



United States Army Trial Defense Service (TDS)

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Article 15 Fact Sheet

Article 15s are considered nonjudicial punishment under the UCMJ. Article 15s are a mechanism that allow the chain of command to punish a Soldier for offenses under the UCMJ without formally charging him/her at a court-martial. Article 15s are governed by AR 27-10, Chapter 3. The information in this handout is given to you as a guide, but it is not a substitute for actual legal advice from a TDS attorney.

Basic Things Every Soldier Facing an Article 15 Should Do

1. Read through your entire Article 15 packet. You cannot properly defend yourself if you do not know what you are charged with or what evidence is against you. **Along with the DA Form 2627, your Article 15 packet should contain the supporting evidentiary documents.** If you think that evidence is being withheld from you, please inform the paralegal at the TDS office. We will ensure that your command gives you these documents prior to the Article 15 hearing so that you can prepare. If you would like, we can also provide you with a copy of anything in your Article 15 packet. Just ask.
2. Carefully read and re-read your charges. The offenses, their elements and defenses, and definitions may be found in DA Pam 27-9, the Military Judge's Benchbook, which is available on the internet.
3. Determine the type of strategy that you will use to defend yourself at your Article 15 hearing. There are two basic strategies: (1) contest the evidence and assert your innocence, or (2) admit wrongdoing and ask for leniency. The type of strategy you employ should be based on the facts and circumstances, and the strength of the evidence against you.
4. Be a model Soldier and do not get into any further trouble. This is key. The best thing you can do when under scrutiny is to perform well and earn the respect of your chain of command. A bad attitude during and/or after the Article 15 process will only make your life more difficult.

Considerations

- ❖ The main decision you must make with an Article 15 is whether to allow your guilt to be decided through the Article 15 process, or whether to demand a trial by court-martial. **“Accepting” the Article 15 is NOT an admission of guilt!** It is simply your permission to allow your Commander to decide whether you are guilty and, if so, what punishment should be imposed.
- ❖ In 99% of cases, we advise Soldiers to accept the Article 15 process. The main reason is that it protects the Soldier from having a criminal record. If found guilty at a court-martial, you will have a criminal record that will follow you into the civilian world. Depending on the type of offense that you are found guilty of, you may even be considered a felon. A criminal record seriously prejudices your future educational and employment opportunities and should be avoided at almost all costs. In addition, you can receive jail time and a punitive discharge at a court-martial.
- ❖ You must recognize that if you turn down an Article 15, the Government may add extra charges on to the charge sheet for court-martial, even if those charges were not on the Article 15.
- ❖ The main drawback of the Article 15 process to the typical Soldier is that the Commander will decide guilt. This Commander may have a negative view of you that you believe makes the Commander biased against you. To a certain extent, most Commanders will have a pre-conceived idea of the Soldier. However, I have seen multiple Commanders find clients not guilty during Article 15s. The Article 15 process is not perfect, but it does provide a method for Soldiers to contest their guilt without having to fear permanent criminal repercussions if they are found guilty.
- ❖ There may be a case in which it is advisable to turn down an Article 15, but these cases are rare. **If you truly wish to turn down the Article 15, you must consult with a TDS attorney first.** Your attorney is an expert on the law and will be able to give you an accurate assessment of your chances of prevailing at trial.

If You Accept the Article 15

Whether you accept or refuse an Article 15, you must sign the form and indicate your choice. If you refuse to sign it, the law gives your Commander the right to treat the Article 15 as if you had accepted it.

Accepting the Article 15 is not an admission of guilt. By accepting the Article 15 you are only agreeing to let your Commander decide whether or not you are guilty, and if guilty, the appropriate punishment. The Commander must listen to your side of the case and all of your witnesses. You may either present your own case, hire a civilian lawyer, or you may ask a non-lawyer to speak on your behalf. You can have your own witnesses appear and explain to the Commander what happened, and you can also present other evidence (statements, police reports, etc.) on your own behalf. Often it is best to write

out your side of the story for presentation to the Commander. This statement will be permanently attached to the Article 15 if it is included in your records. If you desire, and the Commander agrees, the Article 15 hearing may be open to the public; that is, anyone may come and view the proceedings.

If you want witnesses to be present at your hearing, either in person or telephonically, make sure you coordinate with your chain of command. You are entitled to witnesses who have relevant testimony related to your charges. If your chain of command is denying you the right to have witnesses present, inform TDS immediately.

Here is a list of potential evidence that you may want to obtain to assist in your defense at your Article 15 hearing:

- a. If you are NOT contesting guilt and asking for leniency:
 - i. Statements or testimony from current or former supervisors (even at past duty stations) who can talk about your character and work performance.
 - ii. Statements or testimony from mitigating witnesses (wife to talk about how couple had just suffered through a miscarriage, etc.)
 - iii. Evidence of financial hardship if requesting no forfeitures.
 - iv. Past awards or other evidence of good conduct.
- b. If you are contesting guilt and saying you are innocent:
 - i. If drugs or some type of character crime (false official statement), testimony or statements from witnesses to say you are an honest person or not the type of person to do drugs, etc.
 - ii. Eyewitnesses to event (example – in an assault case, any person who witnessed the fight and can say you acted out of self-defense.)

5. After the evidence in your case has been presented, the Commander will decide whether you are guilty or not, and if you are guilty, what punishment should be imposed. If he decides that you have not committed an offense under the UCMJ, he will end the proceeding and destroy the Article 15. If the Commander decides that you are guilty and should be punished, he will personally tell you what the punishment is and it will be noted on the Article 15 form.

6. **Maximum Punishment.** The maximum punishment that can be imposed under Article 15 depends on your rank and the rank of the Commander imposing punishment. Your Commander may give a combination of the listed punishments for your offense. He is not required to give any minimum or maximum punishment in your case.

7. **Suspended Punishment:** Your Commander may suspend any or all punishment for a period not to exceed six months. If the punishment is suspended, it does not take effect. You are, in essence, on "probation" for the suspension period. As long as you do not engage in any misconduct, the suspended punishment will not take effect. However, if you engage in misconduct of any kind, the Commander can withdraw (vacate) the suspension and the original punishment takes effect. You do not have a right to contest or appeal the vacation of the suspension. Furthermore, the violation action will not preclude further judicial or nonjudicial punishment for the same misconduct. The possible punishments are listed on the last page of this handout.

8. **Appeal.** If the Commander finds you guilty, you may appeal to the next higher Commander. Your Commander will give you a period of time (usually five days) within which to decide whether you want to appeal. Grounds for appeal include:

- a. You are innocent.
- b. The punishment imposed was too severe for the offense committed.
- c. The Commander did not follow the law or regulations during the Article 15 procedures (i.e., he did not allow you to exercise one or more of your rights).

Whether you appeal or not, all punishments take effect immediately. If you checked the block that states: "I appeal, and do not submit additional matters," your appeal is complete the date you check that block. If you chose to submit additional matters, write a letter stating your reasons for appeal. If possible, attach letters from supervisors stating your good duty performance prior to this offense, and any witness statements or other documents which you believe could help in getting the appellate authority to grant your appeal. If you want assistance in preparing your appeal, contact TDS immediately for an appointment.

You are not entitled to personally appear before the commander acting on your appeal, so you must ensure you submit statements on your behalf. Otherwise, the appeal authority may never hear your side of what happened. The appeal authority can take any action to lessen the punishment, but may not increase the punishment in any way.

9. **Filing of Article 15:** For those soldiers in the grade of E-4 and below, the Article 15 will only be filed locally and destroyed two years from date of imposition or upon the soldier's transfer to a new duty station, whichever comes first. For those soldiers in the grade of E-5 and above, the Commander must designate that the Article 15 be filed in the performance section of your OMPF (AMHRR), or in the restricted section of your OMPF. When an Article 15 is designated for the restricted section, that section is reviewed to ensure that it does not already contain a previous Article 15. If you already have an Article 15 in the restricted section of your OMPF, the new Article 15 will automatically be placed in the performance section of your OMPF. The performance section is that portion of your OMPF that is routinely used by career managers and

selection boards for the purpose of assignment, promotion, and schooling section. It should be noted that even if the Article 15 is filed in your restricted section, it will remain there permanently. If you receive adverse action again in your career, military prosecutors will examine the restricted section of your OMPF and any Article 15s found can be used against you.

The unit copy, on the other hand, is kept in your file for 2 years from the date of punishment or until you transfer to another GCM jurisdiction, whichever comes first. You or your character witnesses should always request that the Commander file the Article 15 in the restricted section of your OMPF.

If You Turn Down an Article 15 and Demand a Court-Martial

1. **NEVER TURN DOWN AN ARTICLE 15 BEFORE CONSULTING WITH A TDS ATTORNEY.** If you refuse the Article 15, your chain of command will then decide whether to drop the case or forward it for court-martial action.
2. Depending on the charge(s) and circumstance(s), the command will decide what level of court-martial your case should be referred to. Therefore, you should discuss the situation with a defense counsel first.

ARTICLE 15 PROCEDURES

This information is designed to help you understand the DA Form 2627 (the "Article 15" form) and the accompanying procedures.

1. On the first line of the DA Form 2627, ensure that all information about you is correct. Be sure your base pay is correct because any forfeitures of pay you may receive will be based on this amount.
2. Block 1 of this form contains a description of the offense(s) you have allegedly committed. Read the charges carefully and think through your response to them.
3. In Block 3 of DA Form 2627, the first decision you must make is whether to have your case resolved by Article 15 procedures or whether to request a trial by court-martial. Electing to have your case resolved by Article 15 procedures does **not** mean that you are admitting guilt; it means that you want your commander to be the person who decides whether you are guilty, rather than a judge or a jury. There are other aspects of Article 15s you should understand before you make your decision:

The level of proof is the same at both an Article 15 hearing and a court-martial – all must be convinced of your guilt by the evidence presented **"beyond a reasonable doubt"** before you can be found guilty.

Whatever the outcome of the hearing, an Article 15 is not considered a conviction and would not appear in your civilian record. On the other hand, if you demand a trial by

court-martial and are **convicted**, this would be a federal conviction that would stay with you even after you leave the Army.

No lawyers are involved in the Article 15 hearing; you must be your own lawyer. There is also no prosecutor at an Article 15 hearing. At a court-martial, you would be entitled to be represented by a military lawyer at no cost to you, but there would also be a prosecutor present.

If you are thinking of asking for a court-martial, you MUST see an attorney before you make the decision.

4. If you decide to have your case resolved by Article 15 procedures, you have additional decisions to make in Block 3.

You may choose whether the hearing is **open** or **closed**.

An open hearing means that anyone can observe the proceedings.

A closed hearing means that only you, your Commander, First Sergeant, and the witnesses are eligible to be present for the hearing.

You may also choose to have someone speak on your behalf if you wish, that is, do the talking for you and explain your side of the story to the Commander. You are **not** authorized an attorney to represent you in an Article 15 hearing.

5. You must also decide whether to present matters in defense, mitigation, or extenuation.

Evidence in your "**Defense**" would be something related directly to the offense you have been charged with that shows you are not guilty. For instance, I did not disobey my Commander's order because this email tells me to do exactly what I did.

"**Mitigation**" refers to matters introduced to lessen the punishment to be adjudged, or to furnish grounds for a recommendation of clemency. This includes testimony or statements from people as to your character, duty performance, or other positive aspect about you. For instance, "yes, SPC Doe missed formation 5 times last month, but his wife had just given birth to their first child and he was making the arrangements for his father's funeral." Or, "SPC Doe was already punished for missing formation because he has been ordered to attend every PT formation 30 minutes early for the past month, and therefore, his punishment at the Article 15 should be minimal."

Matters in "**Extenuation**" of an offense serves to explain the circumstances surrounding the commission of an offense. This includes testimony or statements from people that know you as to your character, performance of duty, or other positive aspect about you. Basically, extenuation makes the offense less severe. For instance, "I

admit that I punched X, but I did it because X made a joke about my wife in front of the platoon.”

6. You should sign and date the form in the signature block next to your typed name and grade.

7. When you have decided which witnesses you wish to bring before the Commander and exactly what evidence you wish to present, it is a good idea to make a list of the witnesses and determine an order in which you'd like them to testify. A memo for that purpose can be drafted by the TDS paralegal. You have the right to have witnesses testify, assuming that they are reasonably available. The better organized your case is, the better chance you will have of defending yourself and avoiding punishment or receiving a lesser punishment. Any documents you may have that would support your version of the facts can be presented during the hearing to your Commander. He should listen to all your witnesses and consider all your evidence before coming to a decision.

8. After your hearing, if your Commander finds you guilty of an offense, he should give you an opportunity to present matters that will help him decide what punishment is appropriate for you. You may use a Personal Financial Statement to argue that reduction in rank and forfeiture of pay will negatively affect your ability to Soldier. You may request that all or part of the punishment be suspended. Your commander will enter the punishment imposed in Block 4.

MAXIMUM ARTICLE 15 PUNISHMENTS

Punishment for Enlisted Members	Summarized	Company Grade	Field Grade
Reprimand	Yes	Yes	Yes
Extra Duties	7 Days	14 Days	45 Days
Restriction	7 Days	14 Days	45 Days 60 Days; without extra duty
Correctional Custody (E3 and Below)	No	7 Days	30 Days
Reduction in Rank	No	E-5 and E-6 cannot be reduced E-4 and Below One Grade	E-5 and E-6 <u>One Grade</u> E-4 and Below One or More Grade
Forfeitures	No	Seven Days Pay	½ of One Month's Pay For Two Months

Punishment for Officers (only imposed by General Officers)	
Restriction	30 Days
Arrest in Quarters	30 Days
Restriction	60 Days
Forfeitures	½ of One Month's Pay for Two Months

*E5s and above receiving Summarized Article 15s will NOT see their actions filed in their AMHRR and they will be filed locally.