

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230010692

APPLICANT REQUESTS:

- removal of DA Form 2627 (Record of Proceeding Under Article 15, Uniform Code of Military Justice (UCMJ)), imposed on 22 November 2022; and
- to be restored to the rank/grade of staff sergeant (SSG)/E-6

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

- DD Form 149 (Application for Correction of Military Record)
- DA Forms 2166-9-1 (Noncommissioned Officer Evaluation Report (NCOER) Sergeant (SGT)), 1 March 2019 to 11 November 2022
- Enlisted Record Brief (ERB), 26 September 2022 and 19 December 2022
- DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 6 October 2022
- Leave and Earnings Statements (LEs), October 2022 to June 2023
- Character Letter in Support of Applicant, 29 November 2022
- DA Form 2627, 22 November 2022
- Personnel Action Request flagging the Applicant, 24 January 2023
- Integrated Personnel and Pay System-Army (IPPS-A) screenshots, 4 and 25 May 2023
- Headquarters Department of the Army (HQDA) Monthly SSG Promotion Selection By-Name List Selected for 1 June 2023, Promotion as of 19 May 2023
- Orders Number 0004894401.00, 31 May 2023
- Soldier Talent Profiles, various dates

FACTS:

1. The applicant states:

a. He received a reduction in rank, and with supporting documents he will provide reasons why his rank should not have been reduced based on him trying to do everything within the NCO Creed to help service members underneath him. He had a situation with the command team not trying to help Soldiers receive full per diem and activate five Soldiers Government Travel Cards, even though meals were not provided

during the entire duration of being a Division Surge Team for "regen" back to Fort Bliss, TX, while traveling from Fort Bliss to Fort Irwin, CA.

b. The reason why the finding was an injustice was a lack of knowledge while given the proceedings and knowing the why behind why he made a decision. There was only a one-way story that was only explained before the hearing and upon completion. He used the open-door policy to clarify the reason behind his actions. Additionally, no actions were taken until he went to S-1 asking questions. He was wearing the rank of SGT/E-5 from the time of removal until being pinned by his company to staff sergeant (SSG)/E-6. He has video evidence as well.

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

a. The applicant enlisted in the Regular Army on 20 October 2015 and reenlisted on multiple occasions. He is currently serving on active duty.

b. DA Form 1059 (Service School Academic Evaluation Report) shows he achieved course standards and completed the NCO Basic Leader Course on 1 February 2019.

c. On 27 February 2019, the 82nd Airborne Division Sustainment Brigade published Orders Number 058-025, which promoted the applicant to the rank/grade of SGT/E-5, effective on with a Date of Rank of 1 March 2019.

d. On 3 October 2022, he was counseled for providing a false report pertaining to his location and the whereabouts of a Soldier under his supervision. DA Form 4856 (Developmental Counseling Form) shows he agreed with the counseling.

e. DA Form 268 shows an adverse action flag was initiated against the applicant on 6 October 2022.

f. On 22 November 2022, he accepted nonjudicial punishment under the provisions of Article 15, UCMJ for being derelict in the performance of his duties and making an official false statement. DA Form 2627 shows his punishment included reduction to the rank/grade of specialist (SPC)/E-4. The imposing commander directed the original DA Form 2627 be filed in the applicant's restricted section of his Official Military Personnel File (OMPF). The applicant did not appeal.

g. The applicant's record contains an ERB, dated 29 November 2022, which shows, in relevant part, his rank as SGT with a DOR of 1 March 2019. The ERB also shows an adverse action flag imposed on 6 October 2022.

h. His record also contains Department of the Army:

- Orders Number 0004894401.00 published on 31 May 2023, which promoted the applicant to the rank/grade of SSG/E-6, based on "temporary promotion," effective 1 June 2023
- Orders Number 0005830584.00 published on 28 August 2023, which demoted the applicant to the rank/grade of SPC/E-4, based on "erroneous promotion," effective 29 November 2022
- Orders Number 0006463617.00, which laterally changed the applicant's rank to corporal (CPL)/E-4, effective 2 November 2023
- Orders Number 0004894401.01 published on 19 December 2023, which revoked Orders Number 0004894401 pertaining to the applicant's temporary promotion to SSG/E-6 on 1 June 2023
- Orders Number 0007049465.00 published on 22 January 2024, which promoted the applicant to the rank/grade of SGT/E-5, based on "temporary promotion," effective 1 December 2023

3. In support of his case the applicant provides:

a. DA Forms 2166-9-1 covering the period of 1 March 2019 to 11 November 2022, showing he received favorable ratings such as met standard, qualified, and highly qualified.

b. His ERB dated 26 September 2022, showing his rank as SGT with a DOR of 1 March 2019. It does not show a flag.

c. LESs for the period covered from October 2022 to June 2023, which show, in relevant part, his pay grades, dates, and allowances.

d. Character letter in support of the applicant dated 29 November 2022, wherein, Captain B_ G_ states, in part, she served as the applicant's Executive Officer at 19th Expeditionary Sustainment Command, Headquarters and Headquarters Company, Camp Henry, South Korea, for the entirety of his time stationed there. He served diligently as both the Shop Foreman and as the Interim Maintenance NCO In-Charge. The applicant consistently displayed great confidence, dedication to duty, and care for his Soldiers.

e. ERB dated 19 December 2022, showing his rank as SGT with a DOR of 1 March 2019, and an adverse action flag imposed on 6 October 2022.

f. Personnel Action Request dated 24 January 2023, which shows an adverse action flag was initiated on 6 October 2022 and the final report was closed unfavorably.

g. IPPS-A screenshots dated 4 and 25 May 2023, which show requests for the applicant to be demoted from the rank of SSG to the rank of SPC/E-4 were approved.

h. HQDA Monthly SSG Promotion Selection By-Name List Selected for 1 June 2023, Promotion as of 19 May 2023, which lists the applicant's name as a temporary promotion.

i. Soldier Talent Profiles, various dates, which provide a brief snapshot of his career in the Army. It also provides basic data, career mapping, his DOR, experience, readiness, knowledge, and skills.

4. On 30 December 2023, the U.S. Army Human Resources Command (HRC), Chief, Enlisted Promotions, Promotions Branch, provided an advisory opinion for the applicant's case and determined it should be denied. The advisory official stated:

a. After review of his application for correction of military records, it has been determined that the applicant's request for correction of military records should be denied.

b. A review of the applicant's records indicate he was promoted to SGT, effective 1 March 2019. The applicant was on the Promotion Recommended List (PRL) to SSG/E-6 until 6 October 2022 at which time he should have been removed from the PRL. In accordance with Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions), paragraph 3-28, Soldiers will be automatically removed from the PRL when a flag is initiated. The applicant was flagged on 6 October 2022, but the unit failed to submit the transaction into the Electronic Military Personnel Office (eMILPO) which failed to remove him from the recommended list.

c. On 22 November 2022, the applicant received punishment under the UCMJ, Article 15, reducing him from SGT to SPC. The reduction occurred during the Army's brownout/cutover (BOCO) timeframe where the systems would transition from eMILPO to the IPPS-A. The applicant was flagged in the system and removed from the PRL on 23 January 2023 when the flag was closed unfavorably. This transaction removed him from the PRL but because the unit failed to execute the reduction transaction; the applicant's rank was SGT thus IPPS-A automatically integrated him on 1 March 2023 due to the Mandatory List Integration rules.

d. The demotion transaction due to misconduct did not happen in a timely manner which caused the applicant to be selected to SSG, effective 1 June 2023. Although, the applicant was a SSG in the system on 28 August 2023 the unit processed an erroneous promotion transaction demoting him from SGT to SPC with an effective date of 29 November 2022. This was the wrong transaction to do because the erroneous promotion was to SSG not SGT. There should have been two (2) transactions done,

one revoking the promotion orders to SSG and then processing a demotion to SGT due to misconduct. On 19 December 2023 a transaction was approved to revoke the 1 June 2023 promotion orders. All data records were updated in Job Data to reflect the correct rank of CPL/E-4, effective 29 November 2023.

e. AR 600-8-19, paragraph 3-28, further states after removal, the applicant was required to reappear before a new promotion board to be re-integrated onto the PRL. He went back to the promotion board on 13 October 2023 and was re-integrated on 1 November 2023 for promotion consideration to the rank of SGT, effective 1 December 2023.

f. The applicant's petition is that he should not have been reduced based on him trying to do everything within the NCO Creed to help his Soldiers. He further states that the reason behind his reduction was an injustice due to the lack of knowledge given during the proceedings. He states that no actions were taken to remove his SGT rank until his promotion to SSG. This office does not advice on reduction procedures approved by Commanders.

5. On 3 March 2024, the applicant responded to the HRC advisory opinion via email and stated:

a. He was just now reviewing the mailed response that was sent to him via mail. He has been at the National Training Center (NTC) since January and just returned Tuesday, 27 February. Moving forward he does have a lot of comments regarding his situation.

b. The reason he submitted this correction is because it was recommended by a representative from the Fort Bliss Inspector General (IG) Office to submit because of the fact that within his chain of command in Bravo Company there was only one or two people that knew him and his team's movement to Fort Irwin in support of 1st Armored Division and the move was being wrongfully done based off a lot of Army Regulations. Out of his whole team of seven people only he had his Government Travel Card activated for a Temporary Duty (TDY) travel from Fort Bliss to Fort Irwin, which he brought up to his commander that everyone's cards should be activated because the travel is 13 hours long.

c. They had one rental van a Toyota Sienna to seat seven Soldiers all baggage and two snap on tool boxes which was not enough space at all. Furthermore, he was told by his acting commander (First Lieutenant T_) that they had to drive straight to Fort Irwin without any rest i.e., stopping at a hotel because everyone's Government Travel Card was not activated. Per Army Regulation no travel is to be more than 4 to 6 hours in one day while moving TDY. So, just these actions alone were left out of his Article 15 (NJP) hearing. He had to do an open-door meeting with his Battalion

Commander, Lieutenant Colonel R_ and explain the situation. He ended up helping all six Soldiers receive money that they were owed and now every team that they send from his Battalion to Fort Irwin for NTC, all get TDY pay.

d. In conclusion, he is asking that the Article 15 be removed from his record because he got it for trying to help his Soldiers that were not being helped by people with more rank than him. Also, if additional documents need to be provided then he can send them as supporting documents. Included within this email [carbon copied] is the IG that helped him start this process and gave him the knowledge and wisdom to submit the application if the Board needs more insight on what actually happened or just someone to speak on his behalf.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, 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 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 the preponderance of evidence found in the military record the applicant's claim for removal of the Article 15, imposed on 22 November 2022 is not warranted.

2. Upon review of the applicant's petition, the advisory opinion provided by the U.S. Army Human Resources Command, and the applicant's military record, the Board concurred with the advisory opinion finding that the applicant was on the promotion recommended list to staff sergeant (SSG)/E-6 until 6 October 2022 at which time he should have been removed automatically when his flag was initiated. On 22 November 2022, the applicant's nonjudicial punishment was imposed and the punishment included reduction to specialist (SPC)/E-4 from sergeant (SGT)/E-5. The reduction occurred during the Army's system transition to the Integrated Personnel and Pay System-Army (IPPS-A). Due to a failure of the applicant's unit to execute the reduction transaction, the applicant was automatically integrated on 1 March 2023 to SSG. However, once the system aligned, the SSG order was revoked (19 December 2023). The Board denied relief based on the applicant's reduction to SPC from SGT on 22 November 2022.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR is not an investigative agency.

2. AR 27-10 (Military Justice) prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial (MCM), United States, 2024, and the rules for courts-martial (RCMs) contained in the MCM. In pertinent part:

a. Section IV (Punishment), paragraph 3-19a states, whether to impose punishment and the nature of the punishment are the sole decisions of the imposing commander. Among the kinds of punishment authorized under Article 15 of the UCMJ is reduction in grade. The grade from which the Soldier is reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. When a Soldier is reduced in grade as a result of an unsuspended reduction, the DOR in the grade to which reduced is the date the punishment of reduction was imposed. The Soldier will also be removed from standing promotion lists in accordance with AR 600-8-19.

b. Paragraph 3-37 (Distribution and filing of DA Form 2627 and allied documents) states, the original DA Form 2627 will include as allied documents all written statements and other documentary evidence considered by the imposing commander or the next superior authority acting on an appeal (see paragraph 3-37g). The servicing legal office will transmit copies of the DA Form 2627 to the Soldier's military personnel division or the unit personnel office and to the servicing Defense Military Pay Office. The DA Form 268 will be submitted per AR 600-8-2 (Suspension of Favorable Personnel Actions (Flag)). Standard instructions for distributing and filing forms for commissioned officers and enlisted Soldiers serving on active duty are below.

c. Paragraph 3-37b(1)(a) states, the original of the DA Form 2627 will be sent to the appropriate custodian listed in paragraph 3-37b(2) for filing in the Army Military Human Resource Record (AMHRR). The imposing commander will decide to file the original DA Form 2627 in the performance portion or the restricted portion in the AMHRR when 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 UCMJ, Article 15 report be filed in the performance portion that the imposing commander directed to be filed in the restricted portion. The imposing commander's

filing decision will be indicated in item 4b of DA Form 2627. A change in the filing decision should be recorded in block 8 of DA Form 2627.

3. AR 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy and procedure for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The regulation states, in pertinent part, the restricted portion of the OMPF contains documents that may normally be considered improper for viewing by selection boards or career managers. Includes masked documents defined in paragraph 3-10. The restricted file ensures that an unbroken, historical record of a member's service, conduct, duty performance, evaluation periods, and corrections to other parts of the OMPF is maintained. It is intended to protect the interest of the member and the Army.

4. AR 600-37 (Unfavorable Information), paragraph 7-2a(4), appeals for Article 15 removal (see AR 27–10) provides that, the DASEB will not consider appeals to remove a records of proceedings under UCMJ, Article 15, from the AMHRR. The authority to adjudicate such claims rests with the ABCMR, under AR 15–185.

5. AR 600-8-19 (Enlisted Promotions and Demotions) prescribes enlisted promotion and demotion (previously known as reduction) functions. In pertinent part:

a. Paragraph 1-11 (Non-promotable status (Regular Army)) states, Soldiers (SPC through MSG except as noted) are non-promotable to a higher rank when a Soldier is denied favorable personnel actions under the provisions of AR 600-8-2 (applicable for promotion to PV2 through SGM). Failure to initiate DA Form 268 (Report of Suspend Favorable Personnel Actions (Flag)) does not affect the Soldier's non-promotable status if a circumstance exists that required imposing a suspension of favorable personnel actions (flag) under the provisions of AR 600-8-2.

b. Paragraph 1-12 (Suspension of favorable personnel actions (Flags) (Regular Army) states that, Soldiers suspended of favorable personnel actions (flagged) are not eligible for promotion while the flag is active. Soldiers integrated on the promotion recommended roster (PRR) to SGT/SSG will be removed if the determination is made the Soldier is not qualified for promotion. When a flag is closed unfavorably (and the adverse action is not filed locally), Soldiers will be removed from the SGT/SSG PRR and must be reconsidered for PRR integration. Soldiers who are on an order of merit list (OML) stemming from an NCO evaluation board will be established as Not Fully Qualified (NFQ) for the remainder of that OML; which can only be overcome by a subsequent NCO evaluation board. This pertains to adverse action flags, among others.

c. Paragraph 3-20c (Removal from the promotion recommended roster) states, all Soldiers (including those integrated as a result of mandatory list integration) will be

immediately removed from a recommended list for Adverse actions and demotion (indicated by a flag).

//NOTHING FOLLOWS//