

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 September 2024

DOCKET NUMBER: AR20230008725

APPLICANT REQUESTS:

- amendment to the narrative reason for separation to disability separation retirement
- removal of all records of nonjudicial punishment (NJP) proceedings under provisions of Article 15 of the Uniform Code of Military Justice (UCMJ)
- reimbursement of forfeiture of pay incurred under the provisions of Article 15 of the UCMJ

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

- DD Form 149 (Application for Correction of Military Record), 8 May 2023
- Self-Authored Statement, 24 April 2023
- Civil Air Patrol Certificate, 10 August 1986
- letter, State University
- SF 600 (Health Record), 22 January 1991
- Grade Sheet, U.S. Army Electronic Warfare Aviation Systems Repairer Course, 19 June 1981
- SF 600s, 29 July 1991, 22 August 1991, 26 August 1991, 26 August 1991
- Memorandum, U.S. Army Medical Department Activity, Fort Devens, subject: Congressional Inquiry (Applicant)
- Adjutant General, Department of the Army, 3 September 1991
- DA Form 2627 (Record of Proceedings Under Article 15, UCMJ), 11 September 1991
- Texas docket website printout
- Veterans Administration Rating Decision, 8 August 2022

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20100015282 on 16 December 2010.

2. The applicant states:

a. He communicated with a congressman in June 1991 about the waste of funds on the retention of a Soldier who was injured in the line of duty, a communication which was protected under Title 10, U.S.C. 1034. His letter did not include all of the communications from Captain (CPT) S\_\_\_ pertaining to his threats and hate speech.

b. The evidence shows causation from the congressional inquiry. Correspondence from Dr. K\_\_\_ to his unit shows the Dr. reversed his diagnosis. Correspondence from the Adjutant General, Fort Devens, to his congressman shows the acts of reprisal to the applicant. Service treatment records reflect recommendation for a medical board and the justification under Army Regulation 40-501.

c. In August 2022, the Department of Veterans Affairs awarded him 100% service connected disability benefits for post-traumatic stress disorder (PTSD) acquired from the reprisal he received from his unit.

d. His commander's hate speech, death threats, public humiliation and fraudulent NJP, fraudulent disenrollment, and loss of his top secret/sensitive compartmentalized information security clearance caused mental trauma resulting in psychosis that lasted 379 months.

### 3. The applicant provides:

a. An SF 600, 14 January 1991, reflecting treatment for exercise induced asthma with no prior history of asthma.

b. An SF 600, 22 January 1991, reflecting he reported having a history of asthma since 16 years of age and was given an inhaler but rarely used it. Asthma was exacerbated by exercise. The same SF 600 reflects an entry on 22 July 1991 for complain of intermittent sleep, migraines, frontal headache lasting 1 to 5 minutes two times a day.

c. A class grade sheet for the Army Electronic Warfare Aviation Systems Repairer Course which shows his scores on various events, up to and including event number 21. Events numbered 22 to 37 were not recorded or were not completed.

d. An SF 600, dated 29 July 1991, reflecting he was treated for asthma which he had as a child but had no problems since he was 18. The examining physician recommended medication and inhaler use. The physician further recommended separation proceedings for a condition that existed prior to service (EPTS).

e. An SF 600, 22 August 1991, reflecting he was evaluated for stomach cramps and loose stools.

f. An SF 600, with entries recorded on 26 August 1991 and 28 August 1991. On 26 August 1991 he was evaluated for asthma. The administrative proceedings were completed with a recommendation of no separation action at that time. He was advised to continue taking medication and using an inhaler. A subsequent entry on 28 August 1991 shows he was evaluated again for asthma but there was not enough evidence of asthma interfering with his military occupational specialty (MOS) to disqualify him in accordance with Army Regulation 40-501, chapter 3-27i. The examining physician recommended a medical consult to clarify his therapy.

g. A memorandum from the Chief, Outpatient Clinic, U.S. Army Medical Department Activity, Fort Devens, to the Commander, 112th Military Intelligence Brigade, 28 August 1991, noting the applicant was fit for duty under the medical retention standards of Army Regulation 40-501, chapter 3. The memorandum reads, in part, "At no time was he counseled that his medication use would interfere with his performance of duty or compromise the health or safety of fellow Soldiers. He was qualified for worldwide assignment. The recommendation for discharge made on 24 July 1991 was based upon his failure to meet induction (Army Regulation 40-501, chapter 2) standards. Induction standards no longer apply to [Applicant] and he did not apply to the time of this erroneous recommendation as he had served over 120 days on active duty. [Applicant] appears to have presumed a disability due to Asthma which is not evidence in his current medical conditions or his past performance. A disability is not present and he will perform well when taking prescribed medication."

h. A memorandum from the Adjutant General to his Congressman, dated 5 September 1991, showing his commanding officer's response to his constituent (Applicant) that he had been evaluated by Dr. K\_\_\_ and his condition was not severe enough to warrant a medical discharge. On 28 August 1991, he was recommended for academic disenrollment from the Aviation Systems Repairer Course. If the recommendation was approved, he would be reclassified into another MOS dictated by the needs of the Army. He would be sent to another training site for retraining. He would be sent to another training site for retraining. He would be counseled and assisted in every way possible to help him become the Soldier he is capable of being.

i. A copy of NJP imposed against him on 11 September 1991.

j. A (County), Texas printout of dockets in which the applicant was involved during the years subsequent to his discharge.

k. A VA rating decision reflecting a grant of 100% for disability benefits for PTSD, effective 2021.

4. A review of the applicant's service records show:

a. On 31 July 1990, he enlisted in the Regular Army.

b. A DA Form 3286-63 (Statement for Enlistment-United States Army Training Enlistment Program), dated 31 July 1990, shows that in connection with this enlistment he agreed and understood:

- his enlistment for this program assured him that, provided he met required prerequisites, he would receive training in the MOS 33R10
- if he should be relieved from training for academic deficiency, disciplinary reasons, failure to receive any required security clearance because of information withheld by him or any misconduct, he would be trained in accordance with the needs of the Army and required to complete the term of his enlistment
- if his enlistment could not be fulfilled through no fault of his own, the alternatives available to him would be provided in Army Regulation 635-200
- he would have a period of 30 days from the time he was notified become award or reasonable should have become award that his selected training could not become fulfilled, to elect an alternative training program for which he was qualified
- if he became disqualified for this enlistment because of personal conduct, withholding information, that he has within his knowledge that precludes access to special intelligence information, he would be retrained and required to complete his term of enlistment in accordance with the needs of the Army

c. An interim Certificate of Clearance and Security Determination was granted to him on 4 September 1990, with an expiration date of 180 days from that date (3 January 1991).

d. An SF 600, 14 January 1991, reflects he was seen on an outpatient basis for chest tightness, wheezing, and reported no history of asthma.

e. A DA Form 4700 (Medical Record-Supplemental), dated 15 January 1991, shows he was given inhalation therapy treatment and tested on a treadmill for pulmonary function, post exercise.

f. A DD Form 689 (Individual Sick Slip), dated 22 January 1991 shows the Medical Officer, indicated a disposition of duty and prescribed use of an inhaler before any exercise and every 4 hours while he was in an exertional activity.

g. A SF 600, dated 22 January 1991, reflects he was evaluated on an outpatient basis for asthma, he had a history of asthma since age 16; recommended pulmonary function studies; and diagnosed exercise exacerbated asthma. The examining physician prescribed medication and inhaler use.

h. A Course 14FC class grade sheet shows he maintained an average of 84.88 as of completion of 23 of 37 events.

i. On 19 July 1991, he was promoted to private first class/E-3.

j. A DD Form 689, dated 24 July 1991, reflects he was evaluated as the result of his asthma problem and the medical officer recommended administrative separation under provisions of Army Regulation 635-200 ((Personnel Separations – Enlisted Personnel).

k. An SF 600, dated 22 July 1991, reflects he was evaluated for migraine headaches.

l. A SF 600, dated 29 July 1991, reflects he was evaluated for adult asthma. The examining physician noted he reported childhood asthma but no problems since age 18 and recommended medication twice daily with inhaler use; recommended separation by reason of condition existing prior to service.

m. An SF 600, dated 1 August 1991, shows follow-up for asthma, with a 7 August 1991 follow-up.

n. An SF 600, dated 26 August 1991, reflects he was evaluated for asthma; administrative proceedings concluded and no separation action was taken at that time; continue taking medication and inhaler use. A 28 August 1991 follow-up reflects difficulty with asthma but that there was not enough evidence of asthma interfering with his MOS to disqualify him in accordance with Army Regulation 40-501, chapter 3-27a. The examining physician suggested a medical consult to clarify therapy.

o. On 11 September 1991, he accepted NJP under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for failing to go to his appointed place of duty at Hale Hall, at the time prescribed on or about 23 August 1991; feigning illness for the purpose of avoiding duty at an advanced individual training student on 23 August 1991; with intent to deceive, make to Sergeant First Class VN\_\_\_\_ a false official statement that he was on sick call from 0630 hours to 1230 hours on or about 27 August 1991. His punishment consisted of reduction to private 2/E-2; forfeiture of \$197.00 for 1 month, which was suspended for 120 days; and extra duty and restriction for 14 days. He did not appeal his punishment.

p. Orders issued from Headquarters (HQ), Fort Devens, dated 10 September 1991, assigned him to U.S. Army Armor School (USAARMC), Fort Knox for 14 weeks training, with a reporting date of 20 September 1991.

q. On 20 September 1991, his status was changed; he was assigned from in to in-transit from Company D, 305th MI Battalion, 112th MI Brigade, to not joined, USAARC, Fort Knox, KY.

r. On 13 July 1992, his status changed from dropped from the rolls to present for duty. A DA Form 4187 reflects he returned to military control and he was assigned to B Battery, Personnel and Support Battalion, Fort Sill.

s. On the same date, he declined a medical examination for separation.

t. On 15 July 1992, court-martial charges were preferred against him. A DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from on or about 20 September 1991 to 13 July 1992.

u. On the same date, he consulted with legal counsel and requested a discharge in lieu of trial by courts-martial under the provisions of Army Regulation 635-200, chapter 10. In doing so, he acknowledged that the charges preferred against him under the UCMJ, authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- he could be discharged under other than honorable conditions and he could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA)
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he would forfeit all accrued leave and be reduced to the lowest grade of E-1
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- he was advised he could submit any statements he desired in his own behalf, and elected not to do so
- he elected not to undergo a separation physical evaluation

v. On 14 August 1992, the separation approval authority approved his request for discharge, under the provisions of chapter 10, Army Regulation 635-200, for the good of the service in lieu of trial by court-martial. He directed issuance of an Under Other Than Honorable Discharge and reduction to the lowest grade/pay grade.

w. On 3 September 1992, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was credited with completing 2 years, 1 month and 3 days active service; he was discharged under the provisions of Army Regulation 635-200, chapter 10; for the good of the service in lieu of trial by court-martial. His service was characterized as under other than honorable conditions. His DD Form 214 further shows he had 297 days' time lost from 20 September 1991 to 13 July 1992 and he had excess leave of 73 days from 20 July 1992 to 3 September 1992. The separation code was KFS and the reentry code was 3. He was neither awarded an MOS nor was he awarded any decorations or medals.

5. On 22 June 2005, the Army Discharge Review Board (ADRB) considered his request for an upgrade of his discharge in a records review hearing in case number AR20040009862 and granted partial relief with an upgrade of his discharge to under honorable conditions (General). The Board voted not to change the narrative reason of and the authority for his discharge.

6. On 16 December 2010, the ABCMR denied his request for an upgrade to honorable and a change to the separation designator and reentry code to allow him to reenlist, finding no evidence of procedural errors and determining the type of discharge and the reasons for separation were appropriate considering all the facts of the case.

#### 7. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR in essence requesting a referral to the Disability Evaluation System. He has indicated on his DD 149 that PTSD and Reprisal/Whistle Blower status are issues related to his request. He states:

“On 08 AUG 2022, Dept. of Veterans Affairs granted [Applicant] 100% permanent and total service-connected disability compensation for PTSD acquired from Reprisal.”

c. The Record of Proceedings and prior denial detail the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service

under consideration, issued with a discharge upgrade at the direction of the ADRB, shows he entered the regular Army on 3 July 1990 and was discharged under honorable conditions (general) on 3 September 1992 under the separation authority provided by chapter 10 of AR 635-200, Personnel Separations – Enlisted Personnel (17 September 1990): Discharge for the Good of the Service.

d. The applicant's period of service predates the EMR.

e. Medical documentation shows the applicant was evaluated and treated for a left non-displaced radial head fracture (elbow), two right shoulder dislocations, and exercise induce asthma which had existed prior to service. Treatments included oral medication, physical therapy, and temporary duty limiting permanent physical profiles. There is no evidence in the supporting documentation the applicant was placed on permanent duty limiting physical profile or referred to the DES.

f. A Charge Sheet (DA Form 458) shows the applicant was charged with absence without leave (AWOL) from 20 September 1991 thru 13 July 1992.

g. The applicant voluntarily requested discharge from the Army for the good of the Service under chapter 10 of AR 635-200. The applicant declined a pre-separation medical examination.

h. There is no evidence the applicant had any duty incurred medical condition(s) which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his voluntary discharge. Thus, there was no cause for referral to the Disability Evaluation System.

i. JLV shows he has been awarded three VA service-connected disability ratings: PTSD effective April 2021, limited right arm motion effective November 2010, and limited flexion of left forearm effective August 2010. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

j. It is the opinion of the Agency medical advisor that a referral of his case to the DES is unwarranted.



**BOARD DISCUSSION:**

1. 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 record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding no evidence the applicant had any duty incurred medical conditions which would have failed the medical retention standards and as such a referral to the Disability Evaluation System is not warranted.

2. Upon review of the applicant's petition and military records, the Board determined that the applicant did not demonstrate by a preponderance of evidence that procedural error occurred that was prejudicial to the applicant and by a preponderance of evidence that the contents of the nonjudicial punishment are substantially incorrect and support removal. Furthermore, the Board found the burden of proof rests with the applicant, and he provided no evidence to support his nonjudicial punishment was in error. The Board concluded based on a preponderance of the evidence found in the military record, the applicant's claim for removal of the Article 15, imposed on 11 September 1991 is not warranted. Additionally, the Board found no error or injustice in the punishment imposed in connection with the nonjudicial punishment, including the forfeiture, and therefore denied his request pertaining to reimbursement of pay.

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:	:	:	GRANT FULL RELIEF
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■	■	■	DENY APPLICATION

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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REFERENCES:

1. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provided:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

a. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1984, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

2. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "KFS" corresponded to "For the good of the service – in lieu of court-martial," and the authority, Army Regulation 635-200, chapter 10.

3. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a table of U.S. Army reentry eligibility (RE) codes.

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable

4. Army Regulation 600-8-4 (Line of Duty Determination) notes that line of duty determinations are essential for protecting the interest of both the individual and the

United States Government, where service is interrupted by injury, disease, or death. Line of duty investigations are conducted essentially to arrive at a determination as to whether misconduct or negligence was involved in the disease, injury, or death and if so, to what degree. The finding of in line of duty is not evidence that an individual is entitled to disability separation or retirement but only that the injury was not the result of misconduct or negligence.

5. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Chapter 7 prescribes a system for classifying individuals according to functional abilities. The functions have been considered under six factors designated "P-U-L-H-E-S." Four numerical designations are used to reflect different levels of functional capacity. The basic purpose of the physical profile serial is to provide an index to overall functional capacity. Therefore, the functional capacity of a particular organ or system of the body, rather than the defect per se, will be evaluated in determining the numerical designation 1, 2, 3, or 4. An individual having a numerical designation of 1 under all factors is considered to possess a high level of medical fitness.

6. Army Regulation 40-501 (Standards of Medical Fitness), effective 14 June 2017, applies to the active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

a. This regulation governs:

- medical fitness standards for enlistment, induction, and appointment, including officer procurement programs
- medical fitness standards for retention and separation, including retirement
- medical fitness standards for diving, Special Forces, Airborne, Ranger, free-fall parachute training and duty, and certain enlisted military occupational specialties and officer assignments
- medical standards and policies for aviation
- physical profiles
- medical examinations and periodic health assessments.

b. The proponent of this regulation is The Surgeon General. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activities' senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent.

7. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, established the Army Physical Disability Evaluation System according to the provisions of chapter 61 of Title 10 United States Code and Department of Defense Directive 1332.18. It set forth policies, responsibilities, and procedures that apply in determining whether a member was unfit because of physical disability to perform the duties of his office, grade, rank, or rating. If a member was found unfit because of physical disability, it provided for disposition of the member according to applicable laws and policies.

a. Paragraph 4-24 provided that Based upon the final decision of the Commanding General, U.S. Army Physical Disability Agency, or the Army Physical Disability Review Board, the Commanding General, Military Personnel Center would issue retirement orders or other disposition instruction separation for physical disability with severance pay.

b. Paragraph 4-24b(1) provided U.S. Army Human Resources Command (HRC) will publish orders or issue proper instructions to subordinate headquarters or return any disability evaluation case to U.S. Army Physical Disability Agency (USAPDA) for clarification or reconsideration when newly discovered evidence becomes available and is not reflected in the findings and recommendations. Based on the final decision of USAPDA, HRC will issue retirement orders or other instructions as follows:

- permanent retirement for physical disability (Title 10, United States Code, Section 1201 or 1204)
- placement of the Temporary Disability Retirement List (Title 10, United States Code, Section 1202 or 1205)
- separation for Physical Disability with severance pay (Title 10, United States Code, Section 1203 or 1206)

8. Army Regulation 27-10 (Military Justice) prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial. Paragraph 3-37 (Distribution and Filing of DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) and Allied Documents) states the original DA Form 2627 will be filed in the Soldier's AMHRR. The decision to file the original DA Form 2627 in the performance folder or the restricted folder in the AMHRR will be made by the imposing commander at the time punishment is imposed. The filing decision of the imposing commander is subject to review by any superior authority. However, the superior authority cannot direct that a DA Form 2627 be filed in the performance folder that the imposing commander directed to be filed in the restricted folder.

9. Army Regulation 27-10 (Military Justice) prescribes the policies and procedures pertaining to administration of military justice.

a. Paragraph 3 states NJP is imposed to correct misconduct as a result of intentional disregard of or failure to comply with prescribed standards of military conduct in violation of the UCMJ. NJP may be set aside or removed upon a determination that under all the circumstances of the case, a clear injustice has resulted.

b. Paragraph 3-37a, states the original DA Form 2627 will include allied documents, such as all written statements and other documentary evidence considered by the imposing commander or the next superior authority acting on an appeal.

c. Paragraph 3-37b(1)(a) states the decision to file the original DA Form 2627 in the performance or restricted folders in the OMPF will be made by the imposing commander at the time NJP is imposed. The filing decision of the imposing commander is subject to review by superior authority. For Soldiers in the ranks of sergeant and above, the original will be sent to the appropriate custodian for filing in the OMPF.

d. "Clear injustice" means there exists an unwaived legal or factual error that clearly and affirmatively injured the substantial rights of the Soldier. An example of clear injustice would be the discovery of new evidence unquestionably exculpating the Soldier. Clear injustice does not include the fact that the Soldier's performance of service has been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on the retention or promotion potential of the Soldier.

10. Department of Defense Directive 7050.06 (Military Whistleblower Protection), implemented the provisions of the MWPA as codified in Title 10, U.S. Code, section 1034.

a. The directive established policy that:

(1) Members of the Military Services (referred to in this directive as "Service members") are free to make protected communications.

(2) No person will restrict a Service member from making lawful communications to a member of Congress or an inspector general (IG).

(3) Service members will be free from reprisal for making or preparing to make or being perceived as making or preparing to make a protected communication.

(4) No person may take or threaten to take an unfavorable personnel action or withhold or threaten to withhold a favorable personnel action in reprisal against any Service member for making or preparing to make or being perceived as making or preparing to make a protected communication.

b. Protected communications are defined as:

(1) Any lawful communication to a Member of Congress or an IG.

(2) A communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, including:

- a law or regulation prohibiting sexual harassment or unlawful discrimination
- gross mismanagement
- gross waste of funds or other resources
- an abuse of authority
- a substantial and specific danger to public health or safety

c. Reprisal is defined as "taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication."

d. A "personnel action" is any action taken that affects, or has the potential to affect, the military member's current position or career. Personnel actions include promotions; disciplinary or other corrective actions; transfers or reassignments; performance evaluations; and any other significant changes in duties or responsibilities inconsistent with the military member's grade.

11. Army Regulation 380-5 (Army Information Security Program), currently in effect, implements the policy set forth in Executive Order 13526 and Department of Defense Manual 5200.01, Volumes 1 through 4. It establishes policy for classification, downgrading, declassification, and safe guarding of information requiring protection in the interest of national security.

12. Army Regulation 380-67 (Personnel Security Program), currently in effect, implements the DOD and Department of the Army Personnel Security Program and takes precedence over all other departmental issuances affecting these programs. It contains the policies and procedures for access to classified information and assignment in a sensitive position. It also prescribes the investigative scope and adjudicative standards and criteria that are necessary prerequisites for such access or employment. It includes due process procedures for appealing adverse administrative actions rendered in accordance with the provisions of this regulation. This regulation contains all of DOD 5200.2-R and includes all recommendations of the Commission to Review DOD Security Policies and Practices.

a. Paragraph 8-8. Involuntary separation of military members and DA civilian personnel As soon as involuntary separation is considered for military members or DA



civilian personnel who have had access to SCI, Special Access programs, or other sensitive programs, the local commander will send the personnel information to HQDA (DAMI-CIS), Washington, DC 20310-1051. Elimination action will not be completed until DAMI-CIS acknowledges receipt of this information.

- individual's name, grade, and SSN
- date and place of birth
- marital status
- length of service
- reason(s) for proposed involuntary discharge or dismissal
- type of discharge or dismissal contemplated
- level of access to classified information

b. Paragraph 9-10. Termination briefing. Upon termination of employment, administrative withdrawal of security clearance, revocation of security clearance, or contemplated absence from duty or employment for 60 days or more, DOD military personnel and civilian employees shall be given a termination briefing, return all classified material, and execute a Security Termination Statement.

13. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//