



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC

DEC 08 1998

Office of the Assistant Secretary

AFBCMR 98-00011

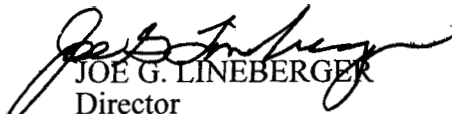
MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that:

a. The Article 15, UCMJ, initiated on 9 January 1995, with punishment imposed on 26 January 1995, be, and hereby is, set aside and removed from his records and all rights, privileges and property of which he may have been deprived be restored.

b. The Article 15, UCMJ, initiated on 7 February 1995, with punishment imposed on 13 February 1995, be, and hereby is, set aside and removed from his records and all rights, privileges and property of which he may have been deprived be restored.

  
JOE G. LINEBERGER  
Director  
Air Force Review Boards Agency

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

DEC 08 1998

IN THE MATTER OF:

DOCKET NUMBER: 98-00011

COUNSEL: [REDACTED]

HEARING DESIRED: No

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APPLICANT REQUESTS THAT:

The Article 15s, dated 26 January 1995 and 13 February 1995, be removed from his records.

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APPLICANT CONTENDS THAT:

He was exonerated and his Unfavorable Information File (UIF) was pulled; however both Article 15s are still in his records. In support, he provides an unsigned, undated AF Form 1058, UIF Action, which contains a typed statement, "The Article 15 for stealing and the Article 15 for impeding an investigation are being removed from the UIF. Because of this action the UIF is now being terminated."

A copy of applicant's complete submission is attached at Exhibit A.

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STATEMENT OF FACTS:

The applicant was honorably released from active duty in the grade of airman first class on 19 October 1996 for completion of required active service and transferred to the Reserves. He had 4 years of active service.

The remaining relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force. Accordingly, there is no need to recite these facts in this Record of Proceedings.

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AIR FORCE EVALUATION:

The Associate Chief, Military Justice Division, AFLSA/JAJM, evaluated this appeal and provides the details surrounding the Article 15s in question. The applicant has not provided any compelling evidence that he was subsequently exonerated—of the

offenses in either of the Article 15s. There is no paperwork indicating the Article 15s were set aside. If he was exonerated, some sort of documentary evidence should exist to corroborate this. A document can only remain in a UIF for two years. This could be the basis as to why the Article 15s were removed and the UIF terminated. In addition, the AF Form 1058 is questionable since it is not signed and not dated. The author concludes that as there are no legal errors requiring corrective action, the appeal **should** be denied.

A copy of the complete Air Force evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant responded with electronic mailgrams dated 4 and 5 May 1998, an undated handwritten statement and an undated typed statement. He states that with these two Article 15s in his record his honorable discharge might as well have been dishonorable because no one will hire him. He was innocent and it was all a misunderstanding. He gives his reasons at length for why the Article 15s should be removed. He also provides a copy of the AF Form 1058 that is signed and dated. *[The Personnel Data System (PDS) indicates that the individual who signed the form is currently a 1<sup>st</sup> lieutenant in the Air Force. The PDS also confirms that at the time he signed the form as a 2<sup>nd</sup> lieutenant, he was the section commander of the Mission Support Squadron at [redacted] The applicant was relieved from the [redacted] at [redacted] when he was discharged.]*

Applicant's complete responses, with attachment, are at Exhibit E.

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THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. According to the AF Form 1058, signed and dated 26 March 1996, the 77MSS section commander removed the contested Article 15s from the UIF, effectively terminating the UIF. We realize the mere removal of the Article 15s from the UIF does not conclusively prove the applicant was exonerated and the nonjudicial punishments were set aside. This may have been merely an administrative action taken to close the UIF. However, we note these documents were removed nearly a year before the normal two-year period. We believe the possibility exists that he may have been cleared of the charges against him. In view of this

and the anguish he appears to have suffered, we conclude any doubt in this case should be resolved in behalf of the applicant. Therefore, on the basis *of* clemency, we recommend his records be corrected as indicated below.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that:

a. The Article 15, *UCMJ*, initiated on 9 January 1995, with punishment imposed on 26 January 1995, be set aside and removed from his records and all rights, privileges and property of which he may have been deprived be restored.

b. The Article 15, *UCMJ*, initiated on 7 February 1995, with punishment imposed on 13 February 1995, be set aside and removed from his records and all rights, privileges and property of which he may have been deprived be restored.


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The following members of the Board considered this application in Executive Session on 22 October 1998, under the provisions of AFI 36-2603:

Ms. Martha Maust, Panel Chair  
Mr. Kenneth L. Reinertson, Member  
Mr. William M. Edwards, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 13 Jan 98, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLSA/JAJM, dated 18 Mar 98.
- Exhibit D. Letter, AFBCMR, dated 4 May 98.
- Exhibit E. One undated typed statement w/atch, one undated handwritten statement, and two Electronic Mailgrams dated 4 and 5 May 98,

  
MARTHA MAUST'  
Panel Chair



DEPARTMENT OF THE AIR FORCE  
AIR FORCE LEGAL SERVICES AGENCY (AFLSA)

18 Mar 98

MEMORANDUM FOR AFBCMR

FROM: AFLSA/JAJM (Maj Hogan)  
112 Luke Avenue, Room 343  
Bolling AFB, DC 20332-8000

J F: Correction of Military Records  
(F TAIM JDAI

[REDACTED]  
[REDACTED] M)

**Applicant's request:** In an application dated 13 January 1998, the applicant requests the removal of a two nonjudicial punishment actions from his permanent records. The applicant received the first Article 15 nonjudicial punishment action on 26 January 1995 for stealing two cases of champagne, valued at around \$156.00 from the NCO Club at [REDACTED]. This was in violation of Article 121 of the Uniform Code of Military Justice (UCMJ). The applicant received the second Article 15 nonjudicial punishment action on 13 February 1995 for a violation of Article 134 of the UCMJ for endeavoring to impede an investigation. The applicant separated from the service on 17 Nov 95. The application was submitted within the three year statute of limitations provided by 10 U.S.C. 1552(b).

**Facts of military justice action:** On 9 January 1995, the applicant was notified of his commander's intent to impose nonjudicial punishment upon him for one specification of larceny, a violation of Article 121 of the Uniform Code of Military Justice. The applicant was alleged to have stolen two cases of champagne from the NCO Club at [REDACTED]. On 20 January 1995, the applicant acknowledged he understood his rights concerning nonjudicial punishment proceedings, that he consulted a lawyer, that he waived his rights to be tried by court-martial, and that he desired to make a personal and written presentation to the commander. On 26 January 1995, the applicant's commander determined that the applicant had committed the offenses and imposed punishment consisting of forfeitures of \$200.00 pay. On 26 January 1995, the applicant appealed his commander's decision and indicated he would submit additional matters in writing. On 7 February 1995, the appellate authority denied the applicant's appeal. The Article 15 was reviewed and found legally sufficient on 21 Feb 95.

On 7 February 1995, the applicant was notified of his commander's intent to punish him under Article 15 nonjudicial punishment proceedings for impeding an investigation in violation of Article 134 of the UCMJ. Specifically, the applicant asked a [REDACTED] to speak to the principle witness against him (the applicant) and to ask her to drop the charges. On 10 February 1995, the applicant acknowledged he understood his rights concerning nonjudicial punishment proceedings, that he consulted a lawyer, that he waived his rights to be tried by

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court-martial, and that he desired to make a personal and written presentation to the commander. After listening and **reviewing the applicant's presentation**, the commander found the applicant guilty of the alleged offenses and sewed punishment on the applicant on 13 February 1995. The punishment consisted of a reduction to the grade of airman basic (the reduction below the grade of airman was suspended until 1 August 1995) and **23** days extra duty. On 13 February 1995, the applicant appealed his nonjudicial punishment. On 21 February 1995, the applicant withdrew his decision to appeal. On 22 February 1995, the Article 15 **was** found to be legally sufficient.

**Applicant's contentions:** The applicant contends he did not commit any of the offenses alleged under the two Article 15s. The applicant claims he was exonerated and, as a result, the Unfavorable Information File (UIF) was removed from his record but they forgot to remove the Article 15s from his record. The applicant separated from the service in November 1995 with an honorable discharge. He requests that the Article 15s be removed from his permanent record. The applicant provided an unsigned and undated AF Form 1058 which he claims corroborated the fact that he was exonerated. The form indicates the UIF was terminated because the Article 15s were removed from his UIF. The applicant submitted no evidence of being found not **guilty** of the alleged offenses.

**Discussion:** The applicant has not provided any compelling evidence that he was subsequently exonerated of the offenses in either of the Article **15s**. There is no paper work indicating the Article 15s were set aside. The burden is upon the applicant to show the board an injustice occurred. There is nothing in the file which would indicate a clear injustice has taken place. His commander and the appellate authority had the opportunity **to** review all the evidence available at the time of the Article 15 proceedings and upon doing so, determined the applicant did commit the alleged offenses. If the applicant was exonerated, some sort of documentary evidence should exist to corroborate this. **A** document can only remain in a UIF for a period of two years. This could be a basis as to why the Article 15s were removed and the UIF terminated. In addition, the **AF** Form 1058 is questionable since it is not signed and not dated.

It is impossible to recreate the evidence available to the commander at the time he decided to impose nonjudicial punishment. However, it appears there was sufficient evidence upon which the commander could base her determination that the applicant committed the offenses. The evidence used to support nonjudicial punishment action is not required to meet the "beyond a reasonable doubt standard" **of** a court-martial. Based on the information available, the applicant's nonjudicial punishment action was properly accomplished and he was afforded all the rights granted by statute. The applicant has not raised any new evidence that could not have been available to him when he decided to accept nonjudicial punishment proceedings.

If the Board finds applicant's submission credible, the Board does have the authority to set-aside the nonjudicial punishment actions and thus remove them from the applicant's permanent records.

**Recommendation:-** After a review of the available records, I conclude there are no legal errors requiring corrective action regarding the nonjudicial punishment and administrative relief. I recommend the Board deny the applicant's request to remove the nonjudicial punishment actions from his permanent military record.



**LOREN S. PERLSTEIN**  
Associate Chief, Military Justice Division  
Air Force Legal Services Agency

Attachment:  
Case File