

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 April 2025

DOCKET NUMBER: AR20240008729

APPLICANT REQUESTS: reconsideration of his previous request for removal and destruction of all the DA Forms 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), filed throughout his career except the one dated 14 September 1977.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
Online Application, dated 26 May 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20230009905 on 17 April 2024.

2. The applicant states after receiving the previous docket number, he believes there were several errors, and it did not properly address what he wrote to the Board. He is appealing all Article 15's, minus the one dated 14 September 1977, be removed from his Official Military Personnel File (OMPF). Stating the previous Article 15's should have been removed from his record after 2 years or after he rotated out of his command, whichever came first.

a. The Article 15 dated 14 September 1977 is not just. He and his wife were taking their injured son to the base hospital when he was stopped for speeding. The Military Policeman (MP) asked if he had been drinking and he replied, "yes he had two beers". The MP asked if his wife could drive, he replied with yes, the MP said let your wife drive and he would let them go and escorted them to the base hospital. There was no field sobriety test, or blood testing, and he was let go from the scene. He had to see his commander the next day, who issued him an Article 15 because of the blotter entry. The commander said the Article 15 would be filed until he departed the command.

b. He rebuts the Board's discussion in the Record of Proceedings, wherein the Board states "incident of driving under the influence, which resulted in the death of someone did occur, and the applicant acknowledged his acceptance of the Article 15". He states this statement is preposterous, there was no accident, or any other cars

involved, and he was only stopped for speeding while trying to get his injured son to the hospital, to which the MP let him go.

c. He did not file within the three year time frame provided in Title 10, U.S. Code, section 1552(b) because he did not know these documents were in his OMPF. He believes having these Article 15's in his OMPF is not okay and these derogatory documents are also on his criminal record background check.

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

a. On 23 December 1971, he enlisted in the Regular Army for a 3-year period.

b. He received nonjudicial punishment (NJP), under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ), in the rank of private/E-1, on 18 January 1972 for failing to be at his appointed place of duty on or about 17 January 1972. His punishment imposed was forfeiture of \$50.00 pay for one month, restriction for 14 days, and extra duty.

c. He received NJP under the provisions of Article 15, UCMJ, in the rank of private first class/E-3, on 14 March 1973, for violating a lawful general order on or about 1 March 1973. The form is illegible.

d. On 18 March 1974, he reenlisted for a 5-year term.

e. On 1 October 1974, he was found guilty by a special court-martial at Bad Kreuznach, Germany, of the following:

- one specification of unlawfully killing a German National (female) by driving a motor vehicle against the said German National female in a negligent manner on or about 23 March 1974
- one specification of operating a passenger vehicle while drunk and thereby causing a vehicle collision with a vehicle operated by a German National, and injuring another German National on or about 23 March 1974

f. The court sentenced him to reduction to the rank/grade of private/E-1, confinement at hard labor for six months, forfeiture of \$217.00 pay per month for six months, and separation from the service with a bad conduct discharge. The sentence was approved on 25 October 1974, except for the portion extending to the bad conduct discharge, which was suspended until 1 May 1975, to be vacated. The record of trial was forwarded for appellate review.

g. Special Court-Martial Order Number 475, 10 April 1975, noted his sentence to confinement at hard labor had been served and approved remittance of the suspended portion of the sentence without further action. The appellate review was still pending.

h. Special Court-Martial Order Number 947, 9 September 1975, noted the findings of guilty and only so much of his sentence as provided for confinement at hard labor for six months, forfeiture of \$217.00 pay per month for six months, and reduction to the rank/grade of private/E-1, were affirmed. The sentence as modified would be duly executed.

i. He received NJP under the provisions of Article 15, UCMJ, in the rank of specialist four/E-4, on 19 October 1977 for driving a passenger vehicle while drunk on or about 14 September 1977. His punishment included, in part, reduction to the rank/grade of private first class/ E-3 (suspended for a period of 30 days); the remaining entries are illegible.

j. On 23 June 1978, he reenlisted for a 3-year period in the rank/grade of sergeant/E5. He served continuously through several terms of enlistment and attained the rank/grade of sergeant first class (SFC)/E-7 effective 5 October 1984.

k. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he retired by reason of permanent physical disability in the rank/grade of SFC/E-7 on 19 October 1990. He completed 18 years and 5 months of total active service.

4. In his previous request, AR20230009905, on 17 April 2024, the Board stated the evidence presented did not demonstrate the existence of a probable error or injustice and determined the overall merits of the case were insufficient as a basis for correction of the applicant's records.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, 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 review based on law, policy, and regulation. Upon review of the applicant's petition and military records, the Board determined that the applicant did not demonstrate by a preponderance of evidence that procedural error occurred that was prejudicial to the applicant and by a preponderance of evidence that the contents of the nonjudicial punishments are substantially incorrect and do not support removal. Furthermore, the Board found the burden of proof rests with the applicant, and he provided no evidence to support that his nonjudicial punishments were in error. The Board concluded based

on the preponderance of evidence found in the military record, the applicant's claim for removal all his Article 15's except the one dated 14 September 1977 is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XX	XX	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 amendment of the ABCMR decision rendered in Docket Number AR20230009905 on 17 April 2024.



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 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

2. Army Regulation 27-10 (Military Justice), 26 November 1968 and in effect at the time, prescribed the policies and procedures pertaining to the administration of military justice and implemented the Manual for Courts-Martial. It provided that 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 Uniform Code of Military Justice (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.

a. Paragraph 3-6a addressed filing of NJP and provided that a commander's decision whether to file a DA Form 2627 (Record of Proceedings under Article 15, UCMJ) in the performance folder of a Soldier's Official Military Personnel File (OMPF) is as important as the decision relating to imposition of the NJP itself. In making a filing determination, the imposing commander must carefully weigh 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 DA Form 2627 directed for filing in the restricted folder. However, the interests of the Army are compelling when the DA Form 2627 reflects unmitigated moral turpitude or lack of integrity, patterns of misconduct, or evidence of serious character deficiency or substantial breach of military discipline. In such cases, the DA Form 2627 should be filed in the performance folder.

b. Paragraph 3-37b(2) stated the original DA Form 2627 for Soldiers in the ranks of sergeant and above will be sent to the appropriate custodian for filing in the OPMF. The decision to file the original DA Form 2627 in the performance folder or restricted folder of the OPMF 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 file a DA Form 2627 in the performance folder that the imposing commander directed filing in the restricted folder.

c. Paragraph 3-43 contained guidance for transfer or removal of DA Forms 2627 from the OMPF. Applications for removal of a DA Form 2627 from the OMPF based on an error or injustice will be made to the ABCMR. There must be clear and compelling evidence to support removal of a properly completed, facially valid DA Form 2627 from a Soldier's record by the Army Board for Correction of Military Records (ABCMR).

3. Army Regulation 600-37 (Unfavorable Information), 18 May 1977 and in effect at the time, prescribed the policies and procedures regarding unfavorable information considered for inclusion in official personnel files.

a. Once an official document has been properly filed in the OMPF, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.

b. Only those documents listed in Table 2-1 and Table 2-2 are authorized for filing in the OMPF. Depending on the purpose, documents will be filed in the OMPF in one of three folders: performance, service, or restricted. Table 2-1 (Composition of the OMPF) shows the DA Form 2627 is filed in either the performance or restricted folder of the OMPF as directed in item 5 of the DA Form 2627.

4. Army Regulation 640-10 (Individual Military Personnel Records), 1 July 1984 and in effect at the time, assigned responsibilities for maintaining and controlling the OMPF, the Military Personnel Records Jacket, and the Career Management Individual File; controlled the filing of documents in military personnel records; and identified documents authorized for filing in personnel records. Paragraph 4-4 provided that once placed in the OMPF, the document becomes a permanent part of that file. The document will not be removed or moved to another part of the file unless directed by the ABCMR or other authorized agency.

//NOTHING FOLLOWS//