

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20240007826

APPLICANT REQUESTS:

- removal of nonjudicial punishment (NJP) and associated documents from the restricted portion of his Army Military Human Resources Record (AMHRR)
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record) and an online application, 5 June 2024
- letter of support, Captain (CPT) [REDACTED] 7 February 2024
- letter of support, CPT [REDACTED] 19 March 2024
- memorandum for record, First Sergeant (1SG) [REDACTED] 19 March 2024

FACTS:

1. The applicant states incorrect legal advice was given to him during the company-grade nonjudicial punishment proceedings. The battalion legal team notified him, his company commander, and his first sergeant, that filing the DA Form 2627 (Record of Proceedings Under Article 15 of the Uniform Code of Military Justice) in the restricted section of his record would keep the proceedings recorded locally and not permanently follow his career in the AMHRR. As a result, the Qualitative Management Program and the Director of Military Personnel Management recommended denial of his continued service on active duty, and an involuntary discharge no later than December 2024.

2. The applicant provides three letters of support from members of his command outlining his service and his performance on active duty.

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

a. On 9 August 2016, he enlisted in the Regular Army for 3 years and 30 months. Following a series of reenlistments, he attained the rank/grade of staff sergeant (SSG)/E-6 on 1 April 2022.

b. On 17 April 2023, his company commander counseled him for substandard performance and notified him a FLAG (Suspension of Favorable Personnel Actions) (DA Form 268) was being imposed against him as the result of adverse actions. He understood he was being considered for a rehabilitative transfer or an adverse action could be taken against him, including separation. He agreed in writing with the counseling.

c. On the same date a FLAG was imposed against him.

d. On 21 April 2023, he accepted company grade NJP for on divers occasions between on or about 15 February 2022 and 1 November 2022, wrongfully engage in a prohibited relationship with a junior enlisted Soldier. His punishment consisted of forfeiture of \$866.00 (suspended), extra duty for 14 days, and a written reprimand. He did not appeal this punishment. The supporting documentation includes:

(1) The written sworn statements of seven Soldiers;

(2) A rights warning statement from the applicant in which he declined to make a statement;

(3) Two noncommissioned officer evaluation reports of his duty performance;
and

(4) bank statements, showing transactions from March 2023 to April 2023.

e. Orders 194-0200, issued by Headquarters, U.S. Army Garrison and Fort Campbell on 12 July 2024, reassigned him to the Army transition point for processing with a discharge date of 1 December 2024.

f. On 1 December 2024, he was honorably discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he was discharged by reason of completion of required active service after having completed 8 years, 3 months, and 23 days of net active service.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 petition and available military record, the Board found that all due process protections were afforded the applicant and that the processing of nonjudicial punishment was done within regulatory guidelines and standards. The Board noted the applicant's serious misconduct accurately reflected being found guilty (UCMJ) for a prohibited relationship with a junior Soldier.

2. 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. There does not appear to be any evidence the contested Article 15 or the DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ) was unjust or untrue or inappropriately filed in the applicant's AMHRR. For that reason, the Board agreed that denying the requested relief was appropriate.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

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 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, paragraph 2-11 reads 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. Army Regulation 600-20 (Army Command Policy) prescribes the policy and responsibilities of command which include the wellbeing of the force, military discipline and conduct, the Army Equal Opportunity Program, and the Army Sexual Assault Victim Program. Paragraph 4-14b states relationships between Soldiers of different rank are prohibited if they compromise, or appear to compromise, the integrity of supervisory authority or the chain of command; cause actual or perceived partiality or unfairness; involve, or appear to involve, the improper use of rank or position for personal gain; are, or are perceived to be, exploitative or coercive in nature; or create an actual or clearly

predictable adverse impact on discipline, authority, morale, or the ability of the command to accomplish its mission.

3. Army Regulation 27-10 (Military Justice) prescribes the policies and procedures pertaining to administration of military justice.

a. Paragraph 3 states NJP is imposed to correct misconduct as a result of intentional disregard of or failure to comply with prescribed standards of military conduct in violation of the UCMJ. NJP may be set aside or removed upon a determination that under all the circumstances of the case, a clear injustice has resulted.

b. Paragraph 3-37a, states the original DA Form 2627 will include allied documents, such as all written statements and other documentary evidence considered by the imposing commander or the next superior authority acting on an appeal.

c. Paragraph 3-37b(1)(a) states the decision to file the original DA Form 2627 in the performance or restricted folders in the Official Military Personnel File (OMPF) will be made by the imposing commander at the time NJP is imposed. The filing decision of the imposing commander is subject to review by superior authority. For Soldiers in the ranks of sergeant and above, the original will be sent to the appropriate custodian for filing in the OMPF.

d. "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.

4. Army Regulation 600-8-2 (Suspension of Favorable Personnel Actions (Flag)) prescribes Army policy for the suspension of favorable personnel actions function of the military personnel system.

a. Paragraph 2-9 provided that only officers authorized to direct initiation of a flag may direct removal of a flag (for example, the unit commander, a general officer, commandant, or head of a Department of the Army staff or field operating agency) unless otherwise directed by this regulation or Commander, HRC.

b. Authentication will be in accordance with this regulation. For Soldiers separating while flagged, the DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)) may be authenticated by the officer in charge of the in-and out-processing work center after coordination with the losing commander. For USAR and Army National

Guard personnel, the final disposition of a DA Form 268 will be authenticated by the unit commander or by the personnel officer of the headquarters issuing the separation order.

c. DA Form 268 and supporting documentation removing a flag must be maintained for 1 year by the unit or the HR office controlling the flagging action. A flag closed as erroneous will be declared void and of no effect.

d. Remove the flag when the Soldier is acquitted at court-martial or civilian trial and no other adverse action arising from the incident or charges is contemplated; when UCMJ action is closed or dropped without action; or when punishment from court-martial, civilian trial, or NJP is completed. If a court-martial has adjudged a punitive discharge, the individual will remain flagged until the conviction is final in accordance with Rule for Courts-Martial 1209, Manual for Courts-Martial. If there is a suspension of punishment (for example, under Article 15, UCMJ) or the imposition of probation or parole (usually for civilian misconduct), that individual will remain flagged until the suspension, probationary, or parole period is over. This does not include suspension of a driver's license. If the duration of punishment, suspension, probation, or parole is over 1 month, the unit should consider if the adverse action flag should be converted to a transferable "punishment phase" flag, if appropriate. In this case, the "adverse action" flag is lifted the same date the "punishment phase" flag is initiated. If the Soldier receives punishment and subsequently appeals, the flag will be removed when punishment is complete; the Soldier will only remain flagged if the appeal puts the punishment on hold or suspension.

//NOTHING FOLLOWS//