

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 February 2025

DOCKET NUMBER: AR20240004320

APPLICANT REQUESTS: removal of Headquarters and Headquarters Battalion, 10th Mountain Division (Light Infantry), Order 301-001, 29 November 2021, from his Official Military Personnel File (OMPF).

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)
- Headquarters, 81st Regional Support Command, Orders 14-102-00039, 12 April 2014
- Headquarters and Headquarters Battalion, 10th Mountain Division (Light Infantry), Order 301-001, 29 November 2021
- Headquarters, 10th Mountain Division Artillery, Memorandum for Record (Supplementary Action under Article 15, Uniform Code of Military Justice (UCMJ), (Applicant), 9 August 2022
- DA Form 2627-2 (Record of Supplementary Action under Article 15, UCMJ), 22 September 2022

FACTS:

1. The applicant states he was promoted to the rank/grade of staff sergeant (SSG)/E-6 effective 1 April 2014. His nonjudicial punishment (NJP) under Article 15, UCMJ, was successfully set aside in 2021, resulting in reversal of all penalties and restoration of his previous date of rank. Headquarters and Headquarters Battalion, 10th Mountain Division (Light Infantry), Order 301-001, 29 November 2021, is erroneous and should be deleted from his OMPF as a misfiling error.
2. He enlisted in the U.S. Army Reserve on 8 April 2008.
3. Headquarters, 81st Regional Support Command, Orders 14-102-00039, 12 April 2014, promoted him to the rank/grade of SSG/E-6 effective 1 April 2014.

4. He was discharged from the U.S. Army Reserve in the rank/grade of SSG/E-6 on 11 June 2017 for immediate enlistment in the Regular Army. He enlisted in the Regular Army on 12 June 2017.

5. Headquarters and Headquarters Battalion, 10th Mountain Division (Light Infantry), Order 301-001, 29 November 2021, promoted him to the rank/grade of SSG/E-6 effective 1 November 2021.

6. The applicant provided the Headquarters, 10th Mountain Division Artillery, memorandum for record from the commander (Supplementary Action under Article 15, UCMJ, (Applicant)), 9 August 2022, stating the discovery of new evidence unquestionably exculpates the applicant of both specifications cited in his DA Form 2627 (Record of Proceedings under Article 15, UCMJ), 28 May 2020. As a result, he wholly set aside the applicant's NJP. (Note: His Army Military Human Resource Record (AMHRR) does not contain the originating DA Form 2627 describing the misconduct and punishment imposed.)

7. The applicant provided the DA Form 2627-2 (Record of Supplementary Action under Article 15, UCMJ), 22 September 2022, from the 10th Mountain Division Artillery Commander setting aside all punishment imposed on 28 May 2020 and restoration of all rights, privileges, and property.

8. The applicant's Enlisted Record Brief, 22 November 2022, shows his rank/grade as SSG/E-6 effective 1 April 2014.

9. The U.S. Army Human Resources Command memorandum from the Chief, Enlisted Promotions Branch (Advisory Opinion – (Applicant)), 10 January 2024, recommends denial of the applicant's request.

a. The Enlisted Promotions Branch Chief states the applicant's name appeared on the by-name list for promotion to the rank/grade of SSG/E-6 for 1 November 2021.

b. The applicant references NJP under Article 15, UCMJ, being vacated. The DA Form 2627-2 was not provided with his application to substantiate the punishment being set aside and restoration defined as 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 by the imposing commander.

c. For the applicant's request to be approved, he needs to provide the DA Form 2627-2 showing his punishment was set aside and restored.

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 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 request, available military records and the U.S. Army Human Resources Command- Chief, Enlisted Promotions Branch advisory opinion, the Board-considered the advising official recommendation for disapproval finding the applicant needs to provide the DA Form 2627-2 showing his punishment was set aside and restored. The Board noted the applicant's contentions that this order is erroneous and reflects a misfiling, as it inaccurately documents a promotion to staff sergeant (SSG)/E-6 effective 1 November 2021, despite his original promotion to that rank having occurred on 1 April 2014.
2. The Board determined the applicant's records record confirms that Headquarters, 81st Regional Support Command issued Orders 14-102-00039 on 12 April 2014, promoting the applicant to SSG/E-6 effective 1 April 2014. He maintained that rank through his transition from the U.S. Army Reserve to the Regular Army in June 2017. Furthermore, the applicant provided compelling documentation showing that his nonjudicial punishment (NJP) under Article 15, UCMJ, imposed on 28 May 2020, was wholly set aside by the 10th Mountain Division Artillery Commander via DA Form 2627-2, dated 22 September 2022. The supplementary memorandum dated 9 August 2022 affirmed that new evidence exculpated the applicant of all charges, resulting in full restoration of rights, privileges, and property, including his original date of rank. His Enlisted Record Brief, dated 22 November 2022, correctly reflects his rank/grade as SSG/E-6 effective 1 April 2014.
3. Although the U.S. Army Human Resources Command (HRC) advisory opinion recommended denial, citing the absence of DA Form 2627-2 in the original application, the applicant has since provided the required documentation substantiating the set-aside action. The Board found that Order 301-001 was issued in error following the NJP and no longer reflects the applicant's corrected promotion history. Its continued presence in the OMPF misrepresents the applicant's career progression and contradicts the official record of restoration. Therefore, the Board granted relief for removal of Headquarters and Headquarters Battalion, 10th Mountain Division (Light Infantry), Order 301-001, dated 29 November 2021, from his OMPF.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing the Headquarters and Headquarters Battalion, 10th Mountain Division (Light Infantry), Order 301-001, 29 November 2021, from his Official Military Personnel File (OMPF).

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 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 non-punitive 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 non-punitive 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. 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.

b. If all findings are set aside, then the Article 15, UCMJ, 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 Article 15, UCMJ, or punishment 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.

c. When a commander sets aside any portion of the punishment, the commander will record the basis for this action on a DA Form 2627-2.

3. 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. 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.

//NOTHING FOLLOWS//