

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 December 2024

DOCKET NUMBER: AR20240001907

APPLICANT REQUESTS:

- restoration of rank to sergeant (SGT)/E-5
- a personal appearance (telephone/video)

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum – Subject: Request for Set Aside (Field Grade Article 15), 22 September 2021
- Self-authored letter, Mr. K_B_
- Medical document
- Character Statements
- Presentation Slides (PowerPoint)
- DA Form 3349 (Physical Profile Record)
- DA Forms 2823 (Sworn Statement)
- Email communication with attachments
- Enlisted Record Brief
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 15 November 2022
- Request for Legal Action
- DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 27 July 2027
- DA Form 4856 (Developmental Counseling Form)
- DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag))

FACTS:

1. The applicant states in pertinent part that he was wrongfully reduced in rank on 13 August 2021, due to a medical condition. He contests that he was diagnosed with Type 1 Diabetes (26 November 2020) and his leadership perceived that he was abusing the restrictions related to his medical condition. In result, he received an Article 15 that he believes was solely related to a medical condition that he had no control over. He

routinely would advise his leadership when he would be either late or unable to make the first formation in the morning due to his low blood sugar. He sought the assistance of various members of leadership and other resources (Inspector General, Staff Judge Advocate, Congressional Representatives etc.). The Commanding General suggested that his leadership reconsider the rank reduction. While on extra duty, he argues that he was treated improperly and was not permitted to access his apartment, medications, or medical supplies. Further, after being reduced in rank, he was not permitted to attend several subsequent promotion boards. At some point, he recalls members of his leadership in concert with his Primary Care Physician (PCP) discussing his medical profile. He recalls his leadership encouraging his PCP to not change his profile permitting him to be late for formation for which his PCP complied with. He recalls an incident occurring at home wherein he suffered a diabetic coma which required the assistance of emergency medical personnel. Upon his recovery, his squad leader was present and advised him to return to the office within 30 minutes. Following receipt of his medical diagnosis, he suffered from depression as he intended to serve for 20 years. The applicant's statement is further provided in its entirety within the supporting documents for the Board's review.

2. A review of the applicant's available service records reflects the following:

- a. On 27 December 2017, the applicant enlisted in the Regular Army with duty as an 11B (Infantryman).
- b. On 18 February 2020, the applicant reenlisted for 5 years.
- c. On 28 January 2021, 3rd Infantry Regiment (The Old Guard) issued Orders Number 028-005 announcing the applicant's promotion to the rank/grade of sergeant (SGT)/E-5, effective 1 February 2021.
- d. On 22 June 2021, the applicant was flagged for adverse action.
- e. On 27 July 2021, nonjudicial punishment proceedings under the provisions of Article 15, UCMJ, for violating Article 86 (Absence Without Leave) on 2 occasions (30 March 2021 and 16 June 2021) were initiated by a Field Grade Officer in the rank of lieutenant colonel (LTC)/O-5.
- f. On 13 August 2021, the applicant accepted nonjudicial punishment under the provisions of Article 15, UCMJ, for the above violations. His punishment was reduction in rank to specialist (SPC)/E-4, required to forfeit \$1,291.00 (suspended, to be automatically remitted if not vacated on or before 13 February 2022), 45 days of extra duty and oral reprimand.

g. On 7 September 2021, after review of all evidence and matters provided by the applicant, the appellate authority (colonel (COL)/O-6, upheld the imposing authority's decision and punishment under Article 15.

h. On 8 September 2021, the applicant acknowledged the denial of his appeal.

i. On 22 September 2021, the applicant, represented by legal counsel, requested to have the nonjudicial punishment imposed set aside. In the alternative, counsel requested to have the applicant's reduction suspended for 6 months, permitting the applicant to be medically retired at the rank of SGT.

j. On 3 August 2022, a Physical Evaluation Board convened finding the applicant physically unfit for continued military service due to his Type 1 Diabetes with a recommendation that he be permanently medically retired.

k. On 27 October 2022, Joint Base Myer – Henderson Hall issued Orders Number 300-0010 releasing the applicant from assignment and duty due to a physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability on 15 November 2022.

l. On 15 November 2022, the applicant was medically retired from military service at the rank of SPC.

3. The applicant provides the following a:

a. Self-authored letter, Mr. K_ B_, an Endocrinologist, recommended that the applicant be assigned to within 30 minutes of a facility with the medical capabilities to provide for intensive care services. This letter further provides recommendations for reasonable accommodations associated with the applicant's medical condition to include a duty schedule (8-hours) that permits regularly scheduled meals and self-monitoring of his glucose levels. The applicant should be permitted time to test his glycemic levels which may result in him being late to formation if his levels are too low in the morning.

b. Medical document reflective of the applicant's prescribed medications.

c. Character Statements reflective of 5 personnel that are familiar with the applicant's personal and professional character. Further, the parties reflect upon the applicant's exemplary work ethic and the negative impacts of his medical condition. All parties requested that the applicant's rank be reinstated, noting that his medical condition was a contributing factor to his repeated "reporting late/failure to report for duty" events which ultimately resulted in UCMJ action. These letters are further

provided in their entirety for the Board members review within the supporting documents.

d. Presentation Slides (PowerPoint), reflective of information pertaining to administrative separations and the Integrated Disability Evaluation System process.

e. DA Form 3349, reflective of the applicant's performance limiting profile associated with his diabetic condition. The details of the performance related limitations are further provided in item 3a. above.

f. DA Forms 2823, reflective of 7 event related statements provided by service members familiar with the applicant's actions 17 September 2021 (reporting late for duty) and parking behind the company area. These statements are further provided in their entirety within the supporting documents for the Board member's review.

g. Email communication with attachments reflective of information pertaining to the side effects of Type 2 diabetes to include chronic fatigue.

h. Enlisted Record Brief reflective of the applicant's pertinent personnel and administrative information to include promotion and assignment history.

i. Request for Legal Action, reflective of the submitted request for the applicant to receive a Field Grade Article 15.

j. DA Forms 4856, reflective of event related counseling provided to the applicant concerning varying events to include parking, disobeying a direct order and failure to report. These actions prompted the applicant being recommended for nonjudicial punishment under Article 15, UCMJ.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to grant clemency and restore the applicant's rank. However, based upon the misconduct leading to the applicant's reduction in rank, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's rank.

2. The Board also wished to inform the applicant, based upon current DoD guidance on liberal consideration, liberal consideration is not utilized to determine whether Article 15 punishment should be mitigated.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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.

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 (AR) 27-10 (Military Justice) provides 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. Nonjudicial Punishment (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, bar to

continued service, and military occupational specialty reclassification. 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, Article 15.

a. Section IV (Punishment) provides that whether to impose punishment and the nature of the punishment are the sole decisions of the imposing commander.

b. Paragraph 3-19 (Rules and Limitations) provides the grade from which reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. For the purposes of this regulation, the imposing commander or any subordinate commander has "promotion authority" within the meaning of UCMJ, Article 15 if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade.

c. Table 3-1 (Maximum Punishment for Enlisted Members and Commissioned Officers) provides that a Field Grade Officer (major (MAJ)/O-4) and above may reduce an enlisted Soldier 1 (one) pay grade during peacetime. Paragraph 10-11 (Appeals) provides that appeals of reduction for inefficiency or for misconduct are authorized to correct an erroneous reduction on equitable grounds. This will be based on the facts and circumstances of the particular case that partial or full restoration of rank is in the best interest of the Army and the Soldier.

2. AR 600-8-19 (Enlisted Promotions and Reductions) provides policies and procedures governing promotions and reductions of Army enlisted personnel. Chapter 10 (Reductions in Grade) provides that Soldiers in the rank of SGT may be reduced in rank by field grade commander authorized a LTC or higher.

3. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//