

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2025

DOCKET NUMBER: AR20240010755

APPLICANT REQUESTS: reinstatement of his rank/grade to sergeant (SGT)/E-5.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) ending on 8 September 2014, which shows, he was honorably discharged for misconduct (serious offense) in the rank/grade of specialist (SPC)/E-4 and he served in Iraq from 22 October 2009 to 22 May 2010

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 part:

- He previously applied for a discharge upgrade, and it was granted
- He was chaptered out of the Army after serving 6 years including a tour to Iraq
- He was granted two good conduct medals while he was serving
- He was "given an Article 15 [Non-Judicial Punishment (NJP)] for calling my spouse that I was going through a divorce with a "faggot" and she sent my company commander a screen shot of the text message to him"
- He had prior altercations with the commander due to leadership issues
- He lost his rank of SGT and was demoted to SPC
- He is submitting a request to the Board for reinstatement of his rank to SGT
- The applicant strongly feels that the demotion and subsequent separation from the military that he experienced were based on unjust grounds
- It is crucial to note that the personal text messages exchanged between his spouse and him were never intended to be disclosed to his commanding officer

- In his opinion, the actions taken against him, including the demotion and issuance of an Article 15 (NJP), were not justified
- The applicant firmly believes that penalizing Soldiers for private conversations sets a concerning precedent within the military; it is widely acknowledged that in professional settings, employees may express grievances about their superiors in private discussions
- In an attempt to rectify the situation, he personally extended his apologies to the company commander
- The applicant wholeheartedly believes that correcting past injustices is crucial, regardless of the duration of time that has passed

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

- On 21 August 2008, the applicant enlisted in the Regular Army
- On 24 February 2011, he reenlisted for 5 years
- On 20 March 2013, Orders Number 079-01 promoted the applicant to the rank of SGT, effective 1 March 2013
- On 5 May 2014, the applicant's commander counseled him for failure to obey an order or regulation by refusing to provide his cell phone password to his commander; the counseling also states:
 - On 2 May 2014, the commander determined there was probable cause to seize and search the applicant's cell phone (see attached memorandum for record)
 - The commander met the applicant in front of building 2065 and seized his cell phone to gather evidence for possible Uniform Code of Military Justice (UCMJ) violation
 - The applicant's phone had a security feature; when the commander requested the password, the applicant refused; at one point during the event, the commander allowed the applicant to hold the phone to unlock it
 - When the applicant unlocked the phone, he attempted to delete some information off the phone and the commander took the phone back; the applicant refused to sign the counseling
- On 9 May 2014, the applicant was counseled again by his commander for disrespect toward a superior commissioned officer for calling his commander a "faggot" in a message sent to the applicant's spouse; the applicant indicated he agreed with the counseling
- On 13 June 2014, an Offer to Accept an Article 15 shows, the applicant was advised of violating the UCMJ and that he agreed to accept the Field Grade Article 15 for violations of the UCMJ, Articles 92 and 89, and he conditionally waived his rights to an administrative separation board

- The applicant, his defense counsel, and the trial counsel signed the offer; the brigade commander accepted and signed the offer on 18 June 2014
- On 23 July 2014, the applicant formally accepted the NJP (Article 15), UCMJ, for behaving himself with disrespect toward a superior commissioned officer (Captain B_, 6 May 2014); the punishment consisted of a reduction to SPC/E-4, forfeiture of \$582.00 pay per month for two months (suspended), and 45 days of extra duty, he chose not to appeal the punishment
- On 29 July 2014, the applicant was medically cleared for separation action
- On 31 July 2014, he underwent a mental status evaluation and was psychiatrically cleared for administrative separation
- On 22 August 2014, the applicant was notified by his immediate commander that he was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, for commission of a serious offense
 - The immediate commander recommended the applicant receive a General, Under Honorable Conditions characterization of service; and
 - The applicant acknowledged receipt of the notification
- On 25 August 2014:
 - Counsel advised the applicant of the basis for his contemplated separation and its effects, the rights available to him, and the right to waive his rights; the applicant waived consideration of his case by an administrative separation board (ASB) and personal appearance before an ASB
 - The immediate commander formally recommended the applicant for administrative separation
- On 27 August 2014, the separation authority directed the applicant be separated with a General, Under Honorable Conditions Discharge
- On 8 September 2014, the applicant was discharged under honorable conditions (general), by reason of misconduct (serious offense); he completed 6 years and 18 months net active service this period; his DD Form 214 shows in item:
 - 4a (Grade, Rate or Rank) – SPC
 - 12i (Effective Date of Pay Grade) – 14 July 2014
 - 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):
 - Army Commendation Medal (2nd award)
 - Army Achievement Medal

- Army Good Conduct Medal (2nd award)
 - National Defense Service Medal
 - Global War on Terrorism Service Medal
 - Iraq Campaign Medal with campaign star
 - Army Service Ribbon
- 18 (Remarks) – Service in Iraq from 22 October 2009 to 22 May 2010
- On 12 August 2016, and by a 4-1 vote, the Army Discharge Review Board determined that the applicant's characterization of service was too harsh based on the applicant's length and quality of his service, to include his combat service, and circumstances surrounding the discharge (i.e. isolated single incident, minor)
 - Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable
 - The Board determined the reason for discharge was proper and equitable and voted not to change it
 - On 12 December 2016, the applicant was reissued a DD Form 214 showing an honorable characterization of service; item 4a shows SPC

BOARD DISCUSSION:

After reviewing the application and all supporting documents, 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 review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, length of service and combat service, the Board determined the actions taken by the command was unjust and warranted relief. The Board also noted the Army Discharge Review Board upgraded his character of service to honorable. Therefore, the Board determined that based on an injustice, relief was warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	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 Army records of the individual concerned be corrected by amending his corrected DD Form 214, for the period ending 12 December 2016 to show in:

- item 5a (Grade, Rate or Rank): SGT
- item 5b (Pay Grade): E-5
- item 12i (Effective Date of Pay Grade): 1 March 2013

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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. AR 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. In pertinent part:

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Army policy states that an under other than honorable conditions discharge is normally considered appropriate; however, a general, under honorable conditions or an honorable discharge may be granted.

b. Paragraph 14-12c states a Soldier is subject to action per this section for commission of a serious military or civilian 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.

3. AR 27-10 (Military Justice) provides that any commander is authorized to exercise the disciplinary powers conferred by UCMJ, Article 15. Regarding reductions in grade, the grade from which reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. For the purposes of this regulation, the imposing commander or any subordinate commander has "promotion authority" within the meaning of UCMJ, Article 15 if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade. Paragraph 3-20 describes setting aside of punishment and restoration of rights, privileges, or property. This is an action whereby the punishment or any part or amount thereof, whether executed or unexecuted, is set aside and any property, privileges, or rights affected by the portion of the punishment set aside are restored.

a. NJP is "wholly set aside" when the commander who imposed the punishment, a successor-in-command, or a superior authority sets aside all punishment imposed upon an individual under Article 15. The basis for any set aside action is a determination that, under all the circumstances of the case, the punishment has resulted in a clear injustice.

b. "Clear injustice" means there exists an un-waived legal or factual error that clearly and affirmatively injured the substantial rights of the Soldier. An example of clear injustice would be the discovery of new evidence unquestionably exculpating the Soldier. Clear injustice does not include the fact that the Soldier's performance of service has been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on the retention or promotion potential of the Soldier.

c. Normally, the Soldier's uncorroborated sworn statement will not constitute a basis to support the setting aside of punishment.

d. The power to set aside an executed punishment and to mitigate a reduction in grade to a forfeiture of pay, absent unusual circumstances, will be exercised only within 4 months after the punishment has been executed. When a commander sets aside any portion of the punishment, the commander will record the basis for this action on DA Form 2627-2 (see paragraph 3-38b). When a commander sets aside any portion of the punishment after 4 months from the date punishment has been executed, a detailed addendum of the unusual circumstances found to exist will be attached to the form containing the set-aside action.

4. AR 15-80 (Army Grade Determination Review Board and Grade Determinations) establishes policies, procedures, and responsibilities of the Army Grade Determination Review Board (AGDRB) and other organizations delegated authority to make grade determinations on behalf of the Secretary of the Army. In pertinent part:

a. Paragraph 2-5 (Unsatisfactory service) states that, service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when:

(1) Reversion to a lower grade was —

- Expressly for prejudice or cause
- Owing to misconduct
- "Caused by nonjudicial punishment pursuant to Uniform Code of Military Justice, Article 15"
- The result of the sentence of a court-martial

(2) There is sufficient unfavorable information to establish that the Soldier's service in the grade in question was unsatisfactory. One specific act of misconduct may or may not form the basis for a determination that the overall service in that grade was unsatisfactory, regardless of the period of time served in grade.

b. Paragraph 2-6 (Service in lower grade) states, if service in the highest grade held was unsatisfactory, the Soldier can be deemed to have served satisfactorily in the next

lower grade actually held, unless paragraph 2-5 applies with regard to that next lower grade.

5. AR 635-8 (Separation Processing and Documents) prescribes the transition processing function of the military personnel system. Paragraph 5-6 (Rules for completing the DD Form 214) states for Block 4 (Grade, Rate, or Rank), verify that active duty grade or rank and pay grade are accurate at time of separation.

//NOTHING FOLLOWS//