

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20230013318

APPLICANT REQUESTS: removal of the DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ), 6 November 2017, 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)
- Headquarters, Eighth Army, Memorandum (Eighth Army Command Policy Letter Number 22, General Order Regarding Off-Installation Curfew), 11 April 2016
- Enlisted Record Brief, 1 October 2017
- Military Police (MP) Arrest Documents, 1 and 2 October 2017 (11 pages)
- DA Form 4856 (Developmental Counseling Form), 1 October 2017
- DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 1 October 2017
- Law Enforcement Report (LER), 12 October 2017
- DA Form 2627, 6 November 2017
- DA Form 4856, 30 December 2017
- MP Arrest Documents, 30 December 2017
- Enlisted Record Brief, 3 January 2018
- DA Form 268, 3 January 2018
- DA Form 4856, 3 January 2018
- DA Form 2823 (Sworn Statement), 8 January 2018
- Legal Action Request Form, 18 January 2018
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the Period Ending 5 August 2018

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 the DA Form 2627 regarding his curfew violation should be removed from his AMHRR because U.S. Forces Korea ended the curfew policy in 2019. This removal came nearly 6 months after he left South Korea. He finds it an injustice that the DA Form 2627 remains filed in his AMHRR if the policy is no longer acknowledged or enforced. He also believes his rank reduction was not in accordance with due process procedures and policies.

3. He enlisted in the Regular Army on 20 September 2011.

4. He was assigned to Headquarters and Headquarters Company, 19th Expeditionary Sustainment Command, Camp Henry, Korea, effective 20 December 2016.

5. The Headquarters, Eighth Army, memorandum (Eighth Army Command Policy Letter Number 22, General Order Regarding Off-Installation Curfew), 11 April 2016, states, in part:

This policy applies to all Soldiers assigned or attached to Eighth Army, and/or subject to the general court-martial authority of the Commander, Eighth Army or to the court-martial jurisdiction of any subordinate commander. This is a punitive general order. Service members who fail to comply with the provisions of this general order are subject to punishment under the Uniform Code of Military Justice, as well as adverse administrative actions authorized by applicable law and regulations.

An off-installation curfew is in effect from 0100 to 0500 [1 a.m. to 5 a.m.] every day of the year. By 0100 [1 a.m.], Soldiers will be (1) on any U.S. military installation[,], (2) inside a private residence, or (3) inside a hotel room (but NOT in any public area of the hotel such as the lounge, bar, lobby, restaurant, casino, pool, spa, or hallway). Subordinate commanders will determine to the extent Soldiers may be away from their assigned place of duty without an approved pass or leave.

6. He was promoted to the rank/grade of sergeant/E-5 effective 1 March 2017.

7. The MP apprehension documents he provided show he was identified as the suspect/subject of an arrest when he was found outside the Pacific Hotel during the hours of curfew at approximately 1 a.m. on 1 October 2017 with a blood alcohol content of .10 or higher.

8. Two DA Forms 4856 show he was counseled on 1 and 2 October 2017 for failure to obey a lawful order; specifically, Eighth Army Command Policy Letter Number 22, for a curfew violation. The counseling noted he was briefed on multiple occasions and he even provided curfew briefings to his Soldiers. Thus, he was now subject to punishment

under the UCMJ. The second counseling notified him of initiation of an administrative flag against his records effective 2 October 2017.

9. The LER, 12 October 2017, states two patrol officers noticed the applicant at 12:59 a.m. on 30 September 2017 who stated he was military personnel and in route to the Pacific Hotel seconds prior to curfew. He was informed that he needed to be in his residence at the initiation of curfew. The applicant continued to walk at a slow pace toward his residence. At 1 a.m. on 1 October 2017 when curfew sweeps were initiated, the officers followed the applicant and made contact. The applicant walked into the main doors of the Pacific Hotel where he was stopped in the stairwell. A patrol officer informed the applicant that he was in violation of the curfew policy. The applicant was identified by his common access card and escorted to Building 1425 for further processing.

10. The DA Form 2627, 6 November 2017, shows he accepted nonjudicial punishment (NJP) under the provisions of Article 15, UCMJ, on 6 November 2017 while serving in the rank/grade of sergeant/E-5 for failing to obey a lawful general order, to wit: Eighth Army Command Policy Letter Number 22, paragraph 5a, 10 February 2017, by wrongfully remaining off a U.S. military installation, not on leave or pass, and outside of an approved off-post location between the hours of 1 a.m. and 5 a.m. on or about 1 October 2017. His punishment consisted of reduction to specialist (SPC)/E-4 (suspended), to be automatically remitted if not vacated on or before 5 January 2018; forfeiture of \$1,267 pay; extra duty for 30 days; and restriction for 30 days. He did not appeal the finding of guilt. The imposing commander directed filing the DA Form 2627 in the restricted folder of his Official Military Personnel File (OMPF).

11. The second set of MP apprehension documents he provided shows he was identified as the suspect/subject of an arrest when he was found inside the nightclub D-Hell during the hours of curfew at approximately 1:25 a.m. on 30 December 2017.

12. The DA Form 4856, 30 December 2017, shows he was counseled for failing to obey a lawful order; specifically, Eighth Army Command Policy Letter Number 22 – curfew violation. The counseling noted he was briefed on multiple occasions and he provided curfew briefings to his Soldiers. Thus, he was now subject to punishment under the UCMJ.

13. The DA Form 4856, 3 January 2018, shows he was counseled for violating curfew, vacation of his suspended rank reduction to SPC, and recommended UCMJ action. An administrative flag was initiated against his records the same day.

14. The DA Form 2627-2 (Record of Supplementary Action under Article 15, UCMJ), 5 January 2018, vacated his suspended reduction to SPC imposed on 6 November

2017. The form noted the original DA Form 2627 was filed in the restricted folder of his OMPF.

15. His AMHRR contains a copy of the DA Form 2627, 6 November 2017, in the restricted folder and DA Form 2627-2, 5 January 2018, in the performance folder.

16. His sworn statement, 8 January 2018, states he thought he was still on leave when he violated curfew but knew he had to have his leave form in his possession to be exempted from curfew.

17. The Legal Action Request Form, 18 January 2018, noted his rank/grade as SPC/E-4. His commander recommended imposing field-grade NJP. The DA Form 2627 is not available for review, but the applicant's records show he was reduced from the rank/grade of SPC/E-4 to private/E-2 effective 1 May 2018.

18. On 5 August 2018, he was released from active duty in the rank/grade of private/E-2 and transferred to the U.S. Army Reserve Control Group (Annual Training). He completed 6 years, 10 months, and 16 days of net active service during this period.

19. He is currently serving in the U.S. Army Reserve in the rank/grade of sergeant/E-5.

#### 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 noted the applicant's contention that the curfew policy the applicant violated that caused him to subsequently receive the nonjudicial punishment is no longer in effect, the Board determined that does not change the circumstances as they existed at the time. 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 17 October 2017 is not warranted.

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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.

Response	Percentage
Yes, the current government is responsible	45%
No, the current government is not responsible	55%

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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 27-10 prescribes the policies and procedures pertaining to administration of military justice and implements the Manual for Courts-Martial. It provides 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.

a. Paragraph 3-4 states 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 addresses 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 weigh carefully 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 outlines 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 3-43 contains guidance for transfer or removal of DA Forms 2627 from the OMPF. 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 OMPF to the restricted folder by petitioning the Department of the Army Suitability Evaluation Board. Applications for removal of a DA Form 2627 from the OMPF based on an error or injustice will be made to the ABCMR.

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 ABCMR 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//