

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20230011226

APPLICANT REQUESTS: through counsel, removal of the DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), 10 January 2023, from 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
- Counsel's Memorandum for President, Department of the Army Suitability Evaluation Board (DASEB) (Request for Transfer of Article 15 of (Applicant)), undated
- U.S. Army Recruiting Station, Noblesville, IN, Memorandum for Record ((Applicant)), 10 April 2023
- Spouse's Letter, 6 June 2023
- Memorandum for President, DASEB (Request for Removal of Article 15 for (Applicant)), 18 August 2023
- U.S. Army Recruiting Station, Noblesville, IN, Memorandum for Record ((Applicant)), 13 November 2023
- U.S. Army Criminal Investigation Command (CID) Fort Knox Resident Agency Mid-Central Field Office Memorandum for Record (Investigation Record of (Applicant)), 13 November 2023

FACTS:

1. The applicant states the DA Form 2627 should be completely removed from the restricted folder of his AMHRR. He has never been under any type of investigation or CID investigation in his entire military career. His commander charged him with obstruction of justice and adultery for an investigation that never existed. A woman called his workplace and lied to his commander and told him that his wife initiated a CID investigation and his commander charged him with obstruction of justice.
2. Counsel states Army Regulation 600-37 (Unfavorable Information) allows for the transfer or removal of derogatory information which has served its intended purpose or is inequitable.

a. The DA Form 2627 has been in the applicant's AMHRR and the applicant is at least a staff sergeant (SSG). The applicant requests complete removal of the DA Form 2627 from his AMHRR because the derogatory information is both inequitable and has served its intended purpose in accordance with this regulation.

b. The DA Form 2627 was a mischaracterization of events that happened over a short period in the applicant's career and should be removed because it misrepresents his actions. The DA Form 2627 does not reflect the applicant's military character. The applicant has received more than one noncommissioned officer evaluation report since filing of the general officer memorandum of reprimand (should read DA Form 2627). The DA Form 2627 should be removed from his AMHRR due to errors in both equity and procedure. The fundamental circumstances underlying administration of the UCMJ are in error.

c. Army Regulation 15-6 (Procedures for Investigating Officers and Boards of Officers) states, in part, that an investigating officer (IO) must make findings that clearly state the relevant factual conclusions that the evidence establishes. They must also explore alternate explanations for their conclusions based on the evidence. When the evidence in the record may reasonably support alternative findings, the IO must demonstrate why these alternate findings are not credible. In this case it appears the commander who administered the nonjudicial punishment (NJP) also acted as his own IO. Administration of the NJP was conducted in a manner that did not allow the commander to be impartial – he acted as prosecutor, judge, and jury. In most cases, it is normal for the commander to request an Army Regulation 15-6 investigation so he can remain impartial when he must judge the facts and evidence. The commander did not consider additional character statements and did not explain how the applicant's conduct was criminal in nature.

d. The applicant's request for removal of the DA Form 2627 clearly states the unfairness of the UCMJ action. The applicant believes the NJP tarnished his military career, as it does not reflect his distinguished military character and actions. He felt unfairly singled out and discriminated against.

e. The investigation leading to the NJP was both procedurally and legally lacking. Key witnesses, such as coworkers and his wife, were not interviewed. A thorough and unbiased investigation would have provided a more accurate understanding of the situation.

f. While the DA Form 2627 is presumed to be administratively correct, the applicant has the right to challenge its validity by presenting evidence from other official records that demonstrate the NJP is improper. This includes witness testimonies, performance evaluations, and other relevant documents that can prove the DA Form 2627 is untrue or unjust.

3. The applicant enlisted in the Regular Army on 7 June 2011.
4. The applicant and S____ H____ P____ married on 2 August 2013.
5. The applicant was promoted to the rank/grade of SSG/E-6 effective 25 November 2019.
6. The applicant was selected for recruiting duty and was assigned to the Lexington East Recruiting Station effective 4 May 2021.
7. The U.S. Army Lexington Recruiting Station memorandum for record from the station commander (Improper Relationship), 16 September 2022, states he received a call from H____ A____ on 12 September 2022, alleging an extramarital relationship with the applicant. She openly and freely provided details of a prior/current intimate relationship with the applicant. She stated the applicant threatened her career if she brought the relationship to his chain of command's attention.

a. The station commander reported the following questions and answers from H____ A____:

Question: How long has this relationship been going on?

Response: A few years, since he was stationed in Fort Bliss, TX.

Question: Were there any fathered children outside of wedlock?

Response: No, a few scares, but no pregnancies.

Question: Do you feel physically threatened or have you been physically threatened?

Response: Unsure at this time but it is possible he could do something like that.

Question: When is the last time you saw [Applicant] and where was it?

Response: Earlier this year, around May down here in El Paso, TX.

Question: Are you aware that [Applicant] was/is married at that time?

Response: Yes she was aware and wife found out about the affair.

Question: What happened after [Applicant's] wife found out?

Response: [Applicant's] wife reported the incident to CID and [Applicant's] chain of command. [Applicant] instructed Ms. A____ not to speak with the investigating officer and she blocked the investigator from further contact because she was scared of reprisal from [Applicant].

Question: When is the last time you spoke with him and what numbers did he contact you from?

Response: He contact me from [redacted] and [redacted] almost daily. The last time we actually spoke was 9/10/2022 [10 September 2022].

Question: Is there any other important information you feel I should know?

Response: [Applicant] and I have had an apartment together for the last two years that his wife does not know about. He has been flying and or driving down to Texas without pass or leave as far as she knew. One time back in April, he missed a flight to Lexington and told his supervisor that he was sick and couldn't come to work.

Question: Do you have any proof of any of this?

Response: Yes, I have copies of the lease, pictures, videos, phone numbers to people who have witnessed the relationship.

Lastly, I asked what she would like to do moving forward and how she would like to proceed?

Response: She said she was concerned for other women and herself both emotionally and physically. If [Applicant] was willing to do this to her, then he would be willing to do it to other women. She would like a few days to think about her course of action and what she would like to do.

b. On 15 September 2022, the station commander received a text from Ms. A_____ stating she was obtaining an attorney and would like to move forward with any charges or actions, whether it be via military or civilian channels. She emailed a copy of the lease agreement for the 2 previous years, digitally signed by her and the applicant, and photocopies of photographs and text messages (see attached).

8. On 19 December 2022, the U.S. Army Recruiting Company Commander initiated a DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)) against the applicant for adverse action.

9. The DA Form 2627, 10 January 2023, shows the U.S. Army Recruiting Company Commander informed the applicant that he was considering NJP against him under the provisions of Article 15, UCMJ, while serving in the rank/grade of SSG/E-6 for the following offenses:

a. violating Article 134 (General Article) by wrongfully engaging in extramarital conduct, to wit: a sexual relationship with Ms. H_____ A_____, a person he knew was not his spouse, at or near Tucson, AZ, between on or about December 2020 and on or about May 2022, and that such conduct was to the prejudice of good order and

discipline in the Armed Forces and of a nature to bring discredit upon the Armed Services; and

b. violating Article 131 (Perjury) by wrongfully doing a certain act, to wit: telling Ms. A____ not to speak to the IO from CID at or near Lexington, KY, on or about 10 September 2022, with intent to obstruct the due administration of justice in the case against him, in which he had reason to believe there were or would be disciplinary proceedings pending.

c. The applicant did not demand trial by court-martial and requested a closed hearing.

d. The applicant was found guilty of all charges. His punishment consisted of forfeiture of \$500 pay for 1 month.

e. On 19 January 2023, the imposing commander directed filing the DA Form 2627 in the restricted folder of his Official Military Personnel File (OMPF).

f. On 19 January 2023, the applicant indicated his intent to appeal the NJP and submit additional matters. He appealed the NJP through counsel the same day.

g. The 3d Recruiting Brigade Commander denied the applicant's appeal on 14 February 2023 and noted: "The proceedings were conducted in accordance with law and regulation and the punishments were not unjust nor disproportionate to the offense committed."

10. The applicant's records contain no evidence of an Army Regulation 15-6 investigation. (Note: The requirements of Army Regulation 15-6 do not apply to preliminary inquiries conducted for the purpose of making an initial disposition).

11. The U.S. Army Recruiting Station, Noblesville, IN, memorandum for record from the applicant's former station commander from 2019-2022 ((Applicant)), 10 April 2023, states the applicant was never under any type of investigation under his leadership. The applicant came to recruiting during very difficult times while dealing with the Coronavirus Disease 2019 pandemic and executed every task demanded of him without question and/or hesitation. His resilience resulted in him being a constant contributor to the mission and his esprit de corps was a derivative of his time as a fuel specialist wherein attention to detail and motivation are paramount.

12. The applicant's spouse's letter, 6 June 2023, states she and the applicant had been married for 10 years but separated approximately 3 years prior at Fort Bliss, TX. Since he received recruiting duty orders to Lexington, KY, they decided to wait to start legal proceedings for divorce. They legally separated in August 2022 and lived in separate

homes but later reconciled. A woman from Texas who knew her husband 3 years prior started harassing them after her husband refused to communicate with her. The woman falsely claimed she initiated a CID investigation. She never reported her husband for anything. His commander wrongly charged and convicted him of obstruction of justice for something that never existed. During the Article 15 reading, she sat down and spoke with the commander and told him everything. The commander totally disregarded everything she said and acted upon the other woman's lies with no evidence of any CID investigation. Her husband remained on recruiting duty and was never removed. While dealing with the stress of enlisting people in the Army, her husband endured the mental abuse his command put him through with the lies this other woman told.

13. The applicant's memorandum for President, DASEB (Request for Removal of Article 15 for (Applicant)), 18 August 2023, restates counsel's argument described above and notes he had over 12 years of service and excelled in his field and as a recruiter. The DA Form 2627 has served its purpose and does not adequately reflect his distinguished military character and actions.

14. The U.S. Army Recruiting Station, Noblesville, IN, memorandum for record from the applicant's current station commander ((Applicant)), 13 November 2023, states the applicant was never under any type of investigation under her leadership. The applicant executed all tasks without question and/or hesitation. He is resilient when faced with adversity and performs at a high level under pressure. He outperformed his peers and is usually the top recruiter in the company. He is a big asset to his station and the company, being a constant contributor to the mission. He is a highly motivated noncommissioned officer and leads by example.

15. The CID Fort Knox Resident Agency Mid-Central Field Office memorandum for record (Investigation Record of (Applicant)), 13 November 2023, states CID conducted a search of the Army Law Enforcement Reporting and Tracking System pertaining to the applicant. The search revealed no criminal, administrative, or other law enforcement-related investigations.

16. The applicant is currently serving as a U.S. Army recruiter in the rank/grade of SSG/E-6.

BOARD DISCUSSION:

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 nonjudicial punishment, imposed on 10 January 2023 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 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.

■ [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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

REFERENCES:

1. Army Regulation 27-10 (Military Justice), effective 20 December 2020 and in effect at the time, prescribed the policies and procedures pertaining to administration of military justice and implements the Manual for Courts-Martial. It provided that the 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. Whether an offense is "minor" is a matter within the discretion of the commander imposing NJP. NJP for an offense other than a minor offense (even though thought by the commander to be minor) is not a bar to subsequent trial by court-martial for the same offense.

a. Paragraph 3-4 stated a commander will personally exercise discretion in the NJP process by:

(1) evaluating the case to determine whether proceedings under Article 15 should be initiated;

(2) determining whether the Soldier committed the offense(s) where Article 15 proceedings are initiated and the Soldier does not demand trial by court-martial; and

(3) determining the amount and nature of any punishment if punishment is appropriate.

b. Paragraph 3-6 addressed filing 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 the 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.

c. Paragraph 3-7 outlined who may impose NJP. Unless otherwise specified in this regulation or if authority to impose NJP has been limited or withheld by a superior commander, any commander is authorized to exercise the disciplinary powers conferred by Article 15. The term "commander," as used in this chapter, means a commissioned

or warrant officer who, by virtue of that officer's grade and assignment, exercises primary command authority over a military organization or prescribed territorial area, that under pertinent official directives is recognized as a command. The term "imposing commander" refers to the commander or other officer who actually imposes the NJP.

d. Paragraph 3-14 addressed preliminary inquiries. Upon receipt of information that a service member has committed an offense triable by court-martial, the service member's immediate commander will cause or conduct a preliminary inquiry sufficient to make an appropriate initial disposition pursuant to Rules for Courts-Martial 303. The requirements of Army Regulation 15-6 do not apply to preliminary inquiries conducted for the purpose of making an initial disposition. Interviews of suspected service members by the command are generally discouraged at this stage, and all such interviews must comply with the requirements of Article 31 (Compulsory Self-incrimination Prohibited), UCMJ, and Army Regulation 15-6. A preliminary inquiry for disposition will be conducted expeditiously and may be accomplished through formal or informal witness interviews and a cursory review of available evidence, including police reports and other documents. Such a preliminary inquiry will, at a minimum, determine:

- whether it is likely that an offense was committed
- whether it is likely that the service member was involved
- the character and military record of the service member
- whether referral to an appropriate investigative agency is required

e. Paragraph 3-37b(2) stated the original DA Form 2627 for Soldiers in the ranks of sergeant and above 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 OPMF 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 filing in the restricted folder.

f. Paragraph 3-43 contained guidance for transfer or removal of DA Forms 2627 from the OPMF. Enlisted Soldiers in the ranks of sergeant and above and commissioned officers may request transfer of a record of NJP from the performance folder of their OPMF to the restricted folder by petitioning the Department of the Army Suitability Evaluation Board. Applications for removal of a DA Form 2627 from the OPMF based on an error or injustice will be made to the Army Board for Correction of Military Records.

2. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to authorize placement of unfavorable information about Army members in individual official personnel files; to ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official

personnel files; and to ensure that the best interests of both the Army and the Soldiers are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

3. Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the Army Military Human Resource Record. Paragraph 3-6 provides that once a document is properly filed in the OMPF, the document will not be removed from the record unless directed by the Army Board for Correction of Military Records or other authorized agency. Appendix B (Documents Authorized for Filing in the AMHRR and/or Interactive Personnel Electronic Records Management System) states the DA Form 2627 will be filed in the performance or restricted folder of the OMPF as directed by the issuing commander (item 5 of the DA Form 2627).

//NOTHING FOLLOWS//