

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2025

DOCKET NUMBER: AR20240008424

APPLICANT REQUESTS: the removal of a DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), dated 21 May 2019, from his official military personnel file (OMPF) and a personal appearance hearing before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2627 dated 21 May 2019
- Documents associated to DA Form 2627 dated 6 December 2021 (DA Form 2627 not provided)
- DA Form 1059 (Service School Academic Evaluation Report)
- DA Form 2166-9-2 (Noncommissioned Officer (NCO) Evaluation Report)

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, in effect:

a. The evidence presented in the case was not sufficient and brings into question the fairness of the Article 15 process. The elements for a failure to go to an appointed place of duty requires that a certain authority appointed a certain time and place of duty for the accused, the accused knew of that time and place, and that the accused without authority failed to go to the appointed place of duty at the time prescribed. As presented in his supporting documentation and resident in his iPERMS file, he was never made aware of his appointed place of duty, and no evidence was presented to show he was. At the time of the accused's failure to report, he was at a dental appointment, which he had already communicated to his NCO Support Channel.

b. Upon communicating the appointment, he was excused from the time and place of duty (inventory) for which he was eventually charged for not reporting. The officer in charge time communicated said they would re-schedule, which they never did. These circumstances led him to believe his place of duty was his appointment, and that his inventory would be rescheduled for a later date; despite this, he still received punishment. The only reason the Article 15 was pushed forward, was due to another false allegation he was able to prove false (as annotated in the document itself). Unfortunately, he was still charged with failure to repair because he could not "prove" he was told his dental appointment was his place of duty, despite his NCO Support Channel claiming they did not remember. This displays clear bias and the intent to cover up the accuser's mistakes.

c. The UCMJ has long served its purpose, and full rehabilitation of any potential violation has been achieved. By looking at the punishment he received (4 days of extra duty), the current effect that it has on his career file does not equate to the alleged violation. Due to this injustice, another Article 15 he received, where he made a legitimate mistake, could not be moved to his restricted file (which is what the imposing commander intended and annotated). This has caused his Sergeant First Class order of merit list numbers to suffer greatly, despite several "Most Qualified" evaluations, his performance at the Best Warrior and Best Squad Competitions, Commandant's List at Senior Leaders Course (SLC), etc.

d. He has been completely rehabilitated which can be deduced from his last few evaluations (to include his SLC DA Form 1059) and has learned from the mistakes he made in the past. He believes he is now a much better leader due to the lessons he learned. The Company grade Article 15 was unjust. he received bad information and poor communication by his leadership, which led him to being made a scapegoat. This punishment directly leads to the prevention of the other Article 15 being moved to his restricted file, which has directly led to his future promotion potential being severely hindered, despite the large amount of progress he has made since then. This hinders his ability to affect positive change at higher levels, despite his interest and ability to do so.

3. The applicant enlisted in the Regular Army (RA) on 1 July 2013. He is currently serving in the RA in military occupational specialty 35N (Signals Intelligence Analyst).

4. On 21 May 2019, while holding the rank/grade of staff sergeant/E-6, and in a closed hearing, he was found guilty of one specification of, without authority, failing to go at the time prescribed to his appointed place of duty. The offense was in violation of Article 86 of the UCMJ. The imposing commander directed the DA Form 2627 be filed in the restricted section of the OMPF. The applicant appealed the findings and submitted additional matters. After consideration of all matters presented the appeal was denied on 5 June 2019. His punishment consisted of extra duty for 4 days.

5. A review of his OMPF reveals the DA Form 2627 is, in fact, filed in the restricted section of his file.

6. The applicant provides an evaluation and academic report which are resident in his OMPF which attest to his progressively noteworthy performance and achievements. He also provides numerous documents associated to his 30 November 2021, DA Form 2627 which is filed in the performance section of his file.

7. Army Regulation 27-10 (Military Justice), paragraph 3-6c states, if a record of NJP has been designated for filing in a Soldier's restricted folder, the Soldier's OMPF will be reviewed to determine if the restricted folder contains a previous record of NJP. In those cases, in which a previous DA Form 2627 that has not been wholly set aside has been filed in the restricted folder and in which prior to that punishment, the Soldier was in the grade of sergeant (SGT) or higher, the present DA Form 2627 will be filed in the performance folder.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, 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. One potential outcome was to deny relief finding no error or injustice, However, upon review of the applicant's petition and available military record, the Board majority noted his assertion that poor communication and leadership errors led to his punishment, despite his belief that he was properly excused. The Board also considered the applicant's claim that the punishment imposed (four days of extra duty) was disproportionate to the alleged violation, and that the filing of this Article 15 in his restricted folder subsequently prevented another Article 15 from being moved to the restricted section, thereby negatively impacting his career progression.

2. The Board acknowledged the applicant's record of rehabilitation, as evidenced by his subsequent evaluations, academic achievements, and performance in competitions and courses. The Board further found two Article 15s in his record that appeared minor and more appropriately addressed through counseling statements. Based on the totality of the evidence, the Board determined that the 21 May 2019 DA Form 2627 was unjust and its continued presence in the applicant's OMPF serves no constructive purpose. Therefore, the Board granted relief for removal of the contested DA Form 2627 from the applicant's official military personnel file.

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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	:	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	XXX	:	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 DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), dated 21 May 2019, 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. 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.

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.

3. 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.

4. Army Regulation 15-185 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. The ABCMR considers individual applications that are properly brought before it. 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.

//NOTHING FOLLOWS//