

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 November 2024

DOCKET NUMBER: AR20240003623

APPLICANT REQUESTS: through counsel:

- a. removal of the DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), 10 June 2020, with allied documents from the restricted folder of her Army Military Human Resource Record (AMHRR); and
- b. reinstatement to active duty in the Regular Army in her discharge rank of sergeant first class (SFC).

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)
- Counsel's Brief in Support of Application for Correction of Records, undated, with Exhibits –
 - Exhibit 1 – DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States), 6 June 1997
 - Exhibit 2 – Enlisted Record Brief, Prepared 10 January 2022
 - Exhibit 3 – 139th Military Police Company Memorandum for Record ((Applicant) Unsatisfactory Performance in a Leadership Position), 3 March 2020 (two copies)
 - Exhibit 4 – DA Form 2627, 10 June 2020, with Allied Documents
 - Exhibit 5 – Headquarters, 385th Military Police Battalion, Memorandum (Letter of Reprimand), 16 August 2020
 - Exhibit 6 – U.S. Army Human Resources Command (HRC), Fort Knox, KY, memorandum (Notification of Denial of Continued Active Duty Service under the Qualitative Management Program QMP)), 5 January 2022
 - Exhibit 7 – DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 5 January 2022
 - Exhibit 8 – HRC Memorandum (Notification of Immediate Reenlistment Prohibition Code 13 Transaction), 21 January 2021
 - Exhibit 9 – Counsel's Memorandum ((Applicant) QMP Appeal), 3 February 2022, with Auxiliary Documents

- Exhibit 10 – HRC Memorandum (Reconsideration of Involuntary Separation under the QMP, (Applicant)), 25 February 2022
- Exhibit 11 – nine Memorandums/Statements of Support, 8 January 2022 through 4 April 2022
- Exhibit 12 – Letter, 4 April 2022

FACTS:

1. The applicant defers to counsel.
2. Counsel states the applicant requests removal of the DA Form 2627, 10 June 2020, with allied documents from the restricted folder of her AMHRR.
 - a. Statement of Facts.
 - (1) The applicant enlisted in the Army on 6 June 1997 and received numerous awards and decorations during her service.
 - (2) On 3 March 2020, First Sergeant (1SG) M____ Y. K____ issued a memorandum for record regarding the applicant's "unsatisfactory performance" (see exhibit 3).
 - (3) On 13 July 2020, the applicant was found guilty under the provisions of Article 15, UCMJ, for an incident that occurred in which she failed to obey an order to "stand down" and "abandoning [the Applicant's] military bearing" when ordered by 1SG K____ to go to her office. She was punished with forfeiture of pay in the amount of \$2,564.00 per month for 2 months and a written reprimand; however, the Article 15 Punishment Worksheet specified in a handwritten notation that she was to be issued a written "Letter of Concern" (see exhibit 4).
 - (4) On 16 August 2020, the applicant received a letter of reprimand wherein she was "reprimand[ed] for failing in [the Applicant's] duties as a noncommissioned officer and senior leader within the battalion" (see exhibit 5).
 - (5) On 5 January 2022, the applicant was issued a notification of denial of continued active duty service under the QMP. The memorandum stated that she would be involuntarily discharged no later than 1 July 2022. On 5 January 2022, a DA Form 268 was initiated for involuntary separation. On 21 January 2022, she was sent a Notification of Immediate Reenlistment Prohibition. On 3 February 2022, she, by way of counsel, filed a response to the notification of denial of continued active duty service. The basis of her appeal was that the DA Form 2627 stated she was to be issued a letter of concern but she received a letter of reprimand, which was a material error. The appeal was also premised on the fact that her command committed an

additional material error when the command "destroyed the initial counseling for the Article 15 [DA Form 2627]...As this destruction resulted in an omission from [the Applicant's] AMHRR..." Finally, the appeal was premised on her long and highly decorated career (see exhibits 6, 7, 8, and 9).

(6) On 25 February 2022, the applicant received notice that her request for reconsideration for involuntary separation under the QMP had been denied. The stated reason for denial was that her request did not meet the criteria established in Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) (see exhibit 10).

b. Argument. This Board may grant correction of military records when it is "necessary to correct an error or remove an injustice." The applicant is pending discharge in January 2023; therefore, it is clearly within the 3-year statute and the Board may grant the request because of both material error and the injustice of the applicant's discharge.

(1) Material Error. It is respectfully submitted that the Army committed a material error when it issued the applicant a letter of reprimand instead of a letter of concern. The Article 15 Punishment Worksheet specifically provides the option for the command to select either an oral or written "reprimand" (see exhibit 4). However, in her case, the commander hand wrote "Letter of Concern" and thereby specified that she was not to receive a "reprimand," but rather a lesser form of punishment (see exhibit 5). Because a letter of concern is inherently less severe than a letter of reprimand, the letter of reprimand was improper and a material error as it was not the punishment she was originally meted. Accordingly, she respectfully requests removal of the DA Form 2627 and allied documents from her Official Military Personnel File (OMPF).

(2) Material Injustice. The applicant's service to the country has been remarkable and is demonstrated, not only by a myriad of awards she has received, but by her noncommissioned officer evaluation reports dating back over a decade through the period of the nonjudicial punishment (NJP). Further, the relationship between her 1SG and supervising officers was described as abusive, and it was opined that disciplinary actions against her were targeted.

(a) On 3 March 2007, the applicant was described as a "real leader" who was "dependable" and "performed beyond [the Applicant's] assigned duties." In her evaluation report dated 9 November 2008, the rater stated she was "consistently reliable and industrious," that she "demonstrate[ed] strong moral principles and personal values," and that she "treat[ed] seniors and peers with respect" (see exhibit 11).

(b) The applicant excelled exponentially as she elevated in rank. In her noncommissioned officer evaluation report dated 24 February 2015, the rater stated she:

- "demonstrated the utmost competence in her duties even under the most extreme circumstances"
- "embodied the Warrior Ethos; maintain[ed] a fierce and steadfast belief in assigned mission"
- "lived the Army values, [and was] not afraid to stand up for what she believe[d] was] right"

(c) In the evaluation dated 3 January 2019, the rater stated the applicant was a "phenomenal Noncommissioned Officer who exceeded all expectations. Already promotable to SFC, [the Applicant] must continue to be groomed. Send immediately to SLC [Senior Leader Course] and place in areas demanding more responsibility."

(d) Notably, in the applicant's evaluation covering the period 16 July 2020 to 9 June 2021, the rater stated she exceeded standards and made the following additional observations:

- "[the Applicant is an] exceptionally talented leader whose commitment to mission accomplishment is exemplary"
- "[the Applicant is a] technically proficient leader who is relied upon to ensure accomplishment of medical missions regardless of difficulty"
- "[the Applicant is a] highly polished professional; able to consistently produce superior results in a high OPTEMPO [operating tempo] environment"

(e) This same evaluation noted "[the Applicant] is a top 5% performer and ranks among the top 20% I have rated in my 24 years of service. She is a People First leader with all of the character traits to lead any organization. She possesses unlimited potential is a future 1SG."

(f) This evaluation is particularly notable because it occurred after the applicant's NJP. This demonstrates that the events that led to her NJP were an aberration and had underlying and unaddressed facts that should have been taken into account. It is improbable that her evaluator would describe her in such glowing terms and recommend her for advancement otherwise. She humbly requests that this honorable Board give this evaluation the considerable weight it deserves.

(g) The applicant also has considerable support for her retention on active duty from both her superiors and her peers. In a letter dated 21 January 2022, Colonel D____ P. K____, 3rd Division Sustainment Brigade Commander, wrote:

I fully support and recommend that you approve [the Applicant's] request for retention on active duty. [The Applicant] has served the Army for over 16 years...[the Applicant] is a vital member of the 3DSB [3rd Division Sustainment Brigade] team...Admired by peers and subordinates alike, [the

Applicant] sets the example...Our force would suffer a significant loss without her vast experience and dedication to the Profession of Arms.

(h) Lieutenant Colonel R____ D. H____, 3rd Expeditionary Sustainment Command Surgeon, wrote a similar letter of support on the applicant's behalf. In his letter dated 8 January 2022, he stated:

[The Applicant] has an incredible working relationship with five task forces comprised of three COMPOs [components] dispersed over five countries. She has been nothing but completely professional in all her communications with me and my team...I fully support the continuation of [the Applicant's] Army Career. She is a model of what I look for in my noncommissioned officers. It would be a disservice to the future combat medics that she could develop for the continued success of the AMEDD [Army Medical Department] and Army. She has the capability to advise and mentor every level of soldier in the Army. What [the Applicant] brings to any unit or team is not easily found or replaced.

(i) In a 4 April 2022 letter for the Board, Command Sergeant Major (CSM) J____ W. E____, the applicant's battalion CSM during the events at the time, wrote that prior to 1SG K____ being assigned, he never witnessed anything but professional conduct by the applicant. He stated, in part:

I strongly believe that 1SG K____'s behavior towards [the Applicant] [w]as intentional and targeted and was a driving factor to the situation that led to [Applicant] receiving an Article 15 [DA Form 2627] and subsequent QMP selection. I believe [Applicant's] Article 15 [DA Form 2627] should be redacted from her record and she should be afforded continued service.

c. Conclusion. In light of the overwhelming evidence presented here, the applicant respectfully requests removal of the DA Form 2627 from her AMHRR and her retention on active duty. She has served over two decades, both at home and abroad, and has received nothing but stellar evaluations and accolades. The incident that led to the NJP at issue was an aberration and was directly related to the targeted abuse she suffered under 1SG K____. This abuse was witnessed by her supervising officers and eventually 1SG K____ was removed. However, this came too late to prevent the repercussions she suffered. Further, she was erroneously issued a letter of reprimand instead of a lesser letter of concern. It is not only in the best interest of the Army to retain her, but it is the outcome she is owed in light of the material error and injustice she has suffered despite her years of dedication to her country.

3. Following a period of enlisted service in the U.S. Army Reserve, the applicant enlisted in the Regular Army on 9 April 2009 in the rank/grade of staff sergeant/E-6.

4. The applicant was promoted to the rank/grade of SFC/E-7 effective 1 May 2019.
5. The memorandum for record from 1SG M____ Y. K____, 139th Military Police Company ((Applicant) Unsatisfactory Performance in a Leadership Position), 3 March 2020, states:

On 25 November 2019, [Applicant] failed to show up to an alert/Accountability/UVA [unit victim advocate] formation. 1SG attempted to call her and her phone didn't ring nor was leaving a message an option. [Applicant] was notified of the PAI [personnel asset inventory] via email that the company was to conduct during Urinalysis and the medics were required to set up a vision and PHA [periodic health assessment] station for the Soldiers. [Applicant] didn't show up or brief the other medics on their duties and responsibilities for the PAI. She willfully and negligently failed in her duties as a Senior Medic.

On 7 January 2020, [Applicant] was notified via email by SFC M____ along with the rest of the Senior Leaders in the company of the requirement to attend SLPT [senior leader physical training] and LPD [leader professional development] events for the whole month of January. She failed to come up on the net to inform any of the 139th MP CO [139th Military Police Company] leadership of her whereabouts before 0930. SFC M____ texted her and her excuse was that she had an appointment. She finally showed up at 1123. Senior leaders are expected to be at the appointed place and time, and she never kept her leadership informed.

On 13 January 2020, [Applicant] sent out a flu update and the commander requested a time and date when the next company SRP [Soldier Readiness Program] was scheduled. [Applicant] failed to respond to the Company Commander either via email or verbally to coordinate when and where for the company to execute SRP.

On 14 January 2020, (Applicant) failed to report to PT at 0630 and no one knew where she was. I received a text from her at 0645 stating that she locked herself out of her house and she never reported for accountability.

On 16 January 2020 at 0600, [Applicant] failed to have a medic during company sick-call hours. SPC [Specialist] N____ (medic) reported that all of the medics were at PT [physical training]. As the company medic, it is her job to place one of the four company medics to oversee sick call during the hours of 0600-0630.

On 16 January 2020 @ 0930, [Applicant] was a no show for Senior Leader Professional Development in the BN [battalion] Classroom as it is a reoccurring

event every week, and failed to keep the leadership informed. She provided no excuse.

On 21 February 2020, at approximately 0645, SPC Y____ said he locked his keys in his car and [Applicant] was going to drive him to his house to get his extra set, in which he lives right outside gate 1. [Applicant] never came back to the area that the company was doing PT. The CG [commanding general's] policy is that PT will be conducted between the hours of 0630-0800.

[Applicant] has failed in her duties as a Senior Leader by not leading by example and has failed miserably to demonstrate character, competence, and commitment through her 22 years of Army service. I think she has lost sight of what it means to live and uphold the Army ethics and standards. As a Senior Leader the Army depends on the willingness of their leaders and their subordinates to serve faithfully and competently in both leadership and followership roles. She continues to treat the Commander and First Sergeant with disrespect and contempt and fails to keep us informed. I recommend an Article 15 [NJP] and separation from the military service for her insubordination, unsatisfactory performance, and patterns of misconduct.

6. The DA Form 4856 (Development Counseling Form), 29 April 2020, shows the applicant was counseled by her executive officer for being recommended for field-grade NJP for "disrespect toward a superior commissioned officer" and having an adverse action flag initiated against her. She was notified that she was counseled on her behavior while escorting Private First Class (PFC) C_____. She was given a no-contact order due to her misconduct as well as her conduct during/after the counseling session. She agreed with the information on 29 April 2020.

7. She was considered for imposition of NJP under the provisions of Article 15, UCMJ, on 10 June 2020 at or near Fort Stewart, GA, for behaving with disrespect toward Captain (CPT) N____ B. H____, her superior commissioned officer in rank, then known by her to be her superior commissioned officer in rank, by contemptuously turning from and leaving him while he was speaking to her on or about 20 November 2019 in violation of Article 89, UCMJ.

a. She was afforded the right to consult with counsel. In a closed hearing and having considered all matters presented, the imposing commander found her guilty of the specification. The punishment included forfeiture of \$2,564.00 pay per month for 2 months, suspended, to be automatically remitted if not vacated on or before 13 January 2021, and a written reprimand.

b. The imposing commander directed filing the DA Form 2627 in the restricted folder of her OMPF on 13 July 2020. She did not appeal the finding and signed the form on the same date.

8. Lieutenant Colonel C____ A. G____, Commander, 385th Military Police Battalion, issued the applicant a written reprimand on 16 August 2020 wherein he stated:

I reprimand you for failing in your duties as a noncommissioned officer and a senior leader within the battalion. On 12 November 2019, CPT [Captain] H____ told you that PFC C____, a Soldier you were escorting, was not to contact Ms. M____ B____ due to a current, valid no-contact order placed by CPT H____'s predecessor, CPT R____ T____. CPT H____ told you this order was still in effect. You knowingly and willfully failed to uphold this order by choosing not to speak up or tell anyone when PFC C____ contacted Ms. B____ at his lawyer's direction. On 20 November 2019, you failed to take accountability for your actions when you told CPT H____ that you did not want to contradict PFC C____'s lawyer. You then disrespected your leadership by ignoring CPT H____'s order to stand by and by abandoning your military bearing when 1SG K____ told you to go to her office. Your actions have caused me to doubt whether you are able to perform at the level required of a Sergeant First Class.

The Army and this command have consistently emphasized the importance of living the Army Values and upholding the standards. As a Senior NCO [noncommissioned officer], you are expected to be the utmost professional at all times, lead from the front, and set the standard for good order and discipline for the unit. Your behavior demonstrates a severe lack of moral courage and personal accountability on your part and will not be tolerated. I expect you to review the Army's policy on your duties as a noncommissioned officer, and reflect on the serious impact that remaining silent in the face of misconduct can have on the unit and on your career.

You must remember that you are a noncommissioned officer in the Army, and as such, you are expected to adhere to a higher standard of personal conduct. I expect your future performance to reflect the degree of professionalism expected of every noncommissioned officer in the Army. Further violations may result in additional adverse action.

9. A review of the applicant's AMHRR shows the DA Form 2627 and allied documents, including the written letter of reprimand, are filed in the restricted folder of her AMHRR.

10. The HRC memorandum from the Chief, Transition Branch (Notification of Immediate Reenlistment Prohibition Code 13 Transaction), 21 January 2021, informed the applicant that the DA Form 2627, 13 July 2020, filed in her AMHRR made her

eligible for QMP Board consideration and of her options, including removal of the DA Form 2627 by the Army Board for Correction of Military Records (ABCMR).

11. The HRC memorandum from the Chief, Retirements and Separations Branch (Notification of Denial of Continued Active Duty Service under the QMP), 5 January 2022, informed the applicant that a QMP Board recommended her denial of continued active duty service. As a result, the Director of Military Personnel Management approved the board's recommendation and she would be involuntarily discharged from the Army no later than 1 July 2022. The Retirements and Separations Branch Chief also informed her that she had three options: (1) request voluntary retirement if eligible in lieu of involuntary separation as a result of QMP, (2) request an earlier separation date, or (3) request reconsideration of the decision and request retention on active duty.

12. The DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 5 January 2022, shows a flag was initiated against the applicant's records effective 5 January 2022 by HRC due to her involuntary separation action.

13. Counsel's memorandum ((Applicant) QMP Appeal), 3 February 2022, with auxiliary documents, appealed the applicant's 5 January 2022 notification of denial continued service under the QMP (see exhibit 9).

14. The HRC memorandum from the Chief, Force Alignment Division (Reconsideration of Involuntary Separation under the QMP, (Applicant)), 25 February 2022, informed the applicant that her request for reconsideration did not meet the criteria set forth in Army Regulation 635-200, paragraph 16-11, and was therefore returned without action. The Force Alignment Division Chief further informed her that she may apply to this Board if she decided to seek removal of the DA Form 2627 from her records.

15. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 26 October 2022, shows a PEB convened at Joint Base San Antonio, TX, on 12 October 2022 to determine the applicant's medical fitness for continued service in the Army. The PEB determined she was physically unfit and recommended a disability rating of 10 percent and her separation with severance pay. She concurred with the recommendation and waived a formal hearing of her case on 20 October 2022.

16. The applicant was honorably discharged in the rank of SFC on 24 January 2023 by reason of disability (non-combat related) with severance pay. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 13 years, 9 months, and 17 days of net active service during this period; 3 years, 6 months, and 22 days of total prior active service; and 8 years, 1 month, and 29 days of total prior inactive service. She was assigned reentry eligibility code 3.

17. Counsel additionally provided the following documents for consideration:

- a. nine memorandums/statements of support, 8 January 2022 through 4 April 2022, from the applicant's subordinates attesting to her character, value as a noncommissioned officer, and professionalism, and requesting her retention in the Army (exhibit 11); and
- b. a letter from the applicant's former battalion CSM, 4 April 2022, described above (see exhibit 12).

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The Board through counsel considered the applicant's record of service, documents submitted in support of the request and executed a comprehensive and standard review based on law, policy and regulation. One potential outcome was to grant partial relief to remove the Article 15 based on the applicant's commander's intent to issue a letter of concern not an Article 15. However, upon review through counsel of the applicant's request, available military records and U.S. Army Human Resources Command-Retirements and Separations Branch and Force Alignment Division (Reconsideration of Involuntary Separation under the QMP memorandums for denial, the Board majority concurred with the advising official finding the applicant's counsel did not demonstrate by a preponderance of evidence of the Article 15 are substantially incorrect and support removal.
2. The Board heavily weighed the numerous strong reference character letters of support and her continued service after receiving the Article 15. However, the Board noted the applicant did not appeal the finding and signed the form on the same date without providing any rebuttal speaking to the fact of fiction of the Article 15. The Board found no evidence the Article 15 was unjust or untrue or inappropriately filed in the applicant's military record. Therefore, relief was denied for removal of the DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), 10 June 2020, with allied documents from the restricted folder of her Army Military Human Resource Record (AMHRR); and reinstatement to active duty in the Regular Army in her discharge rank of sergeant first class (SFC).
3. The purpose of maintaining the Army Military Human Resource Record (AMHRR) is to protect the interests of both the U.S. Army and the Soldier. In this regard, the AMHRR serves to maintain an unbroken, historical record of a Soldier's service, conduct, duty performance, and evaluations, and any corrections to other parts of the AMHRR. Once placed in the AMHRR, the document becomes a permanent part of that file and will not be removed from or moved to another part of the AMHRR unless directed by an appropriate authority. The Board agreed, there does not appear to be

any evidence the contested Article 15 was unjust or untrue or inappropriately filed in the applicant's AMHRR.

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 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 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 addresses filing of NJP and provides that a commander's decision whether to file a record of NJP in the performance folder of a Soldier's OMPF is as important as the decision relating to the 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 3-28 (Setting Aside and Restoration) states:

(1) This 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 under Article 15. The basis for any set aside action is a determination that, under all the circumstances of the case, the punishment has resulted in a clear injustice. "Clear injustice" means there exists an unwaived legal or factual error that clearly and affirmatively injured the substantial rights of the Soldier. An example of clear injustice would be the discovery of new evidence unquestionably exculpating the Soldier. Clear injustice does not include

the fact that the Soldier's performance of service has been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on the retention or promotion potential of the Soldier.

(2) Normally, the Soldier's uncorroborated sworn statement will not constitute a basis to support setting aside punishment.

(3) In cases where administrative error results in incorrect entries on the DA Form 2627 or DA Form 2627-1 (Summarized Record of Proceedings under Article 15, UCMJ), the appropriate remedy generally is an administrative correction of the form and not setting aside of punishment.

(4) The power to set aside an executed punishment and to mitigate a reduction in grade to a 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 according to DA Form 2627, notes 11 and 12; DA Form 2627-1, notes 9 and 10; or DA Form 2627-2 (see paragraph 3-38b). 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 3-37b(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 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 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.

d. Paragraph 3-43 contains guidance for transfer or removal of DA Forms 2627 from the OMPF. Applications for removal of a DA Form 2627 from the OMPF 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.

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. Unfavorable information will not be filed in the AMHRR unless the recipient has been given the opportunity to review the documentation that serves as

the basis for the proposed filing and a reasonable amount of time to make a written statement in response.

4. 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 OMPF, finance-related documents, and non-service related documents deemed necessary to store by the Army.

a. Paragraph 3-6 states 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 states 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 in 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 a report be filed in the performance folder that the imposing commander directed to be filed in the restricted folder. Records of NJP presently filed in either the performance or restricted folder of the OMPF will remain so filed, subject to other applicable regulations.

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE-1 applies to Soldiers completing their terms of active service who are considered qualified for enlistment if all other criteria are met
- RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, but the disqualification is waivable – they are ineligible unless a waiver is granted

6. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, and authority for separation of Soldiers upon expiration term of service or fulfillment of active duty obligation, and the general provisions governing the separation of Soldiers before expiration term of service or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers. The regulation implements laws and policies governing voluntary retirement of Soldiers for length of service, and criteria governing uncharacterized separations and the issuance

of honorable, general, and under other than honorable conditions discharges within the Department of the Army. Paragraph 16-11 (Enlisted Qualitative Management Program) contains the policies and procedures for voluntary and involuntary separation for the convenience of the Government of Regular Army, and U.S. Army Reserve Active Guard Reserve noncommissioned officers (staff sergeant and above), under the QMP.

7. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), establishes the Army Physical Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his/her office, grade, rank, or rating.
8. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent.

//NOTHING FOLLOWS//