination card and rewriting my name; alternatively, I decided to crop the old card's admin data containing my name and date of birth over the updated card."

(c) "The middle of April I informed 1SG that I had received my vaccinations and sent him the copy and was removed from the list of personnel that were required to wear mask in bldg. 310. (On) 24 September, 1SG informed me I needed to provide a copy of my vaccination card again, I was told an image would be sufficient, I found the image in my phone and sent it as I was on the way to drive (SCARNG Soldier pregnant with the applicant's child) to her weekly baby appointment."

(d) "1SG asked me to come in as be needed to see it in person; while driving back, I reached out to SGM P__ (Operations SGM), sent three images of my vaccination card, and informed him I was on the way from the appointment to the HHC, and that I didn't understand why they needed me to come in. When I arrived around 1900, CPT F__ (CPT L__ T. F__, HHC company commander) said the vaccination card didn't make sense and they had questions. CPT F__ read me my rights and asked if I wanted to waive my rights; I said I wanted a lawyer present."

(e) "That weekend I informed 1SG that I would be getting in contact with the Baltimore Department of Health to get another vaccination so there's no question of my status; I used the Maryland portal to locate Northern Pharmacy & Med Equipment (NPME). Once scheduled I informed 1SG of my intent; I received the vaccination September 27, 2021 and provided a copy to 1SG on 27 September. September 30th, SGM P__ said CPT F__ needed to see me at 0900. When I arrived, CPT F__ said the (27 September 2021 vaccination) had been proven to be invalid, and that SGM P__ will now escort me to get vaccinated. I informed CPT F__ that a vaccine so close to my previous would be harmful to my health and I cannot comply." With SGM P__ help, the applicant went online, located his 27 September 2021 vaccination, and printed proof for CPT F__; with that, CPT F__ acknowledged the vaccination was valid.

(f) "The following week, CPT F__ called me into the office, and I was required to sign flag paperwork for the outstanding questions and validity of the (vaccination) card (for the shot received in North Carolina), I informed CPT F__ that I would attempt to reach out to M__ Family Practice (who had hosted the vaccinations in conjunction with the SCARNG) to get the card replaced. I reached out to M__ Family Practice again and was forwarded to the manager, who said they would be unable to help as CPT F__ already reached out to them and said they didn't have my information at their facility."

(g) The applicant stated he and his wife (CPT A__ Y__) had been married since 2011; they did not live together and had not been intimate for more than a year. They were a dual-military couple and had been having marital problems; they attempted to overcome their issues after the applicant redeployed, but those efforts did not include marriage counseling. In the final two weeks of his deployment, he met the mother of his child, and, after he redeployed, he kept in contact with her; "she returned from her deployment around late June, early July 2020; I was involved with (her) on and off until November 2020, when I PCS'd to Fort Meade in December 2020. (She) had already been seeing other men, and we had discontinued contact."

(h) "Additionally, (applicant's spouse) and (I) have been separated formally since December 2020; (the SCARNG Soldier) visited (the applicant) Jan 2021, then I saw her in March suspecting her of being pregnant. After weighing options, (she) moved here in late July to prepare for the birth and delivery, where she now cohabitates with me."

(i) "I do not have an NSA badge (and) (CPT A__ Y__) does not have an NSA badge. (CPT A__ Y__) was born in Riga, Latvia, (she) earned her citizenship in 2008 prior to our marriage and has been in the country over 20 years. I have never been required to list her as a foreign contact, not even when conducting an indoctrination with (the unit's S-2 section), I've only needed to provide her naturalization number, date, and state. (CPT A__ Y__) was raised in C__, PA, with her mom E__ and Dad A__ C__; her Dad is born American (and) her mom born in Latvia. I have never visited Latvia nor have I spoken with her family in Latvia."

(j) "After my polygraph I submitted the application for the NSA badge, I left foreign contacts blank at the time as (CPT A__ Y__) is not a foreign contact. The week prior to C__ (SCARNG Soldier) going into labor, CPT F__ instructed me to fill out my spouse's information as a foreign contact on the NSA application. I filled in (CPT A__ Y__)'s information; I do remember saying we lived together and spoke frequently and were intimate. I do not recall any parameters set for time of last contact or anything to do with separation status. I cannot speak to other accusations of my tardiness and accountability during the duty day if there were issues or misunderstandings, I wish they were brought to my attention through counseling, verbal or nonverbal."

(k) "Conclusion. I apologize for my actions that have led to this point and regret betraying those who place(d) so much trust in me. I've always strive(d) to perform above center mass and build lasting relationships with expectation of improving the force and myself. I knowingly went to great lengths to keep the affair from my unit, by not being upfront about the state of my marriage, or the expected baby who is now healthy and well."

i. On 17 November 2021, the IO filed her report with the appointing authority.

(1) "Summary. [Applicant] submitted multiple modified COVID vaccination cards to his senior leadership in (applicant's unit) as proof of his vaccination status. [Applicant] missed multiple accountability formations and submitted 'maternity leave' for a baby that he fathered with SPC (Specialist) K__ P__ (SCARNG Soldier), not his legal spouse, (who was) CPT A__ Y__. [Applicant] submitted forged (hospital discharge) paperwork for the baby before he eventually admitted that his wife was not the mother. [Applicant] failed to annotate on his SF 86 any foreign contacts (despite the fact) his spouse and in-laws were born in Latvia. Additionally, he lied about his upcoming divorce and contact with his spouse on his military SIP form."

(2) Findings.

- Allegation 1 – applicant submitted multiple false official documents (i.e., COVID vaccination forms)
- Allegation 2 – applicant had an extramarital affair with SPC K__ P__

- Allegation 3 – applicant was absent without authority, specifically on 20 August 2021, 4 October 2021, and between 25 and 28 October 2021; in addition, applicant received multiple verbal and written counseling statements due to his lack of accountability
- Allegation 4 – applicant did not report his foreign-born contacts on his SIP and added untrue information about his marital relationship
- Allegation 5 – evidence was insufficient to support the allegation that the applicant lied during his polygraph examination

(3) Recommendations.

- The command should pursue UCMJ action against the applicant for his numerous false statements about his marital status, his child, and his COVID-19 vaccination status, as well as for having engaged in an extramarital affair with SPC K__ P__
- The command should suspend the applicant's security clearance because of his lack of candor and outright lies on his SF 86
- If the applicant does not face trial by court-martial, the command should either bar him from continued service or administratively separate him under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations)
- If the applicant is retained on active duty, the command should transfer him to a position that does not require a top secret clearance and should forcibly reclassify him in accordance with the needs of the Army
- While not within the scope of the appointing authority's initial appointment memorandum, the IO recommended the command consider a charge of fraternization against the applicant, and that they share the results of the IO's investigation with SPC K__ P__'s SCARNG unit

j. On 24 January 2022, the applicant accepted NJP from his battalion commander.

(1) The battalion commander charged the applicant with violating the following UCMJ Articles:

- Article 86 (Failure to Report to a Place of Duty at the Time Prescribed), two specifications – on 20 August 2021, the applicant failed to report to the unit's Organization Day; on 30 September 2021, he failed to report for 0900 Work Call
- Article 92 (Failure to Obey a Regulation), one specification – on 27 January 2021, the applicant violated paragraph 4-14c (2) (Relationships Between Soldiers of Different Grades), AR 600-20 (Army Command Policy) by wrongfully engaging in a sexual relationship with a junior enlisted Soldier

- Article 107 (False Official Statements), four specifications – on 24 September 2021, the applicant gave a false vaccination card to 1SG E__ M__; on 24 September 2021, the applicant gave a false vaccination card to SGM N__ P__ (Operations SGM)
- Article 107 (continued) – on 28 October 2021, applicant presented a false hospital discharge form to CPT K__ I. K__; on 1 September 2021, applicant gave false information on his SIP
- Article 134 (General Article – Extramarital Sexual Conduct), one specification – between 1 June 2020 and 27 October 2021, the applicant engaged in extramarital sexual conduct with SPC C__ P__, a person who was not the applicant's spouse

(2) The battalion commander afforded the applicant the opportunity to consult with counsel, and, subsequently, the applicant elected not to demand trial by court-martial. During a closed hearing, the applicant presented matters in defense, extenuation, and mitigation, and, after considering the available evidence and those matters offered by the applicant, the battalion commander found the applicant guilty of all charges and specifications.

(3) The battalion commander's punishment for the applicant consisted of an oral reprimand, a suspended forfeiture of \$2,220 per month for 2 months, and 45-days' restriction and extra duty. The applicant chose not to file an appeal.

k. On 13 July 2022, a civilian court awarded the applicant's wife an "absolute divorce" from the applicant.

l. On 10 March 2023, a special court-martial, empowered to adjudge a bad conduct discharge, convicted the applicant of UCMJ violations.

(1) The special court-martial convening authority had charged the applicant with violating the below-listed UCMJ Articles; additionally, the applicant's pleas and the court's findings are reflected below:

- Article 86 (Failure to Report to a Place of Duty at the Time Prescribed) – on 27 September 2022, the applicant failed to report for training; the applicant pleaded not guilty; the court found him guilty
- Article 91 (Assault of Superior NCO) – on 28 September 2022, the applicant allegedly struck 1SG ROF on the hand with his hand; the applicant pleaded not guilty and the court found him not guilty
- Article 91 (Insubordinate Conduct toward a Superior NCO) – on 28 September 2022, the applicant said to 1SG ROF, "Who the f__ do you think you are talking to," "Get out of my face," and "We can go outside"; the applicant pleaded not guilty; the court found him guilty

- Article 107 (False Official Statement) – on 28 September 2022, the applicant allegedly told CPT AAL that he had not reported for training, on 27 September 2022, because he was in a court hearing; the applicant pleaded not guilty and the court found him not guilty

(2) The court sentenced the applicant to be reduced from SFC to sergeant (SGT)/E-5.

(3) On or about 24 March 2023, the special court-martial convening authority approved the sentence and ordered its execution.

m. On 1 December 2023, the Army honorably discharged the applicant, per paragraph 16-3 (Non-Retention on Active Duty), AR 635-200; the applicant's separation packet is unavailable for review. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 13 years, 6 months, and 6 days of net active duty. Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) lists the following:

- Army Commendation Medal with "C" Device
- Army Commendation Medal (3rd Award)
- Army Achievement Medal (3rd Award)
- Army Good Conduct Medal (3rd Award)
- National Defense Service Medal
- Afghanistan Campaign Medal with two bronze service stars
- Global War on Terrorism Service Medal
- Korea Defense Service Medal
- NCO Professional Development Ribbon with Numeral "2"
- Army Service Ribbon
- Overseas Service Ribbon with Numeral "2"
- North Atlantic Treaty Organization Medal
- Inherent Resolve Campaign Medal with one bronze service star
- Certificate of Achievement (2nd Award)
- Basic Marksmanship Qualification Badge

4. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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 severity and frequency of the misconduct leading to the UCMJ. The Board agreed that the misconduct in which the applicant engaged, indicated willful intent to deceive. Documentation supports that he was afforded the opportunity to consult with counsel, and, subsequently, the applicant elected not to demand trial by court-martial. During a closed hearing, the applicant presented matters in defense, extenuation, and mitigation, and, after considering the available evidence and those matters offered by the applicant, the battalion commander found the applicant guilty of all charges and specifications. After due consideration of the applicant's request, the Board determined the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

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



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. AR 27-10 (Military Justice), currently in effect, prescribes policies and procedures pertaining to Army military justice. Chapter 3 (NJP) implements Article 15, UCMJ.

a. Paragraph 3-2 (Use of NJP). A commander should use nonpunitive measures to the fullest extent to further the efficiency of the command before resorting to NJP.

(1) Use of NJP is proper in all cases involving minor offenses in which nonpunitive measures are considered inadequate or inappropriate. If it is clear that NJP will not be sufficient to meet the interests of good order and discipline, more stringent measures should be taken. Prompt action is essential for NJP to have the proper corrective effect.

(2) NJP may be imposed to correct, educate, and reform offenders who the commander determines will not benefit from less stringent measures; used to preserve a Soldier's service record from the unnecessary stigma of a court-martial conviction; and to further military efficiency by disposing of minor offenses in a manner that requires less time and manpower than a court-martial.

b. Paragraph 3-17 (Formal Proceedings). Commanders should use formal NJP proceedings when they have determined the possible punishment could exceed that allowed under summarized proceedings (i.e., 14-days' extra duty and/or restriction and an oral reprimand). Commanders will use a DA Form 2627 to record formal proceedings.

c. Paragraph 3-18 (Notification and Explanation of Rights).

(1) The imposing commander will ensure the Soldier is notified of the commander's intention to dispose of alleged misconduct using NJP. The Soldier will also be notified of the maximum punishment the commander could impose, and he/she 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, and will be given a copy of any supporting documents.

(2) The commander will inform the Soldier of his/her right to remain silent; the right to consult with counsel; the right to demand trial by court-martial; and to fully present his/her case to the imposing commander, call witnesses, be represented by a spokesperson, and request either a closed or open hearing. The Soldier will be given a reasonable amount of time to consult with counsel and decide whether or not to demand trial by court-martial.

(3) During the hearing, the Soldier will be allowed to personally present matters in defense, extenuation, or mitigation in the presence of the imposing commander. Within the limitations of AR 27-26 (Rules of Professional Conduct for Lawyers), Judge Advocates may attend NJP proceedings and provide advice to clients; advice should be given during a recess in the proceedings. When defense counsel, military or civilian, act as spokespersons, they speak on behalf of the accused and do not serve in a representative capacity.

(4) In evaluating the evidence, an imposing commander is not bound by the formal rules of evidence before courts-martial and may consider any matter, including unsworn statements, the commander reasonably believes to be relevant to the offense.

d. Paragraph 3-28 (Setting Aside and Restoration).

(1) Setting aside and restoration 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. An NJP is "wholly set aside" when the commander who imposed the punishment, a successor-in-command, or a superior authority (i.e., ABCMR) sets aside all punishment imposed upon an individual pursuant to Article 15 of the UCMJ.

(2) The basis for any set-aside action is a determination that, under all the circumstances of the case, the imposition of the NJP or its punishment resulted in a clear injustice. "Clear injustice" means that 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 that unquestionably exculpates 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.

(3) Normally, the Soldier's uncorroborated sworn statement is not a sufficient basis to set aside a punishment.

2. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//