

## **ARTICLE 15 INFORMATION**

### **Information for the Soldier from the US Army Trial Defense Service**

This fact sheet contains detailed answers to common questions concerning nonjudicial punishment. This fact sheet is not intended as a substitute for speaking with a defense attorney. Any soldier who is read a company or field grade Article 15 has an absolute right to consult with a defense attorney before deciding whether to submit to the nonjudicial punishment process.

### **Why is nonjudicial punishment commonly referred to as an "Article 15?"**

The authority for commanders to implement nonjudicial punishment is outlined in Article 15 of the Uniform Code of Military Justice.

### **What is nonjudicial punishment?**

Nonjudicial punishment is a military justice option available to commanders. The process permits commanders to resolve allegations of misconduct against a soldier without court-martialing the soldier. The decision whether to resolve a case through the nonjudicial punishment process, as opposed to court-martial, initially rests with the commander. A soldier may, however, refuse to submit to the nonjudicial punishment process and demand trial by court-martial.

### **Are there different types of Article 15s?**

Yes, there are three types of Article 15s:

1. Summarized. A commander in the rank of captain or lower may administer this type of an Article 15. Soldiers who are read a summarized Article 15 are not entitled to consult with a defense attorney. They may, however, turn down the Article 15 and demand trial by court-martial. The maximum punishment authorized at a summarized Article 15 is

14 days extra duty

14 days restriction.

2. Company Grade. A commander in the rank of captain or lower may also administer this type of Article 15. This is basically the same as a field grade Article 15. The only difference is the rank of the commander who offers it to you and the maximum punishment that the commander can give you. It is offered by a company grade commander (i.e., company, battery, or detached) in the grade of 0-3 or below. This includes warrant officers.

3. Field Grade. This is given by a field grade commander (grade 0-4 and above). This includes the battalion XO if he's on orders as the acting battalion commander.

**What sources can provide me more information regarding the nonjudicial punishment process?**

The nonjudicial punishment process is discussed in detail in Part V of the Manual for Courts-Martial and in Chapter 3 of AR 27-10. These materials are available for review at the Trial Defense Service Office.

**Is a finding of guilty in an Article 15 considered a criminal conviction?**

A finding of guilty at a nonjudicial punishment hearing is not a federal criminal conviction.

**What do I do if I'm not guilty, but I don't want to risk a court-martial?**

Answer. You check the block "I do not demand court-martial..." Most people think that this is called "accepting" an Article 15. This is absolutely not true! When you decide not to demand a court-martial, what you are really deciding to do is let the commander be the jury. You are not admitting that you are guilty of anything. You can then proceed to be your own attorney and convince your commander that you are innocent. You may believe that he already thinks you're guilty, otherwise he wouldn't have offered you the Article 15 in the first place. However, you should keep two things in mind:

1. Your commander hasn't heard your side of the story yet. When he initially read you your Article 15 before he sent you to a JAG, he wasn't allowed to ask you any questions they hear the

soldier's side of the story.

2. If you turn down the Article 15 and get a court-martial jury, the jury will be comprised of officers and NCOs just like your commander and first sergeant.

**If I decide not to demand a court-martial, what do I do in the Article 15 hearing?**

Answer: You will have to be your own lawyer. You cannot have a JAG officer represent you before your commander. One important purpose of an Article 15 is to keep things simple. JAG officers complicate things so we are not allowed to attend Article 15 hearings. But don't worry, many soldiers do a better job at defending themselves because they focus on the facts. (You do have the option of paying for a civilian lawyer to represent you at the Article 15 hearing.)

If you decide to be your own lawyer and represent yourself, a JAG officer can give you lots of ideas, like presenting witnesses, documents, and the use of a spokesperson. These things will be discussed in detail when you consult with you JAG officer.

**If I demand a court-martial, when will it happen?**

Answer: If you are charged with court-martial charges, the prosecutor has 120 days to get the case to court.

**And what happens if there are some technical things wrong with the Article 15?**

If there are minor things wrong with the Article 15, like the wrong date or location, the imposing commander can make pen and ink changes.

**If I initially turn down an Article 15 and I'm charged with court-martial charges, can I later get the Article 15 re-offered to me and have the court-martial charges dropped?**

Answer. Maybe. It's your commander's prerogative. This is the gamble you take.

**What is the maximum punishment for an article 15?**

Answer. The maximum punishment under Article 15 is not related to the type or number of offenses you're charged with. In other words, the maximum punishment for a double murder (in the unlikely case you're not court-martialed) would be the same as for an AWOL.

This is different than a general court-martial in which the maximum punishment is the total of the maximum punishments for all of the offenses in the case. The maximum punishment for an article 15 depends on the type of Article 15.

1. COMPANY GRADE

a. 14 days restriction. The limits of the restriction will be determined by the imposing commander. The usual restriction is to the "company area." If you're restricted for part of the day, e.g., after duty hours, this counts as a whole day of restriction. The commander can change the limits of the restriction.

b. 14 days extra duty. This usually runs together with the restriction. The commander can't give you extra duty that is unusually harsh or stupid, e.g., cleaning the floor with a toothbrush. Usually, you'll do extra duty as prescribed by the first sergeant.

c. Forfeiture of 7 days pay. This doesn't include allowances, e.g., if your base pay is \$1,000, the commander can only take \$250. the pay must come out of the same month.

d. Written or oral reprimand. An oral reprimand is just a verbal a \_\_\_ - chewing. A written reprimand is a "Letter of reprimand" just like any other Letter of reprimand. It is attached to the Article 15 and is filed along with it.

e. Reduction. If you're an E-4 or below, you can be reduced one grade. If you're an E-5 or above, you can't be reduced.

## 2. FIELD GRADE

a. 60 days restriction.

b. 45 days extra duty. If he combines restriction and extra duty, it can't be for more than 45 days. (e.g., 45 days extra duty and 45 days restriction).

c. Forfeiture of one month's pay. This gets spread out over two months, i.e., you lose half one month and half the next month.

d. Written or oral reprimand.

e. Reduction. If you're an E-4 or below, you can be reduced to the grade of E-1. If you're an E-5 or E-6, you can be reduced one grade. If you're an E-7 or above, you can't be reduced.

### **When does the punishment begin?**

Answer. The day the commander finds you guilty. If there is an unusual circumstance, e.g., you're hospitalized, in the field, or on emergency leave, the commander can hold off starting the punishment for up to 30 days.

### **What is suspended punishment?**

Answer. Any or all of the punishment can be suspended from the time of the imposition of punishment (i.e., the day the commander finds you guilty) up to six months. In other words, if the punishment is suspended, you'll be on "probation" for the suspension period. If you stay clean for the entire suspension period, the punishment never takes effect. Even if the commander doesn't initially suspend the punishment, he can still suspend it within 4 months after imposition. This means that even if he's taken a stripe away from you, he can later suspend the reduction and give it back!

If the commander puts you on suspension and during the suspension period you commit further misconduct of any kind, i.e., simply late for work, he can "vacate the suspension and the original punishment kicks into gear. You

don't have a right to contest or even appeal the vacation of the suspension. The theory behind this tough rule is that he had a right to give you the original punishment in the first place. furthermore, the commander could even give you a completely new 'Article 15 for the misconduct that caused the vacation of the first punishment! You get hammered twice. When you're on suspension, you're "walking on thin ice, so it is best to be on your best behavior."

### **Can I appeal the article 15? When?**

Answer. Absolutely. You are entitled to one appeal, which you must submit within 5 calendar days after the time punishment begins. Punishment begins on the day the commander announces that he has found you guilty.

### **Who decides my appeal?**

Answer. Your appeal is decided by the imposing commander's commander. For example, if the imposing commander is your company commander, the appellate authority is the battalion commander.

AND THE APPELLATE AUTHORITY CAN ONLY OVERTURN THE ARTICLE 15 OR LESSEN THE PUNISHMENT. HE OR SHE CANNOT INCREASE PUNISHMENT. In most cases, a soldier should appeal the Article 15.

### **What should my appeal consist of?**

Answer. First of all, NEVER simply check the block "I appeal and do not submit additional matters." always submit additional matters. The additional matters should consist of a clear, short, concise statement stating: 1) why you think you are not guilty, or, 2) (even if you are guilty, why the punishment was too severe. Your statement should not be too long (a couple of pages) or the commander won't read it. it can be handwritten, but make sure it is legible and easy to read. if you are not a good writer, it someone to proofread it. additionally, you can submit statements from witnesses, your superiors, and your peers stating why you are not guilty or why your punishment should be lessened. you do not have a right to submit your appeal in person (but you can ask anyway).

NOTE 1: even if your appeal is denied, the appeal is filed in your Official Military Personnel file (OMPF) (i.e., you

microfiche) with the article 15. THIS RULE APPLIES IF THE RECORD OF THE ARTICLE 15 IS DIRECTED TO BE FILED ON YOUR OMPF. this is important because your appeal gives the reader of your OMPF, e.g., a promotion board, your side of the story!

NOTE 2: THE FILING DETERMINATION (RESTRICTED OR PERFORMANCE FICHE) IS NOT APPEALABLE!!!!

**If my appeal is denied, what else can I do?**

Answer. Several things. You can attempt to get a suspension, mitigation, remission, or a set-aside and restoration. But first, let me explain who does this stuff.

The imposing commander, his replacement if he's PCS's, or the appellate authority can do all of these things. These are in addition to an appeal, which I've already discussed. For example, after the imposing commander gives you your punishment, you can immediately ask him to remit or mitigate the punishment and your request won't count as your appeal!

- Suspension. Usually suspension is given at the same time the commander imposes the punishment. But even if the punishment is not suspended initially, you can later ask the commander to suspend the punishment. Even if a reduction or forfeiture is already "executed" (i.e., completed), you can get it retroactively suspended up to 4 months after it was imposed.

- Mitigation. "To mitigate" means "to soften." This is when the commander takes one form of punishment and later changes it into a lesser form of punishment. For example, the commander can restrict you for 45 days, and then later mitigate it to 30 days. additionally, the commander can mitigate a reduction into a forfeiture. Reasons for mitigation are that you have been a good soldier since the imposition of punishment, or the punishment was too severe in the first place.

- Remission. "To remit" means "to remove." This is the same as mitigation, except that the particular type of punishment is done away with altogether.

- Setting aside and restoration,. This is different than the others. This is used when a "clear injustice" has

resulted. A "clear injustice" in an Article 15 is when there is newly discovered evidence which clearly shows that you are not guilty. For example, after you get an Article 15 for a positive urinalysis, someone comes forward and proves that the switched urine specimens. a "clear injustice" does not mean that you've been a good soldier since getting your article 15.

#### **DOES AN ARTICLE 15 GO INTO MY MILITARY RECORD?**

Answer. Yes, but the full answer is complicated.

Look at block 5 on your DA Form 2627. this is where the commander makes his filing decision if he determines to go through with the article 15. if he checks the "Performance fiche" block, then it goes into that section of your OMPF. this section of your OMPF is seen by promotion boards, so it won't help you get promoted.

If the commander checks the "Restricted fiche" block, then you dodged the bullets because promotion boards probably won't see it.

*If you are in the grade of E4 and below, the article 15 will be filed locally in nonjudicial punishment files. the Article 15 will be destroyed two years from the date of imposition or upon your transfer from the general court-martial jurisdiction (e.g., transfer from fort drum to fort Defense). for soldiers in the grade E5 and above the first article 15 may be filed in your restricted or performance fiche. this determination is up to the commander imposing the article 15. A soldier in the grade of e5 and above who receives an article 15 will have his or her OMPF checked to determine whether he or she received a previous article 15 for misconduct committed while they were in the grade E5 or above. if such a record of punishment is found, the article 15 being administered will be filed on the Performance Fiche. You cannot appeal the filing determination. The only time an imposing commander's filing determination is subject to review is when the imposing commander directs filing of the Article 15 on the restricted Fiche when a previous article 15 was on the Restricted Fiche. Military Personnel records official will then contact the imposing commander and the soldier informing them that the article 15 was redirected for filing to the Performance fiche.*

**CAN I EVER GET MY ARTICLE 15 COMPLETELY REMOVED FROM MY RECORD/**

Answer. Yes. first, AR 27-10, paragraph 3-43, tells you how to apply to the Department of the Army suitability evaluation Board (DASEB). this board has the power to transfer an article 15 from your performance fiche to your restricted fiche. The regulation spells out exactly how to do this. the regulation says that you normally have to wait one year and until you get at least one NCOER from the time you got the Article 15.

AR 27-10, paragraph 3-43e, refers you to AR 15-185, which tells you how to apply to the army board for Correction of Military records (ABCMR) to get the Article 15 amended or completely removed. Get AR 15-185 for complete information on how to do this.