

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 April 2025

DOCKET NUMBER: AR20240010399

APPLICANT REQUESTS:

- reinstatement to active duty
- remuneration of back pay from the date of his discharge to the date of his reinstatement
- adjustment of rank as appropriate
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of the Army (DA) Permanent Change of Station Order Number 0006135709, 28 September 2023
- Memorandum, Headquarters (HQ), U.S. Army Garrison, Fort Jackson, 29 September 2023, subject: Addendum to Order Number 0006135709
- Memorandum, 3rd Battalion, 34th Infantry Regiment, Fort Jackson, 24 October 2023, subject: Findings and Preliminary Inquiry into Allegations that (Applicant) Violated the Army Equal Opportunity Policy as Outlined in Army Regulation, with eight attachments
- Memorandum for Record (MFR), Echo Company, 3rd Battalion, 34th Infantry Regiment, 27 October 2023, subject: Equal Opportunity (EO) Complaint Plan of Action (first page only)
- Three DA Forms 4856 (Developmental Counseling Form), 4 November 2023, 26 January 2024, and 27 January 2024
- Nonjudicial Punishment (NJP), with rights elections, 9 November 2023
- MFR, HQ, 165th Infantry Brigade, Fort Jackson, 14 November 2023, subject: Follow up Notification to Formal Complaint
- Statement of Specialist (SPC) GNK\_\_\_\_, 11 December 2023
- Memorandum, Counsel to Company Commanding Officer, Echo Company, 3rd Battalion, 28 December 2023, subject: Matters for (Applicant), Ref. Article 15
- Memorandum, Counsel to Battalion Company Commander, 3rd Battalion, 34th Infantry Regiment, 165th Brigade, Fort Jackson, 8 January 2024, subject: Appeal of Article 15 Regarding (Applicant)

- MFR, Applicant to Company Commander, 22 January 2024, subject: Statement by (Applicant) in Conjunction with Sworn Statement (four pages)
- Memorandum, Applicant via Command to the Commanding General, Fort Jackson, 2 February 2024, subject: Formal Article 138 Complaint, Uniform Code of Military Justice (UCMJ) with enclosures (three color photographs)
- Memorandum, Counsel via Command to the Commanding General, Fort Jackson, 6 February 2024, subject: Rebuttal Matters for (Applicant), Ref. Chapter 14-12c Action
- self-authored letter, Applicant (11 pages)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 13 March 2024

**FACTS:**

1. The applicant states,
  - a. In July 2023, he arrived at Fort Jackson for basic training. In October 2023, he was wrongfully accused of misconduct associated with his right to exercise free speech and he was threatened with an administrative discharge.
  - b. The process was delayed by his commander, and he was assigned degrading duties for 6 months. His case has attracted Congressional interest. His congressman traveled to Fort Jackson to inquire as to why he was being targeted for this abuse.
  - c. He filed a complaint under Article 138 of the UCMJ for redress in February 2024, however the command elected to fast-track his discharge prior to resolution of the Article 138 complaint. This violated his rights to redress by wrongfully discharging him prior to the Article 138 decision.
2. The applicant provides:
  - a. Permanent Change of Station Orders Number 0006135709, dated 28 September 2023, for his initial active duty training (IADT) to Fort Gregg-Adams, with an effective date of 26 January 2024. The end date was 4 March 2024.
  - b. An addendum to Order 0006135709, dated 29 September 2023 of his temporary duty location, Fort Moore, for Airborne Training, with a reporting date of 6 October 2023.
  - c. A memorandum from the Company Commander, Echo Company, 3rd Battalion, 34th Infantry Regiment, dated 3 October 2023, appointing an Investigating Officer (IO) to conduct a preliminary "hearing" into the facts and circumstances of (Applicant) and violations of the Army Equal Opportunity (EO) Policy. The general instructions included initiating an Army Regulation 15-6 (Procedures for Administrative Investigations and

Boards of Officers) to elicit facts based upon whether circumstances alleged were accurate and merited correction. The instruction included a listing of six complainants and the accused (Applicant) to determine whether the applicant violated the Army EO Policy; did he use inappropriate language; and did he use discriminatory language. The suspense was 26 October 2023.

d. A memorandum from the IO, 3rd Battalion, 34th Infantry Regiment, dated 24 October 2023, to the Company Commander, Echo Company, 3rd Battalion, 34th Infantry Regiment, outlining the findings for his preliminary inquiry into allegations the applicant violated the Army EO Policy. In response to the commander's inquiry, as to whether the applicant violated the Army's EO, the IO found the applicant: did violate the Army EO Policy; he did use inappropriate language; and he did use discriminatory language. The findings of the IO reflect:

(1) (Applicant) violated the Army EO Policy on multiple occasions throughout the 23-xx training cycle. The behaviors were discriminatory in nature and were in direct violation of the E Company EO program.

(2) (Applicant) used inappropriate language and discriminatory language multiple times, including racial slurs to threats against individuals based on their sexuality; inappropriate gestures, a Roman (Nazi) Salute towards a trainee within his platoon who is of Jewish descent.

(3) During his sworn statement, (Applicant) mentioned the actions of various trainees, actions which if substantiated, would be in violation of the Army SHARP policy. After telephonically reaching out to the Trainees BI\_\_\_\_ and CSG\_\_\_\_, the IO found these claims to be unsubstantiated. He attempted to reach out to Trainee BJWLD\_\_\_\_ at his duty station and was unable to successfully communicate with him.

e. Nine enclosures attached to the IO memorandum, dated 24 October 2023 with the following statements/rights warnings:

(1) Sworn Statement of Private 2 (PV2) JMKH\_\_\_\_, 3 October 2023, in which he wrote, in part, he was walking to formation and the applicant saw him and his battle buddy and threw up a "Nazi Salute." He was confused and shocked. His battle buddy later told him he spoke to the applicant and after he told the applicant that JMKH\_\_\_\_ was Jewish, he said, "What a shame he won't [see] the light of the new tomorrow."

(2) Sworn Statement of Private First Class (PFC) IG\_\_\_\_, 3 October 2023, in which she wrote, in part, she witnessed the applicant racially mock another trainee for being Asian during the early weeks of basic training. The applicant called another trainee by name and mocked him in a fake Asian accent. He then mocked with an offensive sound used against Asians.

(3) Sworn Statement of PV2 DS\_\_\_\_, 3 October 2003, in which he wrote, in part, about multiple racial incidents he experienced with the applicant. While he and another trainee were showing the applicant photos of them during red phase, before they received their haircuts, he said, "Man if I saw you guys walking on the street I would shoot you." When Trainee DJ\_\_\_\_ was assigned platoon guide duties, "he told the applicant to 'stop coming to formation late,' and he started calling him 'Ni\_\_\_\_' and 'Bi\_\_\_\_' and talking down to Black people in nasty ways." "Whenever we used to pull our weapons from the room, he used to point at me and S\_\_\_\_ and say, 'he's reloading,' and act like he would shoot us because we were Black." "When Trainee Z\_\_\_\_ first arrived here he would make fun of him and called him a 'Chink'." "He also called us into a group to basically laugh at him making fun of Z\_\_\_\_'s accent and how he says China." He also does the Nazi Salute in formation or in the bay all the time. The Jewish people in the bay told him to stop and he still continues to do it."

(4) Sworn Statement of PV2 CSG\_\_\_\_, 3 October 2023, in which he wrote, in part, he mentioned to others how gay people were cool and that maybe he (PV2 CSG\_\_\_\_) was [gay]. Some people laughed but the applicant asked what he said, and he repeated it, to which the applicant replied, "That's f----- disgusting." On 30 September 2023, after the platoon was dismissed for lights out, he was talking to a trainee near the applicant's bunk in the applicant's presence. He (PV2 CSG\_\_\_\_) said, "I know gay people and...I am one." The applicant said to repeat it and then said to him, "That's f----- disgusting, get the f--- out of here with that. You're going to hell." From those experiences he assumed the applicant was homophobic and not willing to work with others based on their sexuality.

(5) Sworn Statement of PV2 DTB\_\_\_\_, 3 October 2023, in which he wrote, in part, he witnessed the applicant repeat a list of racial slurs for multiple ethnicities: "During White Phase in the bay the applicant referred to Ka\_\_\_\_ as a slur meant for African Americans after Ka\_\_\_\_ annoyed him." "One month ago, in the bay I witnessed the applicant render a Nazi salute and say some things about Jewish people, specifically, 'They wouldn't see the light of the new day.' "In White phase in formation after Ka\_\_\_\_ sounded off in personnel count, the applicant called him a 'Ni\_\_\_\_' and his exact words were 'That Ni\_\_\_\_ pisses me off'." "After live grenade throws, he told me that 'Gay people are disgusting'." "He told me he would kill me if I was gay." "He made a comment about Ch\_\_\_\_ being 'Sexy'." "He was staring at Ch\_\_\_\_ and said she was a 'beautiful woman'."

(6) Sworn Statement of PV2 BJW LW\_\_\_\_, 3 October 2023, in which he wrote, in part, "Between 25 September 2023 and 28 September 2023, I overheard the applicant say 'Don't forget about me. I'm the most racist of them all'. He has avoided speaking to all trainees who do not speak Spanish. "I heard the applicant use the word 'Ni\_\_\_\_' towards a person of color." On multiple occasions during bay maintenance and personal

time I have heard him joke at Jewish people and Holocaust victims while bragging about having a swastika as the background on his phone.

(7) A DA Form 3881 (Rights Warning Procedure/Waiver Certificate), dated 25 October 2023, in which the applicant understood he was under suspicion or accused of violating the Army EO Policy as outlined in Army Regulation 600-20 (Army Command Policy); he did not have to answer any questions or say anything, anything he said could be used as evidence against him in a criminal trial, and he had a right to seek counsel from an attorney. He signed this form without indicating his preferences for waiving or maintaining his rights and he provided both written and typewritten statements to the IO.

(8) Sworn Statement of the Applicant, 25 October 2023, in which he wrote, in part:

(a) "When I first joined the platoon made good relations with almost everyone, especially S\_\_\_\_, trainee Bl\_\_\_\_, and some others. The mentioned trainees were getting in trouble all the time for not standing still in formation and I created something called 'The E Team' including them and some other males which considered on a team ready to do things above the Army expectations, no cussing, be on time, discipline, etc. We separated since the mentioned trainees were using all the time racial slurs especially the 'N' word in every conversation they have as if it has already become part of their regular vocabulary."

(b) "Trainee Bl\_\_\_\_ is always making sexual related comments in the shower about other trainee's private parts, particularly saying, 'Let me see your dick' and many others."

(c) Trainee S\_\_\_\_ refers to other trainees with 'N' word every single day when we get dismissed at the end of the day as part of regular conversations. He has been called out by other trainees like Trainee Bl\_\_\_\_ and Trainee K\_\_\_\_ for that which is ironic since Trainees Bl\_\_\_\_ and K\_\_\_\_ refer to other trainees with the 'N' word as well as derogatory terms against African Americans."

(d) Trainee L\_\_\_\_ about 1 month ago grabbed another trainee's chest on dinner formation when Hot Aids were brought to the company and he is making obscene gestures in the shower at the end of the day with his tongue, folding up his t-shirt as if it was a female's bra, and rubbing his chest." "He told me...that he was 'horny as fuck' and needed some 'pussy'."

(e) Trainee Bl\_\_\_\_ has exchanged notes with Trainee C\_\_\_\_ (female from 2nd Platoon) asking her if 'she was a virgin' while she responded with another note saying that she's been with 2 men so far."

(f) During the 'Hammer', Trainee Ka\_\_\_\_i was caught by Trainee Ka\_\_\_\_u in the middle of the night in the same sleeping bag with Trainee Be\_\_\_\_ also from 2nd Platoon while Trainee Bi\_\_\_\_ was seen by Trainee Ka\_\_\_\_ in the same sleeping bag with Trainee C\_\_\_\_.

(g) Trainee S\_\_\_\_ mentioned that his MREs should be "Rice and Beans" because of my ethnicity.

(h) Trainee Gu\_\_\_\_ from 1st Platoon approached behind Trainee Mc\_\_\_\_ from 2nd Platoon on the night of 30 September in the bay and said he like "black dicks" while the applicant mentioned that his intimacy was disgusting. Three weeks ago, he mentioned that "he needed a guy."

(i) Trainees Bi\_\_\_\_, Su\_\_\_\_, St\_\_\_\_, La\_\_\_\_, Ka\_\_\_\_ are being asked to keep it quiet after lights out while they just say most of the time "Ni\_\_\_\_ shut up."

(j) His graduation was on 4 October 2023, but he did not get to march due to the EO investigation that was opened by his Senior Drill Sergeant (SDS) F\_\_\_\_ with statements from some of his peers accusing him of being a "Nazi" and making derogatory comments against Blacks and Asians. Some of the things they accused him of were taken out of context. The Nazi part does not make sense since he is a part of an ethnic group they were after that is not White. This was not told to him until the night before his graduation even though SDS F\_\_\_\_ knew his mother was coming all the way from Peru just for his graduation and his wife, who is 7 months pregnant, was also coming from Nevada just for his graduation. When asked by another trainee her preferences, the SDS F\_\_\_\_ pointed to him saying "this one I definitely hate" in front of the entire platoon while pointing at him. He considers himself respectful and subordinate and "old school" and that is why he does not mind the cursing or use profanity. His SDS tries to humiliate without teaching, making him ask himself where the respect is and where is the EO. The trainees he reported for actually doing things he is being accused of are already in Advanced Individual Training and he was left there. He was supposed to start Airborne School on 6 October 2023, and he has been left as a holdover.

(9) The applicant's undated typewritten response to the allegations in the six sworn statements from witnesses on 3 October 2023:

(a) In response to PVT JMH\_\_\_\_'s statement, that he threw a Nazi salute, he simply greeted him by raising his hand, which was taken in a different way taking into consideration of him having a photograph of President Trump on his phone. Later PVT Ha\_\_\_\_ mentioned to him that PVT JMH\_\_\_\_ was offended since he thought the used a Nazi salute since he was Jewish. He said, "I don't mind your race, religion nor color of skin as long as you're not a communist, because if you are, I hope you never get to see the light of the new tomorrow." I grew up in Peru under the oppression of

"The Shining Path: or "Sendero Luminoso" a far-left group widely condemned for its brutality that went from killing native farmers for not cooperating with the party. The government of President George Bush listed "The Shining Path" as a foreign terrorist organization.

(b) In response to PVT IG\_\_\_\_'s statement, that he "racially mocked" Trainee Z\_\_\_\_ for being Asian, he states, Trainee Z\_\_\_\_ was transferred to the platoon from another company after suffering retaliation for reporting a drill sergeant that called him a "commie." At the beginning he could tell he was under a lot of stress, and he introduced himself to Z\_\_\_\_. PVT IG\_\_\_\_ was not specific in her statement since she mentioned he used a mocking sound. There is no such sound in the U.S. or in Peru and he never heard such a thing.

(c) In response to PVT DS\_\_\_\_'s statement, that he mentioned "Man if I saw you walking down the street, I would shoot you," he did say as a joke, "If I see you walking down the street like that, I would shoot you," since they showed their IDs. His comment was meant as a joke. PVT DS\_\_\_\_ was aware that it was a comment made for the fun of it. To his statement that the applicant called him a "Ni\_\_\_\_ and a bi\_\_\_\_," he said it was not true. To his statement that the applicant pointed a weapon at him and another trainee, he would never point any weapon towards anything he is not intending to destroy. They used to point at each other using their hands as weapons in the bay. He never called trainee Z\_\_\_\_ a "Ching" to laugh at him. To the statement that he used to do the Nazi salute in the bay, he jumped into a couple of conversations to correct them that the actual Nazi salute was with the right hand and not with the left. The fact that they knew he was conservative and had a picture of President Trump on his phone triggered them. He does not support any extremist group.

(d) In response to PVT CSG\_\_\_\_'s statement, that he mentioned "That's f----- disgusting" after he mentioned "how gay people were cool and maybe he was one." It was during a conversation with another trainee who did not complete BCT who called him "Maricon," and he told him it actually meant "faggot" to make him stop saying it. PVT CSG\_\_\_\_ yelled at him to stop saying that word. The context was not of an insulting purpose. His statement is not true at all. In response to PVT CSG\_\_\_\_, that he said, "That's f----- disgusting, get the f--- out of here with that, you're going to hell." PVT CSG\_\_\_\_ never stopped saying that he needed a guy and repeated homosexual related comments every time he was around. On 30 September during personal time, PVT CSG\_\_\_\_ came to his locker and told another trainee that he liked "Black dicks." He did not mention that he said this and that was what caused his disgusted comment that night.

(e) In response to PVT DTB\_\_\_\_, that he mentions "During the Forge, he witnessed him recite and repeat a long list of racial slurs for multiple ethnicities." He totally denies this accusation. He does not mention what slurs were used or the

ethnicities that were insulted. He said, "During White Phase in the bay, the applicant referred to Trainee Ka\_\_\_\_ as a slur meant for African Americans and Ka\_\_\_\_ annoyed him." Trainee Ka\_\_\_\_ mentioned that he considered him a good friend who taught him Spanish during personal time. He denied this accusation as well. He denied calling Trainee Ka\_\_\_\_ a "Ni\_\_\_\_"; he denied saying "Gay people are disgusting." And he denied staring at a female's ass since he respects his wife and his family.

(f) In response to PV2 BSJ LD\_\_\_\_'s comment that he used the word "Ni\_\_\_\_" on multiple occasions towards a person of color. That was not a part of his vocabulary. He mentioned he had a swastika as the background on his phone. People in the platoon targeted him as a white supremacist and racist for seeing a picture of President Trump on his phone screen background.

f. Page one only of an MFR from Echo Company, 3rd Battalion, 34th Infantry Regiment, dated 27 October 2023, outlining the plan of action in response to the informal EO complaint submitted by six privates in Echo Company. This plan of action instructs the IO to interview the complainants as a result of their written statements dated 3 October 2023; the complainants did not request a formal complaint; the commander was to take actions that were outlined on subsequent pages of the MFR but were not submitted with the applicant's application.

g. A developmental counseling given by the Echo Company Commander to the applicant, dated 4 November 2023. The applicant disagreed with the counseling and noted he was not given a chance to speak to any investigator until that moment and never had the chance with to tell his side of the events. The allegations were not true at all, and he had evidence to support his statement.

h. A MFR from the Echo Company Commander, dated 9 November 2023, outlining the applicant's rights afforded in the NJP process, that he was allowed to listen to the recorded briefing concerning the NJP process. The applicant elected a telephonic consultation with counsel.

i. A DA Form 2627 (Record of Proceedings Under Article 15, UCMJ), dated 9 November 2023, in which company grade NJP was being considered by his company commander; of incidents occurring between on or about 6 August 2023 and 30 September 2023. On divers occasions, he failed to obey a lawful general regulation; paragraph 6-2 of Army Regulation 600-20 by wrongfully mocking a Trainee of Chinese dissent by using a fake Asian accent; by rendering a "Nazi" salute to a Jewish Trainee, and stating "What a shame he won't see the light of day"; and by pointing his weapon at Black Trainees and saying, "He's reloading." This form neither reflects in block 5, the commander's and applicant's signature and whether the applicant sought an appeal, nor in block 6 the punishment imposed. Note: counsel submitted with this application a 15-

page appeal of the NJP, dated 8 January 2024, which outlines in detail the issues with the investigation leading to the NJP (below in this record of proceedings).

j. An MFR from the Commander, HQ, 165th Infantry Brigade, Fort Jackson, dated 14 November 2023, outlining the status of the investigation to the Sexual Assault Response Coordinator (SARC). The current status as of 14 November 2023 was: the IO was appointed on 27 September 2023; a DA Form 7746 (Sexual Harassment Complaint) was received by the Brigade SARC on 27 September 2023; it was received by the Brigade Commander on the same date; a retaliation/reprisal plan was completed by the Brigade Commander on 2 October 2023; 14 day follow-up by the Brigade Commander was due on dates 15 October 2023/30 October 2023/14 November 2023; and a 20 day progress report was due to be forwarded to the General Court Martial Convening Authority (GCMCA) by 23 November 2023.

k. An undated statement from PFC Ka\_\_\_\_, noting the applicant taught him Spanish, he was a good battle buddy, there was a lot of joking around at basic training, he did not hear the applicant make racial or sexual comments or jokes, he did not hear other make racial or sexual comments or jokes; and SDSF\_\_\_\_ treated the applicant like the other trainees.

I. Counsel's 8-page memorandum to the Echo Company Commander, dated 28 December 2023, subject: Matters for (Applicant) reference NJP. This memorandum outlines issues with the investigation and the allegations made against the applicant. The complete narrative is available for Board's review. Counsel notes:

(1) the applicant claims innocence regarding the allegations against him. The statements against him do not rise to the level of preponderance of the evidence for multiple reasons:

- the investigation was insufficient
- the IO made no effort to explore the truth
- the allegations and only interviewed those he was directed to
- most if not all statements provide very little detail, such as who else was present, the date, the context, what if anything was said or done to cause comments or gestures
- there is zero background explaining why after, allegedly months of comments, the trainees who wrote statements came forward
- no indication as to how they were identified or why right before graduation
- there were no statements from others regarding the EO climate in the company or platoon
- it seems that if the Applicant was as racist and made as many comments as these people claim, this would have been reported or come out long before the end of basic

- certainly, the person portrayed by the statements is a very different person from the one portrayed by Trainee Fe\_\_\_\_, Trainee Ka\_\_\_\_ and Trainee La\_\_\_\_ and all of his character statements
- the Applicant was able to make a statement as part of the NJP counseling on 25 October 2023
- the IO submitted his Findings Memorandum the day before without having seen anything from the Applicant
- based on the Applicant's statement in response to the NJP counseling, his handwritten statement, statements of his character witnesses and other witness statements, there seems to be a huge discrepancy between how the accusers portray him and all others
- those who wrote statements claimed or alluded that they were not friends with or did not like the Applicant, and due to lack of detail and the manner in which the witnesses came forward and reported, the statements seem unreliable at best

(2) The allegations in the NJP include mocking an Asian, rendering a Nazi salute to a Jewish trainee and saying, "what a shame he won't see the light of day," and, pointing a weapon at Black trainees and saying, "He's reloading." In reviewing the statements, the following is notable:

- Trainee JMH\_\_\_\_ claims "his battle buddy" told him (but provided no name) that the applicant, after finding out H\_\_\_\_ was Jewish, made Nazi comments about him but never heard this; he merely cites a battle buddy; This part of his statement should be discarded as unlawful hearsay; the IO did not follow up with the battle buddy to seek a statement from him
- Trainee IG\_\_\_\_ claims she heard the applicant mock Trainee Z\_\_\_\_ "during the earlier weeks of basic" and if significant, why was it being reported in early October, 2 1/2, months later; who prompted her to write the statement and how did anyone know she had information
- the IO never asked follow-on or clarifying questions of anyone; he only spoke to a few others after being directed to look into the applicant's claims
- Trainee DS\_\_\_\_ claimed the applicant made a comment about shooting he and Trainee BI\_\_\_\_; Trainee DS\_\_\_\_ knew the applicant was joking; counsel questions the context of the weapon incident; further, did Trainee DS\_\_\_\_ know the applicant and Trainee Z\_\_\_\_ were friends; there is no statement from Trainee Z\_\_\_\_ in the investigation and the IO did not follow up
- Trainee CSG\_\_\_\_'s statement should not be considered because it does not address any of the comments or actions the applicant is accused of in the NJP; he makes assumptions on comments he claimed to hear; the IO did not ask follow-up questions with this trainee
- Trainee DTB\_\_\_\_ 's statement is similar to other statements; he wrote about what he heard and there was no statement from the person he claimed the

comments were made against; there is no context, dates, no listed witnesses and no follow-up by the IO

- Trainee BJW LD\_\_\_\_'s statement is unrelated to the allegations in the NJP and should be discarded as not relevant and inflammatory

(3) Some opposing statements include:

- Trainee Ka\_\_\_\_ considered the applicant a friend; admits there was a lot of joking and kidding at basic; the applicant was a good battle buddy; taught Spanish during free time; never heard the applicant make racial or sexual comments or jokes
- Trainee Fe\_\_\_\_ considered the applicant a friend; he and the applicant spoke about culture in Spanish; he never heard the applicant make discriminating remarks or gestures; his statement translated from Spanish "what seemed strange was the negative inclination the SDS had with applicant"
- Trainee La\_\_\_\_ considered the applicant a friend; though not in the same platoon was always giving her advice, helped her, and was her in every activity she did; never heard the applicant making racist or sexist comments; many in the platoon talked about girls or used the 'N' word
- Trainee Mc\_\_\_\_ considered the applicant a friend and was in the same platoon with him; he never heard the applicant making racist or sexual jokes; treated everyone similar; the SDS had a little more hostility towards him

(4) The NJP is premature and in similarity to Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 11-4, counseling and rehabilitative requirements, a Soldier should not be separated when this is the sole reason for separation unless efforts at rehabilitation have failed.

(5) The applicant was counseled on 4 November 2023 which was a Saturday. Three working days later on Thursday, he was read his NJP. His counseling was read not as a punitive measure but as an administrative measure; continued action of the same or a similar nature may result in action separating him.

(6) Counsel questions what rehabilitative measures were taken and what was the continued behavior necessitating the NJP. The investigation was completed on 24 October 2023. The only evidence provided was the original statements taken by the IO.

(7) Further in the developmental counseling, it stated to maintain good order and discipline and adhere to Army policy and that the investigation was continuing. Counsel questions what additional information was revealed or uncovered. He was then restricted to the point that he was under constant surveillance and there were not reported instances.

(8) The investigation efforts were non-existent or completely failed. Army Regulation 600-20 outlines the conduct of investigation and purpose in that to determine to the maximum extent possible what actually occurred, to assess the validity of the allegations, and to advise the commander of any leadership or management concerns that may contribute to perceptions of unlawful discrimination and harassment. The appointing authority is responsible for ensuring the investigation is complete, thorough, and unbiased.

(9) The IO merely collected statements from the list of names he was provided. There was no investigation. On 13 December 2023, counsel interviewed SDS F\_\_\_\_\_. It was not until then that counsel found out that there were handwritten statements provided to her which she claimed were provided to the command. These statements were never made available as part of the investigation or at least never provided to the applicant or counsel. When interviewed on 12 December 2023, the IO stated the only information he received was the appointment memorandum. He was not provided the handwritten statements. He did not seek a statement from anyone individually. There was no effort to seek statements from others in the platoon or company.

(10) The IO did admit to interviewing PV2 CSG\_\_\_\_ and PV2 BI\_\_\_\_ over the phone but PV2 CSG\_\_\_\_ denied (the allegations) and PV2 BI\_\_\_\_ did not confirm and that was the end of it. The IO admitted to speaking to three other Soldiers, but those Soldiers' interviews did not amount to any significant information and the IO did not mention these interviews.

(11) It seems odd that the allegations of insulting others or making insulting comments or gestures were not reported by the trainees the applicant is accused of directing the comments and gestures towards.

(12) The applicant is from another country and raised in a different culture; English is his second nature. Hearing racial slurs and the use of the 'N' word frequently, he asked what the difference was between the 'N' word with 'er' on the end and 'a' on the end, revealing his lack of knowledge of the culture in some respects.

(13) Counsel requests consideration of eight character statements provided from people who know the applicant.

(14) If the Applicant is found guilty, counsel requested his punishment be time served due to the punishment and restriction he has already been subject to:

- sleeping in a training room/gym room for over a month
- three Meals Ready to Eat (MREs) a day for over a month with very few exceptions for a hot meal such as Sundays

- sleeping on a cot in the open training room behind a desk and told to leave every time there was a meeting or any activity
- no access to shower until after all of the staff in the battalion left for the day
- loss of phone except for 30 minutes a day and only with the drill sergeant at the duty desk
- rights to speak to the Inspector General essentially denied since no one ever answered the phone
- not given opportunity to use the open door policy with company commander
- denied access to get personal hygiene products for over a month and not given an opportunity to get a haircut for over a month
- could not do physical training because he may get hurt
- transported to the range but only stood around without firing; left by himself for an hour; same treatment on the second day
- he was not provided an ID card until 5-months after starting BCT

(15) Counsel requests that if the commander calls witnesses for the NJP he be allowed to interview them; the investigation was lacking detail, specifics, and had inconsistencies in the statements.

m. On 8 January 2024, counsel for the applicant provided the Commanding Officer, E Company, an appeal memorandum of the findings of the NJP findings. The entire 15-page appeal is available for Board's consideration. In this appeal, counsel:

(1) Requests reversal of the finding of guilt from two aspects; that the evidence did not support a finding of guilt beyond a reasonable doubt and (2) there was no rehabilitative counseling and corrective action taken prior to the NJP, as provided by regulation.

(2) Notes that the NJP was conducted on 3 January 2024. It is not clear, but it appears that his company commander found the applicant guilty of "mocking an Asian," "rendering a 'Nazi' salute to a Jewish trainee," and "pointing a weapon at Black trainees and saying, 'He's reloading'." Lack of clarity exists because his commanding officer did not outline what allegations he was finding the applicant guilty of. He did state that he was removing or entering a finding of not guilty with regards to the comment to or about a Jewish trainee claiming that it was not clear based on statements. He did not cite the charge and elements he was finding and outline the basis for the findings per each charge, the elements of the charge and based on the definitions and requirements under Army Regulation 600-20. The conclusion garnered from the NJP hearing was the applicant was guilty because it seemed to feel like or appeared he was guilty. Finally, with regard to punishment, he asked the first sergeant and a drill sergeant in the hearing what they believed the punishment should be.

(3) Notes the standard used for adjudicating the NJP required preponderance of the evidence, clear and convincing, beyond a reasonable doubt. Counsel lists and explains each of these.

(4) Notes the commanding officer must presume the accused to be innocent prior to reviewing evidence and making a decision. In this case the commanding officer requested the IO to interview certain witnesses and not requesting a thorough investigation seemed to prejudge the case. No witnesses were questioned but only asked to write statements. The applicant's status changed, and his freedom was limited once the allegations were made and investigation begun, indicating a presumption of guilt.

(5) Notes that during the NJP it was not clear the company commander read all the matters and witness statement counsel provided. He removed the finding of the applicant's guilt for the comment regarding a Jewish trainee. He stated this was due to the applicant's statement. In regard to pointing a weapon at a Black trainee, he claimed the applicant admitted this in his statement. What the applicant did admit to was he and other trainees used their fingers to point like a gun at each other. Finally, when the company commander was asked about the finding of guilty for a Nazi salute, he said the applicant admitted it when actually the applicant explained in his statement that after seeing other trainees cover down and laugh while they were doing the Nazi salute, he told them it was with the right and not the left hand.

(6) Notes that in regard to the evidence, it barely meets the lowest standard, preponderance of the evidence. The statements on behalf of the applicant by other trainees, the three statements he provided, and the (twelve) character witness statements negate the allegations.

(7) Notes that a targeted review of the evidence provided forced counsel to conduct his own investigation based on the insufficiency of the IO provided statements. Based on witness interviews and statements, the BCT class included a lot of sexual, racial, and other jokes, derogatory comments and gestures. The allegations of insulting comments or gestures came from other than those who the applicant is accused of directing them towards. A thorough investigation would have provided a clearer picture.

(8) Provides a review of the five trainee accusing statements and reiterates from his 28 November 2023 memorandum to the company commander, that there were certain notable insufficiencies in those statements.

(9) Provides and reiterates the statements that oppose the accuser's statements.

(10) Notes again the inadequacy of the IO investigation, pointing out it was an effort to collect sworn statements, with no effort to actually investigate as to the truth or

detail of any statement. The majority of the statements came from those who were not actual witnesses or those who were not victims. Counsel again questions why the IO did not seek interviews with any alleged victims or questions those about complaints against the various drill sergeants.

(11) Notes again that the applicant's accusers did not like him. He believes he was targeted because of his politics, specifically a picture of President Trump on his phone. After seeing this picture Trainee Co\_\_\_\_ verbally attacked him asking if he was racist and if he liked Black girls.

(12) Notes again the inadequacy of the investigation and that procedurally many steps were skipped. He notes no steps at counseling and rehabilitation as instructed in Army Regulation 635-200, paragraph 11-4; and in paragraph 1-17 concerning command obligations to entry-level Soldiers; and notes developmental counseling deficiencies. In the company commander's separation notification, there is no evidence of further misconduct, or rehabilitation given or outlined showing the method to correct or improve that misconduct.

(13) Notes that when the company commander was asked whey the applicant had been punished already and whether this should be considered during the NJP, he explained that the applicant was in a training status and cited TRADOC Regulation 650-6 [350-6 (Enlisted Initial Entry Training Policies and Administration)], and claimed he was not being punished. Counsel argues that the command cannot avoid the perception of punishment or restriction by claiming the Soldier is in a training status; that he was not training while he was sitting around and not given a phone, was not permitted to engage in physical training, and denied access to church.

(14) Argues that the punishment and restriction was tantamount to confinement. Counsel reiterates the treatment of the applicant once the investigation was underway and all the other trainees graduated was troubling.

(15) Counsel reviewed excerpts of paragraphs detailing Training and Doctrine Command (TRADOC) Regulation 650-6 [350-6] (Enlisted Initial Entry Training Policies and Administration), which outlines the treatment of initial enlisted training of trainees and Soldiers.

n. An MFR from the applicant, dated 22 January 2024, provided through counsel, outlines the applicant's experiences while at BCT. With this memorandum he enclosed twelve character statements. The entire statement is available for Board's review. He states, in part:

(1) Things did not go well for him at the beginning after he received insults from women Soldiers who were charging their phones on Sunday mornings. They noticed a

picture of President Trump on his screen background. He was targeted as "racist," "Nazi," and "White supremacist." He was assigned to 2nd Platoon and his leader was SDS F\_\_\_\_, who asked the trainees to write their reasons for joining the Army. She did not like his reason and referred to him as the "M-F- who thinks he knows it all." He asked SDS F\_\_\_\_ to take him to his unit to retrieve his (naturalization) documents but was ignored. This delayed his in processing and subsequently he could not get sworn in as a U.S. citizen.

(2) From this point his training was entirely based on nothing else but derogatory insults from SDS F\_\_\_\_ towards him. He details the profanity and "hostile" environment he was subject during training. He was not taking issue with the profanity since he became aware of it as part of the Army training. He always thought SDS F\_\_\_\_ had personal issues with him but it was not confirmed until late in "Forge" in Blue Phase when she was asked by one of the trainees if she had a favorite Soldier and she pointed towards him and said, "I don't know about that, but definitely this M-F- is the one I hate most."

(3) On 3 October 2023, his mother and wife came to spend the day with him but was called by SDS F\_\_\_\_ to inform him he was the subject of an EO investigation and would not march the next day. They informed him this a day before graduation and a day before everyone was leaving for AIT training, without telling him the charges or accusations, or a chance to collect evidence or witness accounts to prove his innocence. His family flew from Peru and his wife flew from Nevada for the graduation. His SDS F\_\_\_\_ knew about this because he told her his mother and father were coming and they would not have a problem coming on base if she presented her passport. She also knew his wife was about to give birth in December.

(4) On 3 October 2023, his company commander told him an IO was going to talk to him and ask him some questions. A month later on 4 November 2023, his company commander notified him of the final accusations and no investigator ever came to ask him any questions regarding his case.

(5) The applicant reiterates his statements regarding the allegation of making a 'Nazi' salute and remarking "What a shame he won't see the light of the new tomorrow." He reiterates his statement regarding making racist, homophobic and racist slurs, mocking an Asian trainee, and pointing his weapon at a Black trainee.

(6) He was told he had to collect evidence to defend himself from the accusations, but this was a month after the rest of his company had already left for AIT.

(7) This statement was typewritten on 22 January 2024 in the battalion executive officer's office. He previously hand-wrote this statement in his personal notebook on 5 November 2023.

(8) This statement is accompanied with twelve character references as follows:

(a) General [REDACTED] an undated statement giving his full and whole-hearted endorsement for reinstatement. General [REDACTED] wrote, in part, he was intimately aware of the circumstances which led to the gross miscarriage of justice concerning the applicant. A grave injustice was done, and it must be corrected.

(b) Master Sergeant (MSG) FJD\_\_\_\_, dated 7 May 2024, in which the MSG notes he was recently sworn in as a U.S. citizen and strongly recommended his waiver to serve again in uniform.

(c) Colonel (COL) DWJ\_\_\_\_, dated 25 April 2024, in which the COL recommended his reinstatement and notes a miscarriage of justice was taking place.

(d) RJW\_\_\_\_, noting he previously knew the applicant who worked as a personal caregiver for his father-in-law at home. He noted his hard working and responsible work ethic.

(e) An undated hand-written statement from B\_\_\_\_, in support of the applicant which is partially legible.

(f) A hand-written statement from PVT CL\_\_\_\_, dated 22 October 2023, who served with him during training and looked up to him as an honest and respectful person.

(g) A hand-written statement from SP4 HJ\_\_\_\_, dated 22 October 2023 who notes the applicant was assigned to his platoon and has been cooperative and respectful and in accordance with Army values.

(h) A letter from Mrs. SJ\_\_\_\_, dated 14 November 2023, noting she had known the applicant for over 5 years, and has been like a son to her.

(i) An undated letter from the applicant's wife, a Doctor of Occupational Therapy, who noted he is a strong man of God, who put his faith before anything else. She requests he be given the opportunity to continue serving his country.

(j) An undated letter from CP\_\_\_\_, in which the author met the applicant while working in an assisted living facility. He was a very caring caregiver, always polite, and interested in getting more involved in the community. He was interested in becoming an American citizen.

(k) An undated letter from DH\_\_\_\_ a retired airline pilot who mentored the applicant during flight training at his program. The applicant was highly intelligent and

had good analytical skills and he ranked him in the top 5% of students he taught over the past 5 years. He highly recommended the applicant for training as an Army pilot.

(l) An undated hand-written letter from PV2 AJ\_\_\_\_, who knew the applicant during training and found him to be helpful in the bay with completing all of his duties. He knew the applicant to be honest and a good person.

o. A developmental counseling statement dated 26 January 2024, in which the company commander notified the applicant he was recommending separation under the provisions of Army Regulation 635-200, chapter 14. The key point of the discussion centered around violation of Army Regulation 600-20 and the Army's EO program. His commander recommended separation in concurrence with the recommendation of his DS. The applicant refused to sign this counseling.

p. A developmental counseling statement, dated 27 January 2024, duplicating the counseling statement of the day before. The applicant refused to sign this counseling.

q. A memorandum from the counsel of the applicant, to the GCMCA, dated 2 February 2024, submitting a formal Article 138 complaint in response to the treatment the applicant received: restriction tantamount to punishment and harassment, or at most pre-trial confinement. Counsel reiterates the elements of the restrictions imposed against the applicant, as previously outlined in his memorandum dated 8 January 2024 and appeal of the NJP to his company commander. Counsel notes in this memorandum:

(1) The company commander and his noncommissioned officers failed to follow Army Regulation 635-200 and failed as leaders. Counseling and rehabilitative efforts were not followed. It appears that since this failure and violation of the regulation was pointed out in their matters for a Chapter 11 (entry level performance and conduct) was initially filed, someone provided legal advice and attempted to correct and change the chapter 11 to a chapter 14, believing they could avoid the counseling and rehabilitation requirements. Army Regulation 635-200 still requires counseling and rehabilitation requirements. The switch to chapter 14 appears to be a last-ditch effort to correct the Article 92 violations by the company commander. The applicant was charged with failure to obey an order or regulation, Article 92 of the UCMJ. As will be outlined in the Chapter 14 matters we will submit by 6 February 2024, the company commander is just as guilty of violating this regulation as he accuses the applicant.

(2) The IO did not follow Army Regulation 27-10 (Military Justice) or Army Regulation 15-6 (Procedures for Investigating Officers and Boards of Officers). The statements against the applicant claim his gestures or comments were frequent but no one complained until the day before graduation. He was treated horrifically until he was able to retain civilian counsel to hold the command accountable for their actions. After

counsel pointed out the treatment of the applicant, he issued a 23 November 2023 memorandum subject "Holdover Population" as to how holdovers should be treated. His company commander attempted to claim he was in a training status and that was the reason for his treatment, but TRADOC 350-6 says different.

r. Three color photographs of the cot the applicant slept in and living space in the open bay/gym he was housed during his holdover.

s. A memorandum from counsel to the Commanding Officer, 165th Infantry Brigade, dated 6 February 2024, providing rebuttal matters to the chapter 14 action. The 10-page matters memorandum is available for Board's review. The applicant requested through counsel:

(1) He be retained in the Army and sent to Airborne training. He joined the Army to serve. He was offered NJP then found guilty of violation of Article 92 of the UCMJ. He denied the allegations and provided countering evidence.

(2) Counsel reiterates:

- lack of leadership led to his targeting because he was a conservative Christian and was vocal about that and he had a photo on his phone screen leading to biased treatment
- he was initially facing a Chapter 11 separation and on 28 November 2023, it was read to him but after matters submitted by counsel on 14 December 2023, changed to a chapter 14
- counsel reiterates elements of regulations not being followed as to counseling and rehabilitation
- counsel reiterates the elements of lack of due process and investigation to this case, noting again that 2 days before graduation he collected written statements yet did not see the written statements provided to SDS F\_\_\_\_ before then; there was no interview with the alleged victims

(3) The applicant could be considered a whistleblower as per Army Regulation 600-20 and entitled to protections against retaliation.

(4) Counsel revisits the witness statements and deficiencies with each statement.

(5) Counsel offers the character statements of "8" persons; there are actually 12 statements which have been previously outlined.

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

- a. On 10 July 2023, he enlisted in the Regular Army for 4 years and 23 weeks in the rank/grade of private/E-1.
- b. On an unspecified date he was assigned to Echo Company, 3 Battalion, 34th Infantry Regiment, Fort Jackson, for basic combat training.
- c. On 30 October 2023, he underwent a medical examination and gave a report of medical history. He indicated he was in good health. His medical examination and mental health status evaluation are not available in the records.
- d. Orders Number 0006948836.00, issued by Department of the Army, dated 9 January 2024, promoted him to PV2/E-2, with a date of rank of 10 January 2024.
- e. On 24 January 2024, his company commander notified him he was initiating action to separate him under the provisions of Army Regulation 635-200, Chapter 14 for commission of a serious offense, and advised him of his rights. The reasons for his proposed action were: he had committed multiple violations of Army Regulation 600-20, paragraph 6-2, by wrongfully mocking a Trainee of Chinese descent by using a fake Asian accent, by rendering a "Nazi" salute to a Jewish Trainee, and by pointing his weapon at Black Trainees and saying, "He's reloading." His commander advised him he was recommending an entry-level separation. His recommendation would be submitted to the brigade commander who was the separation authority and would make the final decision in his case. The applicant understood he had the right to consult with consulting counsel, he may obtain copies of the documents that would be sent to the separation authority, he may present written statements to the separation authority for consideration, or he may waive his rights in writing.
- f. On 26 January 2024, his company commander counseled him he was concurring with the recommendation of his drill sergeant in recommending separation under the provisions of Army Regulation 635-200, Chapter 14 for violation of Army Regulation 600-20.
- g. On 9 February 2024, after meeting with counsel, he acknowledged receipt of his company commander's notification memorandum, and he elected his rights. He understood he was not entitled to consideration of his case by an administrative separation board. He elected to submit statements in his own behalf, and he requested consulting counsel. He understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him. He understood that if he received a discharge/character of service that was less than honorable he may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, he further realized that an act of consideration by either board did not imply that his discharge would be upgraded.

h. On 7 February 2024, his company commander forwarded his recommendation to the battalion commander. In his memorandum, the company commander noted the applicant's record of disciplinary action included one instance of NJP for violation of Article 92 of the UCMJ; for violation of Army Regulation 600-20, for using racial slurs. His punishment consisted of 14 days of restriction. His company commander noted the service member's values did not align with the Army values and his lack of remorse did not indicate a willingness to change.

i. On 8 March 2024, the separation authority approved his discharge for commission of a serious offense and directed a characterization of service of uncharacterized.

j. On 13 March 2024, he was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, with uncharacterized service after completing 8 months and 4 days of active service. His rank was shown as PVT/E-1. He was neither awarded a military occupational specialty nor was he awarded any decorations, medals, or badges.

#### 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 request, supporting documents, and evidence in the records. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c (Commission of a Serious Offense) with the commander citing the reason for his proposed action are the applicant having committed multiple violations of paragraph 6-2 of Army Regulation 600-20 (Army Command Policy) by wrongfully mocking a trainee of Chinese descent by using a fake Asian accent, by rendering a "Nazi" salute to a Jewish trainee, and by pointing his weapon at black trainees and saying "he's reloading." Based upon this serious misconduct and the harm it had on fellow new Soldiers, the Board concluded that the seriousness of the misconduct outweighed any potential clemency which may be considered as a result of inappropriate actions taken by unit leadership.

a. Reinstatement to active duty. Deny. The Board found no error or injustice in the separation proceedings. Based upon the egregious misconduct leading to the applicant's separation, the Board concluded there was insufficient evidence of an error or injustice to warrant reinstatement to active duty. The applicant's separation was warranted by the gravity of the offenses outlined in his separation proceedings.

b. Based on the foregoing, the Board determined remuneration of back pay from the date of his discharge to the date of his reinstatement and adjustment of his rank were unwarranted.

2. 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.

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 (Army Board for Correction of Military Records) 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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 (SHARP).
  - a. Paragraph 4-1. Military Discipline. Military discipline is founded upon self-discipline, respect for properly constituted authority, and the embracing of the professional Army Ethic with its supporting individual values.
  - b. Paragraph 4-19. The Army is a values-based organization where everyone is expected to do what is right by treating all persons as they should be treated with dignity and respect. Army personnel are expected to treat all people with respect in all aspects of life and forms of communication (for example, online or in person). Furthermore, Army personnel, especially those entrusted with the mantle of leadership, will lead by example and do what is right to prevent abusive treatment of others. Failure to do so brings discredit on the Army and may have strategic implications. Hazing, bullying, and discriminatory harassment of people or their property is prohibited; allegations of harassment will be addressed swiftly, individually, and in light of their circumstances. Hazing, bullying, online misconduct, and other acts of misconduct, undermine trust, violate our ethic, and negatively impact command climate and readiness.
  - c. Paragraph 4-19a(1). Hazing. A form of harassment that includes conduct through which Soldiers or DA Civilian employees (who haze Soldiers), without a proper military authority or other governmental purpose but with a nexus to military service, physically or psychologically injures or creates a risk of physical or psychological injury to Soldiers for the purpose of: initiation into, admission into, affiliation with, change in status or position within, or a condition for continued membership in any military or DA Civilian organization. Hazing can be conducted through the use of electronic devices or communications, and by other means including social media, as well as in person.
  - d. Paragraph 4-19a(2). Intimidating, teasing, name calling, mockery, threats of violence, harassment, taunting, social exclusion, isolating, manipulating, blackmailing,

and spreading rumors in which there is often a power differential, whether by rank, position, physical stature, social standing or other measures, between the aggressor (one or more) and the victim (one or more).

e. Paragraph 4-19a(2)b(3) Discriminatory harassment. A form of harassment that is unwelcome conduct based on race, color, religion, sex (including gender identity), national origin, or sexual orientation.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), currently in effect, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. Paragraph 1-17. Counseling and Rehabilitative Requirements. 1-17. Counseling and rehabilitative requirements. General. Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Effective leadership is particularly important in the case of Soldiers serving their initial enlistments. Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons: Minor disciplinary infractions or a pattern of misconduct.

b. Chapter 14 establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

c. Paragraph 14-12c. Commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

4. U.S. Army Training Doctrine and Command (TRADOC) Regulation 350-6 (Enlisted Initial Entry Training Policies and Administration), currently in effect (8 December 2022), prescribes TRADOC guidance, policies, procedures, and responsibilities for managing and conducting Initial Entry Training (IET).

- a. Paragraph 2-4. Treatment of IET Trainees/Soldiers. Treat all Trainees/Soldiers in accordance with Schofield's definition of discipline: "The discipline which makes the Soldier of a free country reliable in battle is not to be gained by harsh or tyrannical treatment. On the contrary, such treatment is far more likely to destroy than to make an Army. It is possible to impart instruction and give command in such a manner and such a tone of voice to inspire in the Soldier no feeling but an intense desire to obey, while the opposite manner and tone of voice cannot fail to excite strong resentment and a desire to disobey. The one mode or the other of dealing with subordinates springs from corresponding spirit in the breast of the commander. He who feels the respect which is due to others cannot fail to inspire in them regard for himself, while he who feels, and hence manifests, disrespect toward others, especially his inferiors, cannot fail to inspire hatred against himself." MG John M. Schofield, 11 August 1879.
- b. Treat IET Trainees/Soldiers with the same respect, fairness, and regard for dignity accorded to all Soldiers, regardless of race, sex, class, religion, or other aspects. Goal is to show what positive leadership looks like and to build trust with the trainees/Soldiers from the very beginning.
- c. Create a rigorous environment that places stress on the Trainees/Soldiers and challenges their ability to accomplish the task to standard. Reinforce and certify all Soldiers in their MOS-specific tasks in a rigorous, realistic, Decisive Action Training Environment (DATE) driven scenario culminating field-training exercise.
- d. Provide sufficient time for Trainees/Soldiers to conduct personal hygiene, take prescribed medications, perform rehabilitative exercises, and apply ice therapy or other appropriate self-care instructions when directed by medical authorities.
- e. Afford Trainees/Soldiers the opportunity to participate in scheduled religious services, but do not direct or coerce participation in any service. Afford those Trainees/Soldiers who choose not to participate in religious services the opportunity for secular personal time. Personal time activities will not include barracks maintenance or similar activities that offer Trainees/Soldiers no meaningful choice. The intent is to make it clear that religious activities are voluntary, not command directed.
- f. Paragraph 5-10. Fueling for performance. The demands imposed by Army training are unique. Trainee/Soldier fueling is a critical component of health and fitness, and plays a key role in optimal physical and cognitive function and injury prevention. The integration of basic nutrition concepts can improve individual Soldier performance. Equally important is maximizing the accessibility to fresh, nutritious meals through the dining facilities. Pre-packaged meals, such as the MRE, should be minimized unless specifically required by the training mission. In general, nutritious meals take longer to consume, so adequate time must be provided each day to assure Soldiers have the opportunity to fuel for performance. Drill Sergeants are required to accompany Trainees

through the dining facility (DFAC) to ensure that nutrition standards are followed and that the dining facility is offering quality selections.

5. Army Regulation 15-6 (Procedures for Investigating Officers and Boards of Officers) establishes procedures for investigations and boards of officers not specifically authorized by any other directive. The investigating officer or board of officers has the following responsibilities:

a. Make findings – a finding is a clear and concise statement of a fact that can be readily deduced from evidence in the record. It is directly established by evidence in the record or is a conclusion of fact by the investigating officer or board. Negative findings (for example, that the evidence does not establish a fact) are often appropriate. The number and nature of the findings required depend on the purpose of the investigation or board and on the instructions of the appointing authority. The investigating officer or board will normally not exceed the scope of findings indicated by the appointing authority. The findings will be necessary and sufficient to support each recommendation. The standard of proof for a finding is that it must be supported by a greater weight of evidence than supports a contrary conclusion, that is, evidence which, after considering all evidence presented, points to a particular conclusion as being more credible and probable than any other conclusion. The weight of the evidence is not determined by the number of witnesses or volume of exhibits, but by considering all the evidence and evaluating such factors as the witness's demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity.

b. Make recommendations – the nature and extent of recommendations required also depend on the purpose of the investigation or board and on the instructions of the appointing authority. Each recommendation, even a negative one (for example, that no further action be taken) must be consistent with the findings. Investigating officers and boards will make their recommendations according to their understanding of the rules, regulations, policies, and customs of the service, guided by their concept of fairness both to the Government and to individuals.

c. Investigations or boards may be formal or informal. In an informal investigation or board, a report will be written unless the appointing authority has authorized an oral report. Written reports of informal investigations will use DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers); however, its use is not required unless specifically directed by the appointing authority. Every report, oral or written, on DA Form 1574 or not, will include findings and, unless the instructions of the appointing authority indicate otherwise, recommendations.

d. Paragraph 2-8. Approval Authority. Upon receipt of a completed investigation or board containing the legal review, the approval authority will conduct a final review of

the IO's or board's findings and recommendations and the legal review. The approval authority may approve, disapprove, modify, or add to the findings and recommendations, consistent with the evidence included in the report of proceedings. The approval authority may also concur in or disagree with recommendations that cannot be implemented at his or her level. The approval authority may take action different than that recommended with regard to a respondent or another individual unless the specific regulation or directive under which the investigation or board was appointed provides otherwise.

6. 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. Paragraph 3-37 (Distribution and Filing of DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) and Allied Documents) states the original DA Form 2627 will be filed in the Soldier's AMHRR. The decision to file the original DA Form 2627 in the performance folder or the 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 any superior authority. However, the superior authority cannot direct that a DA Form 2627 be filed in the performance folder that the imposing commander directed to be filed in the restricted folder.

7. Department of Defense Directive 7050.06 (Military Whistleblower Protection), implemented the provisions of the MWPA as codified in Title 10, U.S. Code, section 1034.

a. The directive established policy that:

- (1) Members of the Military Services (referred to in this directive as "Service members") are free to make protected communications.
- (2) No person will restrict a Service member from making lawful communications to a member of Congress or an inspector general (IG).
- (3) Service members will be free from reprisal for making or preparing to make or being perceived as making or preparing to make a protected communication.
- (4) No person may take or threaten to take an unfavorable personnel action or withhold or threaten to withhold a favorable personnel action in reprisal against any Service member for making or preparing to make, or being perceived as making or preparing to make a protected communication.

b. Protected communications are defined as:

(1) Any lawful communication to a Member of Congress or an IG.

(2) A communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, including:

- a law or regulation prohibiting sexual harassment or unlawful discrimination
- gross mismanagement
- gross waste of funds or other resources
- an abuse of authority
- a substantial and specific danger to public health or safety

c. Reprisal is defined as "taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication."

d. A "personnel action" is any action taken that affects, or has the potential to affect, the military member's current position or career. Personnel actions include promotions; disciplinary or other corrective actions; transfers or reassignments; performance evaluations; and any other significant changes in duties or responsibilities inconsistent with the military member's grade.

//NOTHING FOLLOWS//