

AREA DEFENSE COUNSEL DYESS AIR FORCE BASE



ARTICLE 15 FACT SHEET

1. INTRODUCTION: You were just handed an AF Form 3070 by your commander which offers you disciplinary punishment under Article 15, Uniform Code of Military Justice (UCMJ). Before you take any action, you should know what your rights are and what you can do. The following is an explanation of your basic rights, the process and the potential consequences associated with an Article 15. This handout is not intended to be a complete listing of all your Article 15 rights and entitlements. If you do not understand something in this handout, ask your Area Defense Counsel.

2. BACKGROUND: The words "Article 15" actually refer to the hearing or forum in which the case is decided, rather than the punishment itself. This means that the AF Form 3070 given to you by your Commander is not the punishment itself, but only a statement of the charges against you. Before you were notified of this action, your Commander talked with the base legal office to find out if the known evidence against you was sufficient to prove that you had committed the offense or offenses which are alleged in Block 14 of the form. However, there may be other evidence, not known by your Commander which could prove your innocence or raise a reasonable doubt as to your guilt.

You must respond to your Commander within three (3) duty days. In deciding how to respond to these charges, you must decide: (1) who will represent you; (2) whether to demand a court-martial; (3) whether to make an oral or written presentation, or both; and (4) what evidence, if any, you will present on your behalf. After your presentation, your Commander will consider all of the facts and information you have presented before deciding whether to impose punishment under Article 15 or to drop the charges.

3. RIGHT TO A DEFENSE COUNSEL: You are entitled to be represented in this Article 15 by a military lawyer who has been certified by the Air Force as competent to perform the duties of counsel before a military court-martial and who has been admitted to practice law before the highest court of one or more states. Your military lawyer will be the local Area Defense Counsel if he/she is available. If the local Area Defense Counsel is not available, a defense counselor from another base or an attorney from the legal office will be appointed to your case. If you request

counsel, your lawyer will use all of his/her professional skills, experience, and knowledge to examine your case, and assist you in preparing a statement on your behalf and in any appeal you may desire to make.

4. RIGHT TO DEMAND A TRIAL BY COURT-MARTIAL: You have the right to decide whether your case will be heard in your commander's office and decided by him/her or heard in court and decided by a judge or jury. Before you make this decision, consider the following:

a. *Taking the Article 15 does not amount to admitting guilt.* In other words, you are not admitting guilt simply by choosing the Article 15 forum. In the hearing, your commander acts as an impartial judge and will weigh all the evidence you present before deciding on your guilt or innocence. In appropriate cases, commanders have been known to determine an Article 15 is inappropriate after it has been issued. However, you should understand that most of the time, you will be found to have done the alleged act by your commander.

b. *Effects of conviction.* If you turn down the Article 15, you should expect to be tried by a court-martial. If you are found guilty, you will have a federal conviction on your permanent civilian criminal record, which can seriously affect your future. Punishment under Article 15 leaves no such record. However, an Article 15 may be placed in an Unfavorable Information File (UIF) for a maximum of two (2) years for enlisted and four (4) years for officers, and may be removed before that time at the commander's discretion.

c. *Range of punishments:*

(1) In a special court-martial, the maximum punishment you can receive is a bad conduct discharge, confinement for up to 12 months, forfeiture of 2/3 pay for six months, and reduction to E-1.

(2) Under Article 15, the amount of punishment a commander can impose on an airman depends on the commander's rank as shown on Page 3 of the 3070 form. The punishments can be: restrictions for up to 60 days, correctional custody for up to 30 days, reduction in rank to E-1, forfeiture of 1/2 months pay per month for up to 2 months, a reprimand, and extra duties for up to 45 days. Some of these punishments can be combined.

(3) Commanders have authority to suspend any punishment for a period of up to six months. This means that if you stay out of trouble until the suspension period is up, the punishment will not be executed. This is a motivator to help you stay out of trouble. If you are involved in any further misconduct during the probation period, your suspension will be vacated and you will receive the previously suspended punishment.

Based on these facts, it is usually best to accept the Article 15, rather than demand trial by court-martial. You should consult with your attorney before turning down an Article 15 and demanding a court-martial.

5. RIGHT TO A PERSONAL APPEARANCE: You have the right to a personal hearing with your Commander. During this hearing, it is your right to present evidence in defense or matters in

mitigation and extenuation. They may be presented in the form of written statements, documentary evidence, or by testimony of yourself or other witnesses, or all three. It is generally a good idea to use all types at your presentation. This shows your concern and gives you a chance to give your side of the story in detail. If your supervisor is willing, you should encourage him to go with you and speak to the commander on your behalf. A guideline for written statements will be provided to you. You can also submit a financial statement, if you are concerned about any forfeitures of pay or reduction in rank. A sample may be provided upon request. When you go to make your oral presentation, be sure that your appearance is well within dress and appearance standards. Report to your commander, state your case, and answer his/her questions honestly and concisely, unless you feel an answer may incriminate you. If you begin to feel you are getting in deeper than you wanted to, simply stop talking. Try to be brief. Your Area Defense Counsel can be present or on the phone should you request this.

a. *Evidence that should be presented.* If you feel you are not guilty of the charges, you should submit evidence to your commander that will convince him of your innocence. For example, you may want to point out that you had authorization to do what you did, or that you missed roll call because you had come in early and were already performing your assigned duties. As a general rule, if you were caught red-handed, you should admit to your commander that you made a mistake, apologize for the incident, state the lesson you learned from the experience, and point out that it will never happen again. Whether or not you plead guilty to the offense in the Article 15 hearing, you may present matters in "extenuation and mitigation." This means any evidence that might lessen your punishment or explain why you committed the offense, and may include financial difficulties, provocation, communication problems, and outstanding duty performance. Letters of appreciation for on and off-duty achievements will be helpful. Also, if you have good (O/E)PBs, you should submit them as well. In addition, it is perfectly appropriate to tell your commander what punishment you would prefer to receive.

b. *Witnesses.* If after consultation with your counsel, you elect to have military witnesses testify at your hearing, your defense counsel can make arrangements for them to be relieved of their duty for the purpose of testifying on your behalf if it is necessary for the proper disposition of your case.

6. APPEAL PROCEDURES: If your commander decides to punish you via Article 15, you have the right to appeal in writing to the next higher commander. You have five (5) days from the date your commander imposes punishment in which to present an appeal. As you are writing the appeal, try to point out specifically how the punishment is unjust or out of proportion to the offense. Your attorney will help you write your appeal if you ask for his/her help.

7. LEGAL REVIEW: After the commander imposes punishment, the entire record, including statements submitted by you, will be reviewed by the legal office for legal sufficiency and appropriateness. If something is wrong, or if one of your rights has been violated, they will recommend corrective action be taken.

8. SUBSEQUENT ACTIONS: Within four (4) months of the punishment, if you believe you have suffered an injustice, you may request your commander take one or more of the following actions: (1) suspension - postponing all or part of a punishment for a probationary period; (2)

mitigation - changing one form of punishment to a less severe punishment; for example, reduction in grade mitigated to forfeiture of pay; (3) remission - excusal from an unexecuted portion of punishment; or (4) set aside - canceling punishment in whole or in part based on a "clear injustice" to restore all of the rights, privileges and property you had prior to the Article 15 punishment. For example, if your punishment includes correctional custody, you may request that the remaining portion be remitted if you have satisfactorily completed a substantial portion of your punishment. If you want to take advantage of any of these rights, you should immediately contact your attorney.

9. COLLATERAL EFFECTS OF ARTICLE 15 ACTIONS: Article 15 actions may have an impact on unfavorable information files (UIFs), promotions, reenlistment eligibility, NCO status, assignments, and OESs/EPRs.

a. *Officer promotions and records.* In accordance with DAFI 36-2608, a commander imposing Article 15 punishment is required to file the document in the officer's selection record. The Article 15 will remain in the record for ten (10) years, unless the conduct could have resulted in the imposition of punitive discharge and confinement for more than one (1) year if tried by court-martial. In those cases the document will remain in the selection record permanently.

b. *Enlisted promotions.* In accordance with DAFI 36-2502, table 1.2, airmen are not ineligible for promotion based solely on receipt of an Article 15. However, they are ineligible for promotion or testing for promotion, if they are undergoing a suspended reduction imposed through the Article 15 punishment.

c. *Unfavorable Information Files (UIFs).* In accordance with DAFI 36-2907, an Article 15 may be retained in a UIF for a maximum of two (2) years for enlisted and four (4) years for officers. However, upon the conclusion of the period of the punishment, including a suspended punishment, a commander may remove Article 15. If the punishment terminates immediately, such as a reprimand or forfeiture for one month, the commander may decide not to enter the Article 15 in a UIF at all.

d. *Reenlistment eligibility.* In accordance with AFI 36-2606, airman are ineligible to reenlist when serving a suspended punishment imposed through an Article 15. However, they may be eligible to request an extension of enlistment.

e. *Assignments.* In accordance with DAFI 36-2110, airmen and officers will be ineligible for reassignment until punishment imposed under Article 15 is completed, including any period of suspension. If they already have an assignment, the assignment may be cancelled if the date of availability is after the projected departure date.

10. CONCLUSION: This fact sheet is intended to give you an overview of the many factors to be considered in deciding on the proper course of action in an Article 15 proceeding. For further advice on your rights, please contact the Area Defense Counsel at **(325) 696-4233** to make an appointment.