

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20240008178

APPLICANT REQUESTS:

- revocation and removal of a DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ))
- restoration of his rank to private first class (PFC)/E-3

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states

a. He received two Articles 15 during his military service. The first one was justified because he did not show for duty, he was wrong, and he deserved it. The second one he did not deserve. He was getting married on 10 November 1979 and he went to the retention office because he wanted to reenlist and go overseas with his soon to be wife. His noncommissioned officer in charge (NCOIC) found out and his name magically shows up on the duty roster. He received an Article 15 for failure to report. He was also barred to reenlist. He is asking that the Article 15 be revoked and his rank restored to PFC/E-3 so that when he dies, on his tombstone, the rank of PFC can be put there instead of private/E-2 (PV2). It is a matter of honor for him.

b. His NCOIC did not like him and did not want him to reenlist. He did not receive counseling statements, was not in trouble, but when his NCOIC found out that he was getting married and wanted to reenlist and leave Fort Huachuca, AZ, he got mad. Next thing he knows his name magically appears on a duty roster. He was threatened about canceling his leave and marriage. He went to the Office of the Staff Judge Advocate

because that is where they sent him, they said it was legal. He did not want a court-martial, so he went ahead and signed it so he could get married.

c. His rank never bothered him because he served his country. He did one foolish thing and deserved the first Article 15, but he would like to have his second Article 15 removed so his rank of PFC/E3 can be restored because it would be more of an honor on a tombstone to show PFC instead of PV2. He should have never received the second Article 15, but because he was threatened, he went ahead and signed it.

3. The applicant enlisted in the Regular Army on 1 February 1977. His DA Form 2-1 (Personnel Qualification Record-Part II) shows in section 18 (Appointments and Reductions) he was promoted to the rank and grade PFC/E-3 effective 1 February 1978.

4. The applicant's records contain a DA Form 2627 showing that on 21 July 1978, while serving in the rank of PFC/E-3, he received nonjudicial punishment under the provisions of Article 15, UCMJ, for failing to go at the time prescribed to his appointed place of duty. The punishment consisted of reduction to the rank and grade of PV2/E-2 and extra duty for 10 days, two hours per day.

5. The applicant's DA Form 2-1 shows he was again promoted to PFC/E-3 effective 1 April 1979.

6. The applicant's records contain a second DA Form 2627 showing that on 9 November 1979, he received nonjudicial punishment under the provisions of Article 15, UCMJ, for failing to go at the time prescribed to his appointed place of duty. The punishment consisted of reduction to PV2/E-2.

7. The applicant's DD form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released from active duty, in the rank and grade of PV2/E-2 and transferred to the U.S. Army Reserve on 31 January 1980.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the applicant's statement and the lack of evidence showing the applicant was not afforded all due process in the processing of the two Article 15 actions, the Board concluded there was insufficient evidence of an error or injustice warranting removal of any document from the applicant's military record.

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//  
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 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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

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 states:

a. A commander should use nonpunitive administrative measures to the fullest extent to further the efficiency of the command before resorting to nonjudicial

punishment (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.

b. Applications removal of an Article 15 from the Official Military Personnel File based on an error or injustice will be made to the ABCMR. It further indicates there must be clear and compelling evidence to support the removal of a properly completed, facially-valid DA Form 2627 from a Soldier's record by the ABCMR.

c. The regulation also provides guidance on setting aside punishment and restoration of rights, privileges, or property affected by the portion of the punishment set aside. It states 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 that 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.

//NOTHING FOLLOWS//