

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 November 2024

DOCKET NUMBER: AR20240001584

APPLICANT REQUESTS: set aside of nonjudicial punishment (NJP) and removal of the DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), 30 June 2005, including the general officer written reprimand 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)
- Maryland U.S. Attorney's Office Press Release Archive, 24 January 2008
- Memorandum for President, Department of the Army Suitability Evaluation Board (DASEB), from General (Retired) M____ X. G____ (Request Set Aside Article 15 for (Applicant)), 11 September 2023
- Memorandum for President, DASEB, from Major General (MG) (Retired) V____ E. B____ (Request Set Aside Article 15 for (Applicant)), 22 September 2023
- DA Form 2627-2 (Record of Supplemental Action under Article 15, UCMJ, 22 September 2023)

FACTS:

1. The applicant states he wrongfully received NJP under the provisions of Article 15, UCMJ, and a written reprimand from then-Brigadier General (BG) B____. These actions were taken due to a critical incident in which he was compelled to defend himself with a handgun during a criminal encounter. Imperatively, T____ P____ was known for carjackings in the area and subsequently was convicted and sentenced to 13 years in prison. The information regarding T____ P____'s criminal history was not available to BG B____ when he made his decision. BG B____ did not believe he was a victim of a carjacking and the absence of important circumstances of why he was compelled to defend himself impacted the reason he received NJP and a written reprimand.

a. The handgun was not registered on post at Aberdeen Proving Ground, MD, due to his recent arrival and unfamiliarity with the registration process. The weapon was

stored at his aunt's house in Baltimore, MD. He was in the process of transporting the weapon to the base without ammunition to register it when he was stopped at the gate.

b. The procedures for registering firearms on post at the time required the presence of the weapon during the registration process. In light of these facts and the subsequent developments, now-MG (Retired) B_____ has expressed a desire to set aside the NJP and has received the support of General (Retired) G_____.

2. Following prior enlisted service in the Regular Army and Louisiana Army National Guard, he was appointed as a U.S. Army Reserve commissioned officer in the Ordnance Branch in the rank/grade of second lieutenant/O-1 effective 6 May 2005.

3. Headquarters, U.S. Army Cadet Command, Orders 98-23-A-400, 8 April 2005, ordered him to report to Aberdeen Proving Ground, MD, no later than 15 May 2005 in a temporary duty status to complete the Officer Basic Course.

4. He received NJP under the provisions of Article 15, UCMJ, on 30 June 2005 while serving in the rank of second lieutenant. The DA Form 2627 (Record of Proceedings under Article 15, UCMJ) shows he was punished for disobeying a lawful order by wrongfully possessing a dangerous weapon, transporting a dangerous weapon in the driver's compartment of his privately owned vehicle, not properly storing his firearm, failing to register his firearm on post, and unlawfully carrying a concealed weapon and unloaded magazine at Aberdeen Proving Ground, MD, on or about 27 May 2005.

a. He did not demand trial by court-martial.

b. He requested a closed hearing.

c. He requested a person to speak on his behalf.

d. He presented matters in defense, mitigation, and/or extenuation in person.

e. His punishment consisted of forfeiture of \$1,349 pay for 2 months, restriction, and a written reprimand.

f. Item 4 stated:

[Applicant], you are reprimanded for violation of a lawful order to register your personal weapon on post and for carrying the weapon concealed. As a commissioned officer, you have an obligation to lead by example and exercise good judgment. You must conduct yourself appropriately and live Army values. Carrying a concealed weapon and disobeying an order are not acceptable. You must immediately adhere to the discipline required of an

Army officer. Your misconduct calls into question your judgment and, therefore, your potential for future service.

g. The imposing commander (BG V____ E. B____) directed placement of the DA Form 2627 in the performance fiche of his Official Military Personnel File (OMPF).

h. He did not appeal the punishment.

5. His military records contain no evidence documenting matters presented in defense, mitigation, and/or extenuation involving a carjacking incident.

6. His memorandum for President, DASEB (Request Transfer of Adverse Actions from Performance to Restricted Fiche), 15 August 2007, states, in part:

Request that the Article 15 [DA Form 2627] with accompanying General Officer Memorandum of Reprimand [written reprimand] that I received from MG V____ E. B____ on 6 July 2005 [30 June 2005] be transferred from my Performance fiche to my Restricted fiche.

I have learned to properly register my weapon on post and sincerely regret the mistake I have made. As a leader, I have learned all the policies on post that impact the lives of my Soldiers and I ensure that they are aware of them. I have learned and moved on from my situation. I continue to do my job to the best of my capabilities, without dispatch and never faultier [falter]. I used my situation to relate with Soldiers to help them overcome obstacles they encounter.

7. The Office of Deputy Chief of Staff, G-1, memorandum (Resolution of Unfavorable Information – (Applicant)), 18 September 2007, noted the DASEB approved transfer of the DA Form 2627, 30 June 2005, to restricted folder of the applicant's OMPF based on intent having been served.

8. The Maryland U.S. Attorney's Office Press Release Archive, 24 January 2008, states T____ P____ was sentenced to 13 years in federal prison followed by 5 years of supervised release for armed robbery of a gas station on 8 October 2006. (Note: The press release contains no reference to the applicant or multiple carjackings.)

9. The memorandum for President, DASEB, from General (Retired) M____ X. G____ (Request Set Aside Article 15 for (Applicant)), 11 September 2023, states:

I strongly recommend that [Applicant's] Article 15 [NJP] that was administered 18 years ago be removed from his record. I fully concur with Major General B____ recommendation to set aside this injustice against [Applicant].

I have known [Applicant] for 17 years and he has been nothing but a tremendous leader. [Applicant's] glowing performance evaluations along with the numerous commendations and awards he has received throughout his career should serve as a testimony to his leadership capacity and character. His dedication to bettering himself and those around him, his relentless pursuit of excellence, and his firm commitment to the shared values of the military have made him a role model for many.

I am fully confident that this injustice will be corrected.

Thank you for considering my recommendation. I express my utmost confidence in [Applicant's] abilities and believe that he is a future senior leader in our Army.

10. The memorandum for President, DASEB, from MG (Retired) V____ E. B____ (Request Set Aside Article 15 for (Applicant)), 22 September 2023, states, in part:

In 2005, I served as the Commanding General, US Army Ordnance Center and Schools. In that capacity, I administered an Article 15 [NJP] to then [Applicant]. Upon his graduation, I elected to place the action in his restricted file.

In his subsequent eighteen years of service, now [Applicant's] career has been exemplary in a number of critical assignments to include battalion command. This reflects the fact that he has undergone a number of reviews of his service record and been repeatedly identified for continued contributions to our Army.

Request that [Applicant's] Article 15 [NJP], be set aside.

11. The DA Form 2627-2, 22 September 2023, from MG (Retired) V____ E. B____ requests to set aside the applicant's NJP and corresponding written reprimand based on the arrest and conviction of T____ P____.

12. The applicant is currently serving on active duty in the rank/grade lieutenant colonel (LTC)/O-5 within the Office of the Secretary of the Army.

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, military records, and applicant's statement, the Board was convinced the nonjudicial punishment administered on 30 June 2005 and filed in the restricted folder of the

applicant's Army Military Human Resource Record (AMHRR) demonstrates an injustice and supports removal. The Board was convinced by the applicant's statement and noted the applicant's continued service after the nonjudicial punishment proceedings. The Board concluded that the evidence supports removal of the Article 15 from the applicant's AMHRR, including the general officer written reprimand.

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 30 June 2005, and all associated documents from the applicant's AMHRR.

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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), effective 14 October 2002 and in effect at the time, prescribed the policies and procedures pertaining to the administration of military justice. Chapter 3 provided that 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.

a. Paragraph 3-28 stated setting aside and restoration is an action whereby the punishment or any part or amount, whether executed or unexecuted, is set aside, and any rights, privileges, or property affected by the portion of the punishment set aside are restored. NJP is "wholly set aside" when the commander who imposed the punishment, a successor-in-command, or a superior authority sets aside all punishment imposed upon an individual pursuant to Article 15, UCMJ. In addition, the imposing commander or successor-in-command may set aside some or all of the findings in a particular case. If all findings are set aside, then the NJP itself is set aside and removed from the Soldier's records. The basis for any set aside action is a determination that, under all the circumstances of the case, the imposition of the NJP has resulted in a clear injustice. "Clear injustice" means that there exists an unwaived legal or factual error that clearly and affirmatively injured the substantial rights of the Soldier. For example, the discovery of new evidence unquestionably exculpating the Soldier. Clear injustice does not include exemplary performance of service subsequent to the punishment or a future adverse effect the punishment may have on the retention or promotion potential of the Soldier.

b. Paragraph 3-28d stated the power to set aside unexecuted punishment and mitigate a grade reduction to forfeiture of pay, absent unusual circumstances, will be exercised only within 4 months after the punishment has been executed. When a commander sets aside any portion of the punishment, the commander will record the basis for this action on DA Form 2627-2. When a commander sets aside any portion of the punishment after 4 months from the date punishment has been executed, a detailed

addendum of the unusual circumstances found to exist will be attached to the form containing the set aside action.

c. Paragraph 3-37 stated the decision to file the original DA Form 2627 in the performance folder or the restricted folder of the OMPF would be made by the imposing commander at the time punishment is imposed.

d. Paragraph 3-42 stated all DA Forms 2627 of commissioned officers and enlisted Soldiers filed in the AMHRR reflecting that punishments have been wholly set aside will be removed from the Soldier's record. The DA Form 2627 reflecting the original imposition of punishment, will be destroyed if filed in the AMHRR, unit NJP file, or unit personnel files.

e. Paragraph 3-43 stated enlisted Soldiers (sergeant and above) and commissioned and warrant officers may request transfer of a record of NJP from the performance folder of their OMPF to the restricted folder under the provisions of this regulation. To support the request, the person must submit substantive evidence that the intended purpose of NJP has been served and that transfer of the record is in the best interest of the Army. Requests normally will not be considered until a minimum of 1 year has elapsed and at least one nonacademic evaluation report has been received since imposition of the punishment.

3. 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 DASEB to justify the request.

4. Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The AMHRR includes, but is not limited to the OMPF, finance-related documents, and non-service related documents deemed necessary to store by the Army.

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 Army Board for Correction of Military Records or other 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.

//NOTHING FOLLOWS//