

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 November 2024

DOCKET NUMBER: AR20240001244

APPLICANT REQUESTS: removal of the DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), 23 March 2018, 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)
- Certificate of Marriage, 28 February 2014
- State Supreme Court Judgment of Divorce, 25 August 2016
- U.S. Army Installation Command and Headquarters, U.S. Army Garrison, Fort Drum, Orders 244-101, 31 August 2016
- Attorney Letter, 27 November 2017
- Installation Management Command – Pacific, Military Personnel Division, U.S. Army Garrison – Reserve Component, Orders 251-1103, 8 September 2017
- DA Form 5960 (Authorization to Start, Stop, or Change Basic Allowance for Quarters and/or Variable Housing Allowance), 7 December 2017
- DA Form 2627, 23 March 2018

FACTS:

1. The applicant states he was married to N____ I____ during his first duty assignment at Fort Drum, NY in February 2014. He filed for divorce in May 2016 and then received permanent change of station orders in August 2016 reassigning him to Korea. Once he learned he would be going to Korea, he hired an attorney to handle his divorce affairs and agreed to pay his attorney \$121.50 per month until his divorce was finalized. On 27 November 2017 while in Korea, his divorce decree was mailed to him after his last payment was made to his attorney. Shortly after he received his divorce decree, he discovered his divorce was finalized on 3 October 2016 (should read 25 August 2016). Although he was making payments to his lawyer until 27 November 2017, he was unaware his divorce was finalized prior to his final payment to his attorney.

a. In December 2017 while in-processing at Fort Hood, TX, he explained the circumstances surrounding his divorce and provided a copy of his divorce decree. He

made arrangements to repay the full basic allowance for housing that he was receiving while stationed in Korea. Despite paying back the full balance, he was accused of basic allowance for housing fraud and received UCMJ action.

b. It is difficult for him to advance professionally because of the negative action on his record. It makes it extremely difficult for him to obtain his professional goals and advance further within his military career, despite having over 11 years of service. Additionally, it is difficult for him to apply for positions for which he is qualified because of the collateral impact of having a negative mark in his file. He has accepted responsibility for his actions and has taken the necessary steps to make the corrections to clear his name.

2. He enlisted in the Regular Army on 4 June 2012.

3. He and C____ N. I____ married on 28 February 2014.

4. The State Supreme Court Judgment of Divorce, 25 August 2016, shows he and C____ N. I____ divorced on 25 August 2016.

5. U.S. Army Installation Command and Headquarters, U.S. Army Garrison, Fort Drum, Orders 244-101, 31 August 2016, assigned him to Camp Walker, Korea, with a reporting date of on or about 9 November 2016.

6. Installation Management Command – Pacific, Military Personnel Division, U.S. Army Garrison – Reserve Component, Orders 251-1103, 8 September 2017, ordered him to proceed on a permanent change of station and assigned him to Fort Hood, TX, with a reporting date of 10 December 2017.

7. His records do not contain a DA Form 5960 covering his assignment in Korea. His records do contain leave and earnings statements covering the period from August 2016 through October 2017 showing he was receiving basic allowance for quarters at the with-dependent rate.

8. On 27 November 2017, his attorney provided him with his certified Judgment of Divorce, which was signed by the judge on 25 August 2016 and filed with the county clerk on 3 October 2016.

9. His DA Form 5960, 6 December 2017, shows in:

a. block 8 (Marital/Dependency Status), he placed an "X" in the "Divorced" box;

b. block 8(3) (Date of Marriage, Divorce/Separation), he entered 27 November 2017 (should read 25 August 2016);

c. block 13 (Member Signature), he signed the form on 6 December 2017; and

d. block 15 (Certifying Officer's Signature), the certifying official signed the form on 7 December 2017.

10. The DA Form 2627, 23 March 2018, shows while serving in the rank/grade sergeant/E-5:

a. his commander considered imposing nonjudicial punishment (NJP) against him under the provisions of Article 15, UCMJ, for the following offenses:

(1) stealing basic allowance for housing and family separation allowance on or about 15 August 2016 and on or about 27 November 2017, to wit: military property of a value of about \$25,997.58, the property of the U.S. Army;

(2) being derelict in the performance of his duties in that he negligently failed to notify the Defense Finance and Accounting Service of his change in marital status between on or about 15 August 2016 and on or about 7 December 2017, to wit: the day he divorced his spouse, as it was his duty to do; and

(3) signing an official record with intent to deceive on 7 December 2017, to wit: DA Form 5960, which record was false in that his date of divorce was on or about 16 August 2016 rather than 17 November 2017, and was then known by him to be false.

b. Item 3b shows he did not demand trial by court-martial and requested a closed hearing.

c. Item 4a shows his commander, having considered all matters presented in the closed hearing, found him "Guilty of All Specifications."

d. Item 4b shows the imposing commander directed filing the original DA Form 2627 in the performance folder of his Official Military Personnel File.

e. Item 5 shows he did not appeal the findings.

f. Item 6 shows his punishment consisted of reduction to the rank/grade of specialist/E-4; forfeiture of \$1,245.00 pay, suspended, to be automatically remitted if not vacated on or before 19 September 2018; and 45 days of extra duty.

11. A review of his AMHRR shows the DA Form 2627, 23 March 2018, and allied documents are filed in the performance folder of his AMHRR.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was 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 evidence, including notification of his divorce was not available to the applicant prior to the Article 15 imposed on 23 March 2018. The Board concluded that the evidence supports removal of the Article 15 from the applicant's Army Military Human Resource Record (AMHRR). Additionally, based on the imposed punishment, including reduction in rank from SGT to SPC, the Board determined his rank should be restored to SGT based on the removal.

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 relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- removing the DA Form 2627, dated 23 March 2018, and all associated documents from the applicant's AMHRR
- restoring his rank to sergeant (SGT)/E-5 with a date of rank of 1 May 2017

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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 policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. 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.

2. 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. It provides that a commander should use nonpunitive administrative measures to the fullest extent to further the efficiency of the command before resorting to NJP under the UCMJ. Use of NJP is proper in all cases involving minor offenses in which nonpunitive 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 3-6a provides that a commander's decision whether to file a record of NJP in the performance folder of a Soldier's AMHRR is as important as the decision relating to 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. However, the interests of the Army are compelling when the record of NJP reflects unmitigated moral turpitude or lack of integrity, patterns of misconduct, or evidence of serious character deficiency or substantial breach of military discipline. In such cases, the record should be filed in the performance folder.

b. Paragraph 3-37b(2) states that for Soldiers in the ranks of sergeant and above, the original DA Form 2627 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 Official Military Personnel File 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 to be filed in the restricted folder.

c. Paragraph 3-43 contains guidance for transfer or removal of DA Forms 2627 from the AMHRR. Applications for removal of a DA Form 2627 from the AMHRR based on an error or injustice will be made to the ABCMR. There must be clear and compelling evidence to support removal of a properly completed, facially valid DA Form 2627 from a Soldier's record by the ABCMR.

//NOTHING FOLLOWS//