

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 April 2025

DOCKET NUMBER: AR20240007796

APPLICANT REQUESTS:

- Removal and set aside his Non-Judicial Punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) and restoration of his rank/grade to sergeant (SGT)/E5
- a personal appearance before the Board via video or telephonically

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 4856 (Developmental Counseling) dated 17 January 2023 shows the applicant was counseled and agreed to the counseling; to inform him of his responsibilities as a Noncommissioned Officer (NCO) and:
 - Failure to follow directions of reporting a Commander's Critical Information Requirements (CCIR) and Serious Incident Reporting (SIR)
 - Failure to maintain good order and discipline on and off post
 - Actions unbecoming a NCO
- DA Form 4856 dated 6 April 2023 shows the applicant was counseled that he was being flagged pending a commander's investigation regarding an April Fool's joke in which he contacted the operations cell to inform them he left his weapons lock box that contained sensitive items at a gas station which he agreed
- DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag) dated 6 April 2023 the applicant was flagged pending a commander's investigation
- DA Form 268 dated 17 April 2023 the applicant was flagged for adverse action
- DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice)
- Soldier Talent Profile
- Text Message shows on 10 April (unknown year) the applicant asked a staff sergeant if he would write a statement in his defense, the response was "no problem as soon as he found out what the action was"

FACTS:

1. The applicant states:

- NJP was for disrespect of a NCO; however, the NCO he disrespected offered to support him in his defense for adverse action
- He possesses the text message which shows the NCO's support
- The battalion command team was relieved prior to completion of their tenure
- The NCO that was said to have been disrespected was never interviewed during the investigation
- He had multiple character references and provided matters of extenuation which was debunked
- DA Forms 4856 were submitted as part of the Article 15 that were unrelated to the NJP
- He was not allowed to take leave and was erroneously charged 6-days of leave

2. A review of the applicant's service record shows:

- On 31 December 2019, he enlisted in the Regular Army (RA)
- On 21 June 2020, he was assigned to the 554th Military Police Company by Orders Number 121-729 dated 30 April 2020
- On 10 June 2022, he achieved the Commandant's list at the Basic Leaders Course during the period of 18 May through 14 June 2022, included a comment of he often demonstrates mental agility through actions and decisions
- Enlisted Record Brief shows he was promoted to the rank of SGT. effective 1 September 2022
- On 18 January 2023, he was awarded the Army Achievement Medal for his leadership, professionalism and dedication to duty by Orders Number 4003231 dated 10 February 2023
- DA Form 2166-9-1 (NCO Evaluation Report (SGT)) for the rating period of 1 September 2022 through 1 May 2023 shows he:
 - Failed to uphold the Army values
 - Displayed unacceptable behavior
 - Demoted due to making an insensitive joke
 - Set a negative example for Soldiers
 - Socialized in an unprofessional manner with junior Soldiers
 - Avoided responsibility to develop subordinates
 - Lacked self-confidence and failed to avoid negative influences
 - Relieved as a team leader due to Article 15 and reduced to specialist (SPC)
 - Failure to follow guidelines for proper reporting procedures for CCIRs
- On 23 May 2023, he accepted NJP for disrespectful behavior towards a NCO, his punishment included:

- Reduction to SPC/E-4
- 45-days extra duty suspended to be automatically remitted if not vacated before 23 August 2023
- Oral reprimand

- On 23 May 2023, he was reduced in rank to SPC due to misconduct by Orders Number 5016469 dated 12 June 2023
- On 9 August 2023, he was assigned to the 142 Military Police Company, Camp Humphreys, Korea by Orders Number 5632625 dated 9 August 2023
- On 1 January 2024, he was laterally appointed to the rank of corporal by Orders Number 6895715 dated 1 January 2024
- On 1 February 2024, he was promoted to the rank of SGT by Orders Number 7136035 dated 31 January 2024
- On 6 August 2024, he was awarded the Army Achievement Medal for outstanding service as a team leader by Orders Number 9488088 dated 12 September 2024
- On 19 September 2024, he reenlisted in the RA

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. Based upon the available documentation showing the applicant accepted non-judicial punishment, did not appeal the findings and punishment at the time, and was afforded all due process during the processing of the Article 15, the Board concluded there was insufficient evidence of an error or injustice warranting removal of the contested Article 15.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//

X

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 (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 applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
2. AR 27-10 (Military Justice) in effect at the time, prescribes 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. Paragraph 3-28 (Setting aside and restoration), 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 UCMJ, Article 15. 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 UCMJ, Article 15 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 UCMJ, Article 15 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. 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. The Soldier's uncorroborated

sworn statement will not constitute a basis to support the setting aside of punishment. 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 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.

//NOTHING FOLLOWS//