

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 September 2024

DOCKET NUMBER: AR20230013676

APPLICANT REQUESTS:

a. Removal of DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) from his interactive Personnel Electronic Military Records System (iPERMS) record.

b. Personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record) online application
- Two DD Forms 149 paper applications
- Memorandum Request for Retention
- Excerpt from Army Regulation 27-10 (Military Justice) and Army Regulation 15-185 (Army Board for Correction of Military Record (ABCMR))

FACTS:

1. The applicant states he is requesting correction of his records to have the DA Form 2627 removed from his restricted folder located in his iPERMS record. The justification is in accordance with Army Regulation 27-10 (Military Justice) chapter 7 (a) 1-2.

2. The applicant provides a memorandum for U.S. Army Human Resources Command (AHRC), 23 June 2023, from his battalion commander, Request for Retention, which states, he recommends the retention of the applicant on active duty.

a. The applicant served under the battalion commander's command for the previous year and except for one UCMJ infraction in which he received and served his punishment, he has been a model Soldier. Over the previous year, he had proven himself to be competent, professional, and effective in the battalion. He was hand selected to lead a team of logistic observers to assess a partner Reserve Combat Sustainment Support Battalion during their annual Combat Support Training Exercise at Fort McCoy, Wisconsin in August 2023.

b. He is a proactive professional who consistently pre-plans and as the only 25U (Signal Operations Support Specialist) in the battalion, he ensures that all incoming team members have access to the network on arrival to the unit by having each incoming Soldier complete the necessary documentation so he could set up their user accounts before they arrive. He also consistently put others before himself and volunteers for taskings that others shy away from. He is the consummate team player and works tirelessly to maintain a good work life balance.

c. The battalion commander has entrusted him to oversee and manage the communication and arms room equipment with an estimated value of \$1,285,862. During the previous year, while he oversaw this equipment, there was no loss or accountability issues. He has also grown professionally, during this period, and has recently completed the Senior Leaders Course (SLC). The battalion commander has every confidence that given the opportunity to continue serving the Army, he would continue to be value added to any unit to which he is assigned. The battalion commander was asking that he be given the opportunity to continue to serve in the active force where he could continue to positively contribute his professional skills and leadership to the next cohort of young Soldiers.

3. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army on 19 March 2009 and entered active duty on 29 April 2009. He remained in the Regular Army through immediate reenlistments.

b. On 22 January 2019, the applicant received a counseling statement for failing to account for equipment. He acknowledged the counseling and as a Plan of Action, he would create a solution to manage and track all equipment that is required to go to the Field Service Representative.

c. On 15 May 2019, the applicant received a counseling statement for lying to a senior noncommissioned officer. He acknowledged and agreed with the counseling and a Plan of Action it was recommended that he be sent to a non-judicial punishment.

d. DA Form 2627 (Record of Proceedings Under Article 15, UCMJ, shows he accepted nonjudicial punishment (NJP) in the rank of staff sergeant (SSG), on 11 June 2019 for failing to go to his appointed place of duty, failing to maintain accountability of his transceiver work orders, and making a false official statement. His punishment included reduction to the rank of sergeant (SGT) suspended, forfeiture of \$1,688 suspended, and extra duty for 45 days.

- He had the right to consult with counsel and elected not to

- He did not request a trial by court-martial
- He did not appeal his punishment
- The DA Form 2627 was filed in his restricted section of his iPERMS record

e. DA Form 2627 shows he again accepted NJP in the rank of staff of SSG/E-6 on 15 November 2022 for signing an official record he knew was false on three occasions. His punishment included reduction to the rank of SGT suspended, and extra duty for 30 days.

- He had the right to consult with counsel and elected not to
- He did not request a trial by court-martial
- He did not appeal his punishment
- The DA Form 2627 was filed in his restricted section of his iPERMS record

f. Self-Authored memorandum to the Qualitative Management Program (QMP) Board, 5 June 2023, matters of mitigation for consideration, which states:

(1) In reference to the monthly screening that was conducted in Fiscal Year (FY) 2022 of his permanent folder, he took full responsibility for the DA Form 2627 and immediately corrected his behavior which was to constantly monitor and update his personal records.

(2) His most recent accomplishments include being recognized by the 86th Training Division Command Team for expertly conducting a safety stand down and discovering two live and one expended round resulting in preventing over 160 Soldier from being seriously injured during a blank fire exercise. He was awarded an Army Achievement Medal for competing in and winning the Noncommissioned Officer (NCO) of the 4th Quarter board. He received an impact Army Achievement Medal for the Combat Support Training Exercise. He was awarded an Army Achievement Medal for receiving a commendable rating during the Random Post Inspection of the Battalion Unit Prevention Leader Program. He was selected to be a candidate for the Best Warrior Competition. He received commendable ratings on multiple additional duties during an initial inspection. He was awarded the Humanitarian Service Medal and Armed Forces Service Medal for significant contributions during Operation Allies Welcome.

(3) His last rater comments from his last NCO Evaluation Reports (NCOER) states:

- "Exceptional performance during rating period; ranked in top 10 percent of NCOs I have worked with in my 16 year career;" rated highly qualified
- "[The applicant] is easily in the top 20 percent of NCOs that I have served with in my career. [The applicant] has amazing potential and possesses

the attitude to make the organization successful regardless of whether at the operational or strategic level. Select for sergeant first class (SFC) ahead of peers and send to SLC;" rated highly qualified

- "Outstanding performance, [the applicant] ranks number 2 of 3 SSGs that I currently rate. He's one of the finest NCOs with whom I've had the privilege to work with in my 20 years of service. Already demonstrates leadership and potential to serve at the senior NCO level. Select to SFC immediately and send to SLC;" rated as highly qualified

(4) He flawlessly performed and received commendable ratings during every Organizational Inspection Program inspection serving in multiple additional duties for the last three years to include Battalion Prevention Leader, Master Fitness Trainer, Master Resilience Trainer, Operations Security Manager, Physical Security/Arms Room Officer, Signal Digital Master Gunner, SharePoint Manager, and Unit Armorer. He was responsible for the largest hand receipt in the unit with \$1,200,000 worth of equipment with zero property loss for the last three years.

(5) He has given back to the community by selflessly volunteering at Last Paw Rescue located in Tomah, Wisconsin. Since November 2022, he has completed 134.5 volunteer hours with the president of Last Paw Rescue. He is extremely grateful for the opportunity to give back to the local community. He also looks forward to continually volunteering his service with the Last Paw Rescue, and he encourages his fellow servicemembers in the local area to take advantage of the opportunity to give back. Based on the matters of mitigation presented in the memorandum, it was his hope that the QMP board would take these mitigating factors into consideration.

g. Self-Authored memorandum to AHRC, 18 October 2023, response to Notification for Potential Denial of Continued Active Duty Service, states in pertinent part:

(1) In response to the determination of the FY 2022 screening conducted of his restricted folder, he had taken full responsibility for the DA Form 2627 by admittance of fault and taken proper precautionary methods to ensure all records are now and will be current. He would like to request a waiver of rehabilitative transfer. He respectfully requested the ability to remain on active duty.

(2) He was stationed at Fort Riley, Kansas upon the finalization of his divorce in Magistrate Court in Fulton County, Georgia on 13 November 2018. His ex-wife was the petitioner of the divorce. She had friends that worked in the department of filing public records, which made it virtually impossible for him to retrieve his divorce decree.

(3) His divorce was not amicable due to his ex-wife's infidelity and untruths throughout the entirety of the marriage. His ex-wife created hostility towards him with her friends/co-workers of the magistrate court in Fulton County, Georgia where is

records were being kept. His many requests to obtain a copy of the divorce decree were ignored and he had no alternative but to file a request with the Magistrate Council of Georgia. He believes the documents were purposely concealed from him by his ex-wife.

(4) He repeated his NCOER comments, accomplishments, and volunteer work with the Last Paw Resort. The entire memorandum is available for the Board's review.

h. Letter from AHRC to the applicant's Representative, 23 October 2023, states:

(1) AHRC records reflect that the applicant was notified of his eligibility for potential denial of continued active duty service under QMP. The notification memorandum identified an Article 15 from November 2022 as the document, which led to the initiation of this process.

(2) Regretfully, after the QMP board took a holistic look at his record, along with the mitigation matters he submitted to the board president, they recommended denial of continued service. The Director of Military Personnel Management, Army G1 approved the board results on 8 August 2023. The applicant would be separated from the Army on 1 March 2024 in accordance with his selection for denial of continued service under QMP.

(3) AHRC had not received a reconsideration package from the applicant. He may seek reconsideration of the QMP decision when the underlying basis triggering the selection had been removed from his file or there was a material error.

i. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged, in the rank of SSG, on 29 February 2024. He had completed 14 years, 10 months, and 2 days of active duty service. He was discharged for non-retention on active duty.

4. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

#### BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's

contentions, the military record, and regulatory guidance were carefully considered. The Board discussed and understood the purpose of the Army's QMP is to ensure that NCOs (SSG through SGM) meet high standards of performance, conduct, and potential for advancement. The QMP is designed to enhance the quality of the NCO corps by retaining the best-qualified soldiers and denying continued service to those who don't meet standards, encouraging NCOs to maintain high standards, and ensuring that only those who meet standards are permitted to continue serving on active duty. Unfortunately, the QMP did not determine the applicant met high standards of performance, conduct, and potential for advancement.

a. A majority of the Board determined relief is warranted based on several reasons. First, the majority noted that the two NJPs resulted from fairly minor offenses and the punishments were too harsh; and believed the applicant should have received developmental counseling in each case rather than receiving NJP. Second, the imposing officer in each case knew or should have known that imposing NJP on a SSG could trigger consideration by the QMP, for an NCO who has otherwise served honorably for 14 years and 10 months of service with combat service in Iraq, Afghanistan, Kuwait, and Poland. In a way, the board majority felt the applicant was being purposely punished to prevent him from continuing on active duty. Third, the Board majority note that the Army invested heavily in the applicants training and development in an MOS that is otherwise needed in the Army. Last but not least, the Board majority considered the applicant's accomplishments, deployments, awards, and evaluations, and noted that they outweigh the minor offenses that resulted in the NJPs which triggered the QMP board. Although the Board majority did not find a legal reason to set aside the two NJPs, the majority members strongly felt removal of the NJPs from his official records and voiding the resultant QMP is appropriate.

b. The member in the minority voted not to grant relief. The member in the minority noted that the applicant accepted NJP twice while holding the rank of SSG. In each case, he consulted with counsel, declined trial by a court-martial, and was found guilty of the offenses in question. Also in each case, the applicant declined to appeal, and the imposing officer directed the filing of the NJP in the applicant's official records. The Board minority found no error or injustice in the administration of his NJP. As a result of the NJP, the applicant's records were considered by the Qualitative Management Program (QMP) board. The QMP board took a holistic look at his record, along with the mitigation matters he submitted to the board president, they recommended denial of continued service. The Director of Military Personnel Management approved the board results, and the applicant was honorably separated in March 2024 in accordance with his selection for denial of continued service under QMP. The member in the minority also noted the applicant's accomplishments, deployments, awards, and evaluations.

However, all of these documents were available to the QMP board when it made its decision to not retain him. The member in the minority considered removing one of the two NJPs, and the member in the minority also considered the applicant's argument and his commander's support letter but did not find his argument convincing. Therefore, the member in the minority of the Board determined relief 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 Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- Removing the DA Forms 2627, dated 11 June 2019 and 15 November 2022 from the applicant's Army Military Human Resources Record
- Voiding the decision by the Qualitative Management Program (QMP) that led to his non-retention and ultimate discharge
- Voiding the applicant's 29 February 2024 discharge from active duty orders and resultant DD Form 214
- Reinstating the applicant on active duty effective the date he was discharged, with back payment of all pay and allowances

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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. 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 ABCMR.

a. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

2. Army Regulation 27-10 (Military Justice), in effect at the time, prescribed the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial. Chapter 3 implements and amplifies Article 15, UCMJ, and the Manual for Courts-Martial, chapter XXVI. Paragraph 3-4 states a commander will personally exercise discretion in the nonjudicial process by evaluating the case to determine whether proceedings under Article 15 should be initiated; 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 determining the amount and nature of any punishment, if punishment is appropriate.

a. Paragraph 3-17 provides guidance for formal proceedings for punishment after a preliminary inquiry or appropriate investigation determines that punishment, if it should prove to be appropriate, might exceed extra duties for 14 days, restriction for 14 days, an oral reprimand or admonition, or any combination of the above. All entries will be recorded on a DA Form 2627.

b. Paragraph 3-37 provides guidance for filing the DA Form 2627 and allied documents. The decision to file the original DA Form 2627 in the performance folder or the restricted folder of 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. A change in the filing decision should be recorded in block 8 of the DA Form 2627.

c. Paragraph 3-43 provides guidance for transfer or removal of records of nonjudicial punishment. Requests to transfer a record from the performance folder to the restricted folder of the AMHRR will normally not be considered until a minimum of 1

year has elapsed. The officer who directed filing the record may provide a statement in support of a request for transfer.

3. Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes policies governing the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to, the Official Military Personnel File (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 Army Military Human Resource Record and/or Interactive Personnel Electronic Records Management System) contains the list of all documents approved by the Department of the Army and required for filing in the AMHRR and/or interactive Personnel Electronic Records Management System. The original DA Form 2627 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 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 any superior authority. However, the superior authority cannot direct that an Article 15, UCMJ, report be filed in the performance folder that the imposing commander directed to be filed in the restricted folder. The imposing commander's filing decision will be indicated in item 4b of the DA Form 2627. A change in the filing decision should be recorded in block 8 of the DA Form 2627.

//NOTHING FOLLOWS//