

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 April 2025

DOCKET NUMBER: AR20240000717

APPLICANT REQUESTS: correction of his military records to:

- remove the nonjudicial punishment (NJP), dated 30 January 2022
- restoration of his rank to master sergeant (MSG)/E-8, with back pay

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

- DD Form 149 (Application for Correction of Military Record)
- Attorney Brief
- Memorandum for Record (MFR), Subject: Standards of Conduct, Alcohol consumption and Armory Overnight Accommodation Policy, 15 October 2020
- MFR, Subject: Prohibited Relations Policy, 16 October 2020
- Character Letters
- Orders 090-098, 31 March 2021
- MFR, Subject: Request for award of the Armed Forces Service Medal, 7 July 2021
- Report of Proceedings by Investigating Officer (IO) Findings and Recommendations
- Applicant Sworn Statement
- Sworn Statements
- DA Form 2627-AR (Record of Proceedings for NJP), 30 January 2022
- MFR, Subject: Applicant Personal Statement Regarding the Imposition of NJP, 26 February 2022
- Letters of Support
- Military Award Certificates
- Civilian Certificates
- MFR, Subject: Applicant Appeal Statement Regarding the Imposition of NJP, 10 March 2022

FACTS:

1. Counsel states:

a. There is material error, on 10 September 2021, an Army Regulation (AR) 15-6 investigation was initiated by Brigadier General (BG) JH__. The Investigating Officer (IO) was tasked with determining whether the established alcohol policy was violated during COVID-19 Vaccination Operations and if a "drinking game" was being played by Soldiers on 9 April 2021 and whether Soldiers engaged in fraternization, among other issues not pertinent to the applicant. At the time of the investigation, the applicant was the first sergeant (1SG) for the 128th Chemical Company.

b. The IO found that the applicant engaged in behavior which might be considered an inappropriate relationship or fraternization, specifically when a "drinking game" was being played within a hotel room where a Soldier was staying during the mission. The IO recommended that the applicant receive nonjudicial punishment, be removed from his assigned position as company 1SG, receive a Relief for Cause Noncommissioned Offer Evaluation Report (NCOER), and be transferred. Further, the IO found that the lack of appropriate action on the part of the applicant and other Soldiers had an adverse impact on discipline, authority, morale, or the ability of the command to accomplish its mission. Specifically, by observing the drinking game, fraternization between NCOs and junior enlisted Soldiers, and seeing female Soldiers in a male Soldier's room, the applicant failed to halt the activities or take any other action which would have served to correct the inappropriate conduct of the Soldiers.

c. As a result of the investigation, the applicant was charged with five violations of the Pennsylvania Code of Military Justice (PCMJ). The applicant submitted a rebuttal to the nonjudicial punishment (NJP) on 26 February 2022. He explained that he was out to dinner with other Soldiers on the night of 9 April 2021. Soldiers of various ranks from the unit were drinking alcohol, which was permitted at the time as a reward for their performance during the COVID-19 vaccination mission.

d. The Applicant was found guilty of at least one of the specifications in the NJP, despite his rebuttal. He was reduced in grade from E-8 to staff sergeant/E-6 and a Relief for Cause NCOER. On 10 March 2022, the applicant submitted his appeal to the NJP. He stated that this incident was the "most painful and humiliating experience that he has ever endured in both his personal life and professional career" because he was described as an "abject failure" by the IO.

e. On 23 October 2022, the legal review of the NJP was completed by Colonel (COL) MS__. COL S__ found that there were a number of substantive procedural errors that were ultimately cured by action from the Deputy Adjutant General (DAG). Subsequently, BG LM__, DAG approved the NJP and the one grade reduction for the applicant.

f. The AR 15-6 investigation findings and recommendations are fatally flawed because of the evidence the IO relied upon. At this time, it is important to note that this

investigation was launched because on the morning of 10 April 2021, Specialist/E-4/P__ accused SFC H__ of sexually assaulting her the previous night. SFC H__ was ultimately administratively separated from the Pennsylvania Army National Guard and is currently serving a prison sentence for homicide. This incident is the only blemish on the applicant's otherwise stellar Army career. Prior to this NJP, the applicant's professionalism, judgment, and military bearing were beyond reproach.

g. In light of the facts and circumstances presented herein, the applicant requests that his NJP be removed from his military records and his rank be restored to E-8, with back pay. The applicant's NJP was the result of a completely defective AR 15-6 investigation. The IO's findings and recommendations were so obviously flawed that the applicant's resultant NJP is the proverbial fruit of the poisonous tree and should be set aside. Additionally, the applicant has been the victim of a material injustice because of the grossly improper damage done to his career and reputation.

2. The applicant provides through counsel:

a. MFR, Subject: Standards of Conduct, Alcohol consumption and Armory Overnight Accommodation Policy, 15 October 2020 shows the units' standards regarding consumption of alcohol.

b. MFR, Subject: Prohibited Relations Policy, 16 October 2020 shows the units' standards regarding prohibited relations.

c. MFR, Subject: Request for award of the Armed Forces Service Medal (AFSM), 7 July 2021 shows the applicant was eligible for the AFSM for his support of Operation COVID-19 from 1 April 2021 to 1 June 2021. Request the AFSM be verified an updated in his permanent record.

d. Military and civilian certificates show the applicant received a Bronze Star Medal and other military awards. His civilian certificates show commendation for heroism and merit.

e. His NCOERs show he was highly qualified and most qualified.

4. A review of the applicant's service record shows:

a. The applicant enlisted in the Army National Guard (ARNG) on 20 January 2005. He served in Iraq from 9 September 2007 through 14 March 2008.

b. His DD Forms 214 show he was released from active duty on 21 September 2005, 5 September 2008 and 10 January 2018.

c. He entered active duty on 1 January 2018 and was released from active duty on 8 January 2019. His DD Form 214 shows he completed 11 months and 28 days net active service.

d. Orders 31 March 090-098, 31 March 2021 show the applicant was ordered to Full Time National Guard Duty-Operational Support (FTNGD-OS) for the period 1 April 2021 to 1 June 2021 for support in response to COVID-19.

e. Report of Proceedings by Investigating Officer (IO) shows the investigation commenced on 10 September 2021.

(1) Findings and Recommendations of Army Regulation (AR) 15-6 Investigation, shows the IO was appointed on 10 September 2021 to conduct a formal investigation into the facts and circumstances surrounding whether the applicant violated an established alcohol policy or General Order during COVID-19 Vaccination Operations and particularly when a "drinking game" was being played on the evening of 9 April 2021 until the early morning hours 10 April 2021. Redacted, the IO finds that individuals engaged in behavior which might be considered an inappropriate relationship or fraternization, specifically when a "drinking game" was being played within a hotel room where a Service member was staying during the mission. The IO found the applicant was found in violation of Army Regulations, General Order, Division Policy and Army Command Policy.

(2) The IO recommended the applicant receive nonjudicial punishment, be removed from his assigned position as Company 1SG, and receive a Relief for Cause NCOER. He should be transferred upon final disposition of all actions.

(3) Continuation Findings show the lack of appropriate action on the part of involved parties caused actual or perceived partiality or unfairness and created an actual or clearly predictable adverse impact on discipline, authority, morale, or the ability to the command to accomplish its mission. The applicant arrived and observed. NCO's and junior enlisted members engaged in said "drinking game" while in a state of intoxication which rendered them unfit for military duty; female Soldiers within a male Soldiers assigned hotel room and a mixture of alcohol (wine and hard liquor) bottles covering a hotel room table. Despite this, the leaders failed to halt the activities or take any other action which might have served to correct the inappropriate conduct of Soldiers. The fraternization ultimately led to a severe adverse impact on the mission, discipline and morale.

(4) The IO finds the leadership acted appropriately in emplacing and informing the Task Force (TF) S__ formation of the policy concerning alcohol. It is determined that once allegations of inappropriate conduct were made known to the TF S__ Chain of Command, appropriate actions were taken. However, this finding specifically excludes

the following leaders who abjectly failed in their duties to ensure the appropriate conduct of subordinate Soldiers and to the detriment of the mission were 1SG Marson and other sergeant first class/SFCs.

(5) The IO finds that two separate briefings were conducted concerning a special exemption from the existing alcohol prohibition. The entirety of the formation was briefed that any Soldier who was of legal drinking age, (at least 21 years) was permitted to consume two (2) beverages containing alcohol in anticipation of a day without duty. All Soldiers who were less than 21 years of age were given an additional and separate briefing with the specific guidance that although they were prohibited from consuming alcohol, the command was willing to offer alternative means of entertainment as a reward for their dedicated service.

f. The applicant's sworn statement, 11 September 2021 shows that on 9 April 2021, while on State active duty for COVID-19 Vaccinations he was having dinner and drinks with members of his unit (NCOs and an officer) at the R__ hotel. They were able, per the mission commander and command sergeant major (CSM) to have a maximum number of drinks which he did not recall. After some time, they went to get a female Soldier from upstairs. He does not remember everyone that was in the room, but he saw Soldiers had a bottle of wine and another bottle of alcohol. The applicant states he was offered a drink, and he declined because it was not the type of alcohol that he drinks. The applicant recalls saying to the group. The CSM said it's an early wake up, so he suggested they cut it off at 12. Sworn statements, character references and letters of support regarding the investigation are available for review.

g. The applicant's received NJP under the PCMJ on 30 January 2022 for misconduct for:

- failing to obey a regulation by wrongfully engaging in acts and inappropriate relations with subordinate Soldiers which ultimately compromised the integrity of the chain of command on or about 9 April 2021 through 10 April 2021
- failing to obey a policy by wrongfully engaging in and allowing for acts which served to diminish good order and discipline, compromised the chain of command and created an actual or clearly predictable adverse impact on the mission 9 April 2021 through 10 April 2021
- failing to obey a regulation by wrongfully engaging in acts and relations with subordinate Soldiers which ultimately created an actual, or clearly predictable adverse impact on discipline, authority, morale and the ability of the command to accomplish its mission on or about 9 April 2021 through 10 April 2021
- being derelict in the performance of his duties when he failed to properly execute his duties as 1SG and/or a senior NCO by neglecting to properly intervene when subordinate Soldiers were committing acts in contravention of established orders

and regulation; this neglect on his part was to the prejudice of good order and discipline on or about 9 April 2021 through 10 April 2021

- being derelict in the performance of his duties when he failed to properly execute his duties as 1SG and/or a senior NCO by neglecting to properly intervene when subordinate Soldiers were committing acts in contravention of established orders and regulation on or about 9 April 2021 through 10 April 2021
- the applicant had the opportunity to consult with a lawyer
- his punishment was reduction to staff sergeant/E-6
- directed the original be filed in the applicant's performance file
- his request for appeal was denied
- on 16 May 2022 his commander, BG directed a reduction of rank to SFC/E-7

h. ARNG Retirement Points History Statement, 25 February 2022, shows the applicant had 2486 total points for retired pay and 17 years creditable for service for retired pay.

i. MFR, Subject: NJP regarding the applicant, 23 October 2022 shows the Army DAG found no reason to alter the punishment imposed and the applicant would be reduced to E-7.

j. MFR, Subject: Legal Review of NJP for the applicant, 23 October 2022 shows the State Judge Advocate determined the applicant was provided due process and there was no prejudice.

k. Orders 0002140072, 8 November 2022 show the applicant was demoted to SFC, effective 23 October 2022.

l. ARNG Retirement Points History Statement, 20 January 2025, shows the applicant had 2729 total points for retired pay and 20 years creditable for service for retired pay.

m. Order Number 0010773591, 21 January 2025 shows the applicant was honorably released from active duty. Effective date: 19 January 2025.

n. The applicant was notified on 4 February 2025 that he had completed the required years of qualifying Reserve service and is eligible for retired pay upon application at age 60.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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. Upon review of the applicant's petition and available military records, the Board determined the applicant failed to properly execute his duties and follow-up as a senior leader. The Board further noted that removal of an Article 15 is generally not warranted unless it is factually incorrect. The Board determined based on the evidence in the available record, the incident did occur, and there does not appear to be any evidence the contested Article 15 was unjust or untrue or inappropriately filed in the applicant's Army Military Human Resource Record.

2. Restoration of rank. Grant. The IO recommended the applicant be removed from his assigned position as Company 1SG and transferred, after disposition of all actions. Based on this, the Board agreed the applicant should be restored to the rank/grade of MSG/E-8. Therefore, the Board granted partial relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. 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 restoring his rank/grade to MSG/E-8, effective 9 July 2018. Recommend Defense Finance and Accounting Service (DFAS)–IN determine exact arrears payment.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to removal of the non-judicial punishment, dated 30 January 2022.

X //SIGNED//

CHAIRPERSON

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 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 (AMHRR). The military personnel records jacket, military personnel file, and career management information file are no longer authorized for use by any component. This does not eliminate the need for documents to be filed locally. Examples include, but are not limited to, local training records DA Form 705 (Army Physical Fitness Test Scorecard, weapons qualification record, and administrative documents, such as general counseling documents.

a. Paragraph 3-6 (Authority for Filing or Removing Documents in the AMHRR Folders) 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 another authorized agency.

b. Appendix B (Documents Required for Filing in the AMHRR and/or Interactive Personnel Electronic Records Management System) shows memorandums of reprimand, censure, and admonition are filed in accordance with Army Regulation 600-37.

2. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's AMHRR.

a. An administrative memorandum of reprimand may be issued by an individual's commander, by superiors in the chain of command, and by any general officer or officer exercising general court-martial jurisdiction over the Soldier. The memorandum must be referred to the recipient and the referral must include and list applicable portions of investigations, reports, or other documents that serve as a basis for the reprimand. Statements or other evidence furnished by the recipient must be reviewed and considered before a filing determination is made.

b. A memorandum of reprimand may be filed in a Soldier's OMPF only upon the order of a general officer-level authority and is to be filed in the performance folder. The direction for filing is to be contained in an endorsement or addendum to the memorandum. If the reprimand is to be filed in the OMPF, the recipient's submissions are to be attached. Once filed in the OMPF, the reprimand and associated documents are permanent unless removed in accordance with chapter 7 (Appeals).

c. Paragraph 7-2 (Policies and Standards) states 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.

d. Paragraph 7-3c (Filing Authority to Redress Actions) states an officer who directed filing an administrative memorandum of reprimand, admonition, or censure in the AMHRR may request its revision, alteration, or removal, if evidence or information indicates the basis for the adverse action was untrue or unjust, in whole or in part. An officer who directed such a filing must provide a copy of the new evidence or information to the Department of the Army Suitability Evaluation Board to justify the request.

3. Title 10, USC, section 1552 states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

4. Army Regulation 37-104-4 (Military Pay and Allowances Policy) states, only the Director, DFAS-IN may make settlement actions affecting the military pay accounts of Soldiers as a result of correction of records by the ABCMR per provisions of AR 15-185.

5. Pennsylvania Code of Military Justice (PMR) 27-10 (Pennsylvania Code of Military Justice) is outlined in Title 51 of the Pennsylvania Consolidated Statutes. It applies to all members of the State military forces who are not in a federal status, establishing the legal framework for military justice in Pennsylvania. This code includes provisions for military discipline, offenses, and procedures, and has been amended to include various sections related to military justice and the establishment of the State Military Justice Fund.

a. Chapter 53 Nonjudicial Punishment § 5301. Commanding officer's nonjudicial punishment. (a) General rule.--Under such regulations as the Governor may prescribe, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(1) Upon an officer of his command: (i) withholding of privileges for not more than two consecutive weeks; (ii) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks; or (iii) if imposed by the Governor, the commanding officer of a division or a wing or a separate brigade or a similar organization, a fine or forfeiture of pay and allowances of not more than \$100.

(2) Upon other military personnel of his command: (i) withholding of privileges for not more than two consecutive weeks; (ii) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks; (iii) extra duties for not more than 14 days, which need not be consecutive, and for not more than two hours per day, holidays included; (iv) reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command; or (v) if imposed by an officer exercising special court-martial jurisdiction over the offender, a fine or forfeiture of pay and allowances of not more than \$10. (b) Limitations imposed by Governor.--The Governor may, by regulation, place limitations on the powers granted by this section with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise those powers.

b. Appeal from punishment.--A person punished under this section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided. The officer who imposes the punishment, his successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges and property affected. (d) Additional court-martial proceedings.--The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section. The fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

c. Application of forfeiture.--Whenever a punishment of forfeiture of pay and allowances is imposed under this section, the forfeiture may apply to pay or allowances accruing on or after the date that punishment is imposed and to any pay and allowances accrued before that date.

d. Court-martial in lieu of punishment.--Punishment may not be imposed upon any member of the State military forces under this chapter if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment.

6. 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, United States, 2019 (MCM), and the rules for courts-martial (RCMs) contained in the MCM.

a. Chapter 3 (Nonjudicial Punishment), 3–2. Use of nonjudicial punishment reflects a commander should use nonpunitive measures to the fullest extent to further the efficiency of the command before resorting to NJP (see MCM, 2019). Use of NJP is proper in all cases involving minor offenses in which nonpunitive measures are considered inadequate or inappropriate. If it is clear that NJP will not be sufficient to meet the interests of good order and discipline, more stringent measures should be taken. Prompt action is essential for NJP to have the proper corrective effect. NJP may be imposed to—

(1) Correct, educate, and reform offenders who the imposing commander determines cannot benefit from less stringent measures.

(2) Preserve a Soldier's record of service from unnecessary stigma by record of court-martial conviction.

(3) Further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial.

b. NJP is imposed to correct misconduct in violation of the UCMJ. Such conduct may result from intentional disregard of, or failure to comply with, prescribed standards of military conduct. Misconduct resulting from simple neglect, forgetfulness, laziness, inattention to instructions, sloppy habits, immaturity, difficulty in adjusting to disciplined military life, and similar deficiencies may warrant NJP in cases where nonpunitive measures are insufficient. Nonpunitive measures are the primary tools for teaching proper standards of conduct and performance and do not constitute punishment, nor are they required as a first step toward NJP. Included among nonpunitive measures are denial of pass or other privileges, counseling, administrative reduction in grade, administrative reprimands and admonitions, extra training (see AR 600–20), bar to continued service, and military occupational specialty (MOS) re-classification. Certain commanders may administratively reduce enlisted personnel for inefficiency and other reasons. This authority exists apart from any authority to punish misconduct pursuant to UCMJ, Art. 15. These two separate and distinct kinds of authority should not be confused but may be used simultaneously when appropriate.

//NOTHING FOLLOWS//