

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2024

DOCKET NUMBER: AR20230010294

APPLICANT REQUESTS: removal of the DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), 28 July 2016, and allied documents from the performance folder of his Army Military Human Resource Record (AMHRR)

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Headquarters, 91st Military Police Battalion memorandum (Request for Removal of Article 15), 15 May 2023
- six memorandums of support, from 20 May 2023 to 20 June 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states it has been 7 years since he received his Article 15 punishment. Since then, he has worked on improving himself in all aspects of life, both personally and professionally. He has grown from the incident and learned from his actions.
 - a. Army Regulation 27-10 (Military Justice), contains guidance for the transfer or removal of DA Forms 2627 from a Soldier's service record when the non-judicial punishment (JP) has served its intended purpose, has been in the Soldier's record for at least one year since the date it was imposed, the Soldier is at least a Staff Sergeant, and has received at least one non-commissioned officer evaluation report (NCOER) since the filing of the DA Form 2627..
 - b. The Article 15 punishment he received has served its purpose because it has rehabilitated him both professionally and personally. Since receiving NJP, he has

strived to serve his organization with excellence. He has been promoted to Sergeant and Staff Sergeant. He has regained the trust and confidence of his leaders, peers, and subordinates by winning battalion boards, competing in brigade level competitions, being selected to serve on a protective services mission to the Combined Joint Task Force-Operation Inherent Resolve CJTF-OIR Commander and Command Sergeant Major (CSM). In her personal life, he has attended counseling and has succeeded in improving his family life. He also re-approached his faith and consistently attended church services with his family with the aim of holding a personal relationship with God and guiding his family. He has been using his personal time to volunteer with his local church as well which consists of gathering resources needed to prepare meals to donate to a local shelter via the church.

c. He request the Board to note his following achievements since the imposition of the ARTICLE 15 punishment:

- Winning the 759th Battalion Soldier of the quarter board in the year following his NJP in 2017
- Effectively led his team through a 30-day National Training Center rotation, being able to accomplish all tasks while maintaining a high level of motivation and morale
- Selected by his Battalion Commander to deploy to Iraq for a protective services mission from 2019 to 2020 serving in the role of the advance team non-commissioned officer in charge
- While on the deployment he was selected above peers by his Commander to serve as the Personal Security Officer (PSO) to the CSM of CJTF-OIR
- Received all "Most Qualified" and "Highly Qualified" on all NCOERs since being promoted to SSG including his most recent NCOER which was a "Most Qualified" for 12 months rated time as a Squad Leader.
- Recommended for the Regimental CSM James W. Frye Non-Commissioned Officer of excellence award
- His marriage has strengthened, he and his wife celebrated their 10-year anniversary, and they have two daughters together

3. He enlisted in Regular Army on 25 July 2011.

4. He was considered for imposition of NJP under the provisions of Article 15, UCMJ, on 28 July 2016 for the following offenses:

a. he did, at or near U.S. Army Garrison (USAG) Yongsan, Republic of Korea, between on or about 1 January 2016 and on or about 29 February 2016, violate a lawful general regulation, to wit: by wrongfully engaging in an inappropriate relationship with Private First Class (PFC) S____ M. M____, in violation of Article 92, UCMJ;

b. he did, at or near USAG Yongsan, Republic of Korea, between on or about 6 May 2016, violate a lawful general regulation, to wit: by wrongfully engaging in an inappropriate relationship with Private Second Class (PV2) M____ W____, in violation of Article 92, UCMJ;

c. he did, as a married man, at or near USAG Yongsan, Republic of Korea, between on or about 1 January 2016 and on or about 29 February 2016, wrongfully have sexual intercourse with PFC S____ M____, a woman not his wife, in violation of Article 134, UCMJ; and

d. he did, as a married man, at or near USAG Yongsan, Republic of Korea, on or about 6 May 2016, wrongfully have sexual intercourse with PV2 M____ W____, a woman not his wife, in violation of Article 134, UCMJ;

e. He was afforded the right to consult with counsel. He requested a closed hearing, did not request a person to speak on his behalf, and elected not to present matters in defense in person.

f. On 11 August 2016 In a closed hearing and having considered all matters presented, the imposing commander found him guilty of all specifications. The punishment imposed consisted of reduction to Specialist/E-4, forfeiture of \$1,191.00 pay per month for 2 months, 45 days extra duty, and 30 days restriction. The applicant elected not to appeal the punishment.

g. The imposing commander directed filing the DA Form 2627 in the performance folder of his AMHRR.

5. A review of his AMHRR shows the subject DA Form 2627 and allied documents are filed in the performance folder of his AMHRR.

6. He was promoted to the rank/grade of sergeant/E-5 effective 1 June 2017 and to the rank/grade of SSG/E-6 effective 1 August 2019.

7. He provided six memorandums of support from his current and former Army leadership which state, in effect, the applicant is one of the most dedicated and reliable NCOs. He is a professional Soldier and an empathetic leader who provides a healthy work environment for junior Soldiers under his command. He always put his full heart and effort into everything he does. He is someone that can relate to the younger generation and has a leadership style that makes following him. He is an asset to the Army due to his endless pursuit of excellence, and his mentorship to Soldiers. He has a wealth of tactical and technical experience and is a true master of his craft. He not only excels in the tactical and technical realm but is a leader who people trust and embodies the creed of the NCO. His article 15 that was issued in 2016 was a form of

excessive punishment according to standards published in the UCMJ 2019 edition. Continuing to punish the applicant according to outdated UCMJ guidance, hinders his progression as an NCO and his ability to influence junior Soldiers in his formations.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. The Board noted that removal of an Article 15/ UMCJ is generally not warranted unless it is factually incorrect. However, upon review of the applicant's petition and available military records, the Board determined there is sufficient evidence to support removal of the Article 15 from the applicant's AMHRR. The Board determined since receiving the NJP, the applicant's service record has been flawless, and he has been selected for advancement to the next rank by multiple promotion boards.

2. The Board noted the applicant while on the deployment was selected above peers by his Commander to serve as the Personal Security Officer (PSO) to the CSM of CJTF-OIR, received all "Most Qualified" and "Highly Qualified" on all NCOERs since being promoted to SSG including his most recent NCOER which was a "Most Qualified" for 12 months rated time as a Squad Leader and recommended for the Regimental CSM James W. Frye Non-Commissioned Officer of excellence award. The Board agreed there was sufficient evidence to support removal of the DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)). As such, the Board granted relief to remove the DA Form 2627 from the applicant's Army Military Human Resource Record (AMHRR).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing the DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), 28 July 2016, and allied documents from the performance folder of his Army Military Human Resource Record (AMHRR).



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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). 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 evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. 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. It provides that a commander should use non-punitive administrative measures

to the fullest extent to further the efficiency of the command before resorting to NJP under the UCMJ. Use of NJP is proper in all cases involving minor offenses in which non-punitive measures are considered inadequate or inappropriate. NJP may be imposed to correct, educate, and reform offenders who the imposing commander determines cannot benefit from less stringent measures; to preserve a Soldier's record of service from unnecessary stigma by record of court-martial conviction; and to further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial.

a. Paragraph 3-6a addresses the filing of NJP and provides that a commander's decision whether to file a record of NJP in the performance folder of a Soldier's OMPF is as important as the decision relating to imposition of the NJP itself. In making a filing determination, the imposing commander must carefully weigh the interests of the Soldier's career against those of the Army to produce and advance only the most qualified personnel for positions of leadership, trust, and responsibility. In this regard, the imposing commander should consider the Soldier's age, grade, total service (with particular attention to the Soldier's recent performance and past misconduct), and whether the Soldier has more than one record of NJP directed for filing in the restricted folder. However, the interests of the Army are compelling when the record of NJP reflects unmitigated moral turpitude or lack of integrity, patterns of misconduct, or evidence of serious character deficiency or substantial breach of military discipline. In such cases, the record should be filed in the performance folder.

b. Paragraph 3-37b(2) states that for Soldiers in the ranks of sergeant and above, the original will be sent to the appropriate custodian for filing in the OPMF. The decision to file the original DA Form 2627 in the performance folder or restricted folder of the OMPF 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 superior authority. However, the superior authority cannot direct filing a DA Form 2627 in the performance folder that the imposing commander directed to be filed in the restricted folder.

c. Paragraph 3-43 contains guidance for the transfer or removal of DA Forms 2627 from the OMPF. Applications for removal of a DA Form 2627 from the OMPF based on an error or injustice will be made to the ABCMR. There must be clear and compelling evidence to support removal of a properly completed, facially valid DA Form 2627 from a Soldier's record by the ABCMR.

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

a. Paragraph 3-6 provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or other authorized agency.

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

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

//NOTHING FOLLOWS//