

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 March 2025

DOCKET NUMBER: AR20240008373

APPLICANT REQUESTS:

- Removal of DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) from her Army Military Human Resource Record (AMHRR)
- Removal of DA Form 2166-9-2 (Noncommissioned Officer Evaluation Report (NCOER)) for the period ending 16 June 2021 from her AMHRR

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

- DD Form 149 (Application for Correction of Military Record)
- DA Forms 2166-9-2 (NCOER)
- Certificates of Training
- Letter of Congratulations
- Orders 006790522 Award of the Meritorious Service Medal
- Letter of Recommendation

FACTS:

1. The applicant states she would like her Article 15 and "not met standard" NCOER removed from her AMHRR or moved from viewing in order for her to be competitive for the upcoming promotion board. She has never been in trouble before the Article 15 or after the incident. She has held the standard the entire time and she sought the Article 15, due to the injustice by what her previous battalion decided to do to the other Soldier involved. The battalion originally gave her a letter of reprimand, but once she heard they forced the other Soldier out of the Army, she reached back and asked that she be punished properly. She could not take the injustice so she requested an Article 15. This has been held against her since 2021. She had top block NCOERs before and after the incident. She was told if she continued to serve with nothing negative, the Article 15 and NCOER would not be held against her, but it has continued to be used to disqualify her for promotion since 2021. If the Board cannot remove them, please move them so she

will be competitive for the upcoming promotion board. She has served 17 years for this one negative incident to be used against her for three years and counting.

2. The applicant provides certificates of training; a letter of congratulations, 22 February 2023, for being selected among Army Training and Doctrine Command's best Military Police; orders showing she was awarded the Meritorious Service Medal, 12 September 2023; and a letter of recommendation for promotion, 29 April 2024.

3. The applicant's service record contains the following documents:

a. She entered the Regular Army, as an enlisted Soldier, on 21 June 2007. She remains in the Regular Army through immediate reenlistment.

b. On 11 May 2021, she accepted nonjudicial punishment, in the rank of sergeant first class, for wrongfully engaging in an inappropriate relationship with Sergeant L- H-, a person who she was rating. The investigation that resulted in her receiving nonjudicial punishment is available for the Board's review.

c. Her NCOERs show she was consistently rated as far exceeded standard/exceeded standard/met standard and highly qualified/qualified prior to the incident. Her NCOER for the period ending 16 June 2021, shows she was rated as did not meet standard in character.

d. Her NCOERS, after the incident, show she was consistently rated as far exceeded standard/exceeded standard and highly qualified.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation.

a. Removal of DA Form 2627 from her AMHRR. Partial Grant. The applicant accepted nonjudicial punishment in May 2021 for engaging in an inappropriate relationship with a subordinate she rated. While the misconduct was properly adjudicated and documented, the applicant has demonstrated a consistent pattern of exemplary service both before and after the incident. Her NCOERs prior to the event reflect strong performance, and her evaluations following the incident show a return to high standards, including ratings of "far exceeded standard" and "highly qualified." She has also received notable recognition, including selection among TRADOC's best Military Police, the award of the Meritorious Service Medal, and a recent letter of recommendation for promotion. The Board minority determined the applicant was a

senior noncommissioned officer and there was insufficient evidence to remove or transfer the Article 15.

b. Removal of DA Form 2166-9-2. Partial Grant. The applicant has served honorably for over 17 years, and this single incident has continued to adversely affect her career progression despite her sustained record of excellence. She has taken responsibility for her actions and has shown a commitment to professional growth and accountability. The Board minority determined the applicant was a senior noncommissioned officer and there was insufficient evidence to remove or transfer the NCOER.

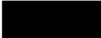
c. In light of her continued service, demonstrated rehabilitation, and the impact of the documents on her promotion competitiveness, the Board majority concluded transferring the Article 15 and associated NCOER to the restricted fiche is appropriate and consistent with Army Regulation 600-37.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by transferring the Article 15, 11 May 2021 and the NCOER, for the rating period ending 16 June 2021 from the performance folder to the restricted folder of her AMHRR.
2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to removing the Article 15 and NCOER from the applicant's AMHRR.



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 27-10 (Military Justice) prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial.

a. Paragraph 3-2 provides that a commander should use nonpunitive measures to the fullest extent to further the efficiency of the command before resorting to nonjudicial punishment. 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 whom 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. Paragraph 3-6 addresses filing determination of NJP and provides that a commander's decision whether to file a record of NJP in the performance folder of a Soldier's AMHRR is as important as the decision on whether to impose NJP punishment itself. In making a filing determination for a record of NJP which does not include a finding of guilty to a sex-related offense, the imposing commander must weigh carefully 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, evidence of serious character deficiency, or substantial breach of military discipline. In such cases, the record should be filed in the performance portion of the Soldier's AMHRR.

c. Paragraph 3-37b(1)(a) states, in effect, that for Soldiers in the ranks of SGT and above, the original will be sent to the appropriate custodian for filing in the AMHRR. The decision to file the original DA Form 2627 in the performance folder or restricted folder in the AMHRR 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 that a UCMJ, Article 15 report be filed in the performance portion that the imposing commander directed to be filed in the restricted portion.

d. Paragraph 3-43, Table 3-2 (Removal of Records of NJP from Military Personnel Files), Rule 3, states that if the Soldier applies to ABCMR for transfer of records of NJP punishment from the performance portion of the AMHRR on the basis that evidence exists which demonstrates error or injustice to a degree justifying removal, then the record of NJP (DA Form 2627) filed in the performance portion of the AMHRR will, on approval of the member's application, be processed in accordance with the instructions of the ABCMR.

2. Army Regulation 623-3 (Evaluation Reporting System), effective 1 April 2014 and in effect at the time, prescribed the policies and tasks for the Army's Evaluation Reporting System.

a. The rater will document any substantiated finding on an Army or Department of Defense investigation or inquiry, that the rated Soldier committed an act of sexual harassment or sexual assault. Paragraph 2-14 (The Senior Rater) will do the same.

b. Army Regulation 60-20 (Army Command Policy) provides policy for when items will be mentioned in a Soldier's evaluation report when substantiated by a completed command or other official investigation to include investigations by civil authorities.

c. No reference will be made to an incomplete investigation concerning a Soldier. References will be made only to actions or investigations that have been processed to completion, adjudicated, and had final action taken before submitting and evaluation.

d. Any verified derogatory information may be entered on an evaluation report. This is true whether the rated Soldier is under investigation, flagged or awaiting trial. While the fact that a rated Soldier is under investigation or on trial may not be mentioned in and evaluation until the investigation or trial is completed, this does not preclude the rating chain's reference to verified derogatory information. For example, when an interim evaluation report with verified information is made available to a commander, the verified information may be included in the evaluation report. For all evaluation reports, if previously reported information later proves to be incorrect or erroneous, the Soldier will be notified and advised of the right to appeal the evaluation report.

e. An appeal will be supported by substantiated evidence. An appeal that alleges an evaluation report is incorrect, inaccurate, or unjust without usable supporting evidence will not be considered. The determination regarding adequacy of evidence may be made by the HQDA Evaluation Appeals Branch, National Guard Bureau Appeals Section, or the appropriate State Adjutant General (Army National Guard).

f. Substantive appeals will be submitted within 3 years of an evaluation report "THRU" date. Failure to submit an appeal within this time would require the appellant to submit his or her appeal to the ABCMR. The Army Special Review Board will not accept

appeals over 3 years old or appeals from Soldiers who are no longer serving on active duty or as part of the U.S. Army Reserve or Army National Guard.

g. The burden of proof in the appeal process rests with the appellant. Accordingly, to justify deletion or amendment of an evaluation report, the appellant will produce evidence that establishes clearly and convincingly that:

(1) the presumption of regularity will not be applied to the evaluation report under consideration and

(2) action is warranted to correct a material error, inaccuracy, or injustice.

h. Clear and convincing evidence will be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. If the adjudication authority is convinced that an appellant is correct in some or all of the assertions, the clear and convincing standard has been met with regard to those assertions.

i. For a claim of inaccuracy or injustice of a substantive type, evidence will include statements from third parties, rating officials, or other documents from official sources. Third parties are persons other than the rated officer or rating officials who have knowledge of the appellant's performance during the rating period. Such statements are afforded more weight if they are from persons who served in positions allowing them a good opportunity to observe firsthand the appellant's performance as well as interactions with rating officials. Statements from rating officials are also acceptable if they relate to allegations of factual errors, erroneous perceptions, or claims of bias. To the extent practicable, such statements will include specific details of events or circumstances leading to inaccuracies, misrepresentations, or injustice at the time the evaluation report was rendered. The results of a Commander's or Commandant's Inquiry or Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) investigation may provide support for an appeal request.

3. Department of the Army Pamphlet 623-3 (Evaluation Reporting System), 31 March 2014, provided procedural guidance for completing and submitting evaluation reports and associated support forms to HQDA that are the basis for the Army's Evaluation Reporting System. Paragraph 6-1 (Deciding to Appeal) states an appellant who perceives that an evaluation report is inaccurate in some way has the right to appeal for redress to the appropriate agency. However, before actually preparing an appeal, an objective analysis of the evaluation report in question should be made.

4. Army Regulation 600-8-104 (AMHR Management) prescribes Army policy and procedure for the creation, utilization, administration, maintenance, and disposition of the AMHRR.

a. This regulation states the OMPF is reflective of a Soldier's permanent record stored in iPERMS. There are various folders within the OMPF, which document a Soldier's military career. Not every Soldier's OMPF will have the same number and types of folders. The types and number of folders will differ based on career path and status. Table 3-1 notes the OMPF folders in the AMHRR.

b. The performance folder of the OMPF contains performance related information. The primary purpose of this folder is to provide necessary information to officials and selection boards tasked with assessing Soldiers for promotion, special programs, or tours of duty. This folder populates various board related applications (for example, Army Selection Board System and National Guard Army Board System).

c. The restricted folder of the OMPF contains documents that may normally be considered improper for viewing by selection boards or career managers. Includes masked documents defined in paragraph 3-10.

//NOTHING FOLLOWS//