

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 14 March 2023

DOCKET NUMBER: AR20190004742

APPLICANT REQUESTS: Reconsideration of his previous request to

- reverse grade determination action
- restore his rank to General (GEN)/O-10
- recoupment of retirement pay from date of retirement
- removal of General Officer Memorandum of Reprimand (GOMOR) dated 12 December 2012 from his official records

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- letter from his attorney

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20160016289 on 2 May 2017.

2. The applicant, through his attorney, states:

a. The applicant requests reconsideration of the ABCMR decision in his case dated 2 May 2017 because the Board exceeded its authority by purportedly denying a request to restore his retirement grade to O-10. The Board lacked the authority to either approve or deny the applicant's request for restoration. The Board failed to address information in a GOMOR that was proven to be false.

b. The applicant served his country honorably for 40 years. He was promoted to GEN in 2006 and held the rank for five years. He never engaged in malfeasance or unprofessional conduct throughout his military career. He served as the first commander for United States Africa Command (AFRICOM). He placed the new command on solid footing and the command has only gotten stronger over time. He handled his responsibilities well, accomplished a tremendous amount, and laid a foundation that continues to underwrite the effectiveness and posture of AFRICOM today.

c. A month prior to his retirement, the Department of Defense (DoD) Inspector General (IG) informed him he was under investigation. The investigation lasted for a year and a half. The Army Vice Chief of Staff issued a GOMOR to the applicant on 12 September 2012. The applicant responded to the GOMOR and the Army Vice Chief of Staff redacted the GOMOR and filed the GOMOR in the applicant's Official Military Personnel File (OMPF) on 9 October 2012.

d. The applicant reimbursed the US Treasury \$82,341.22 for instances in which the DoD IG concluded he had made errors with respect to the Official Representational Fund (ORF) and travel expenses. The Secretary of Defense informed the applicant on 12 November 2012 he would be retired as a Lieutenant General (LTG) O-9. The applicant retired as a LTG on 31 December 2012.

e. The applicant submitted an ABCMR application in September 2016. He was seeking restoration to his previous rank and grade effective his retirement date of 31 December 2012, recoupment of lost retirement pay, and removal of the GOMOR from his OMPF.

f. The application contained more than 35 letters of support and other evidence supporting the arguments and explanations contained in the application. The following information was submitted with the application:

(1) The conclusions of the IG were not characteristic of the applicant. He accepted full responsibility for the administrative actions and none of them rose to the level of warranting a demotion in grade. The other allegations in the IG report were false, defied logic, and misrepresented facts and circumstances. The IG focused his attention on the travel of the applicant's wife on military aircraft. The IG did not account for the official nature of her travel and her positive and well-established contributions to military children, families, and the mission that were always the intent and focus of her travel. She was promoting the interests of military children and families as components of readiness; something she had been doing for more than three decades. The applicant relied on the advice of his legal advisors to ensure his travel decisions were consistent with travel guidelines.

(2) The IG subjectively concluded that in some instances the applicant's wife's travel was not "unquestionably official" and should not have been permitted. This determination was made despite the fact that her travel always involved activities supporting military families and AFRICOM's mission. Her itineraries included meeting with military family readiness officials and meeting with military child research experts thus enhancing readiness. She also met with entities such as Scholastic Book Publishers in order to bring state of the art educational products to the military children in the area of responsibility of the AFRICOM Command. To say her meetings were unquestionably official is incomprehensible given the importance and attention paid to families especially as a component of force readiness. On those occasions the applicant's travel review process concluded his wife's itinerary was not unquestionably official, she did not travel.

(3) When investigators found administrative discrepancies such as missing Invitational Travel Orders (ITOs) which are routinely processed and maintained by staff, or other administrative shortcomings, they did not give the applicant the benefit of the doubt. Instead they maligned him and drew negative inferences that such documentation never existed. Administrative errors and innocent inattentiveness by an inexperienced staff were attributed to the applicant's personal misconduct even after he explained the circumstances.

(4) Forcing the applicant to retire in a lower grade was inequitable and excessive compared to the treatment of his colleagues in similar and more severe circumstances. One O-10 was allowed to keep his 4-star rank and retirement benefits after pleading guilty to a felony. Another 4-star colleague was accused of making mistakes with respect to his travel but was spared the indignity of retiring at a lower grade.

(5) The former Joint Chiefs of Staff (JCS) Chairman was familiar with the applicant's duty performance in AFRICOM and supported him in his request saying the applicant was "an officer of the highest character who possessed and demonstrated a commensurate ethical ethos." He also stated retiring the applicant in a lower grade might have been appropriate if he had been found guilty of "willful conspiracy or fraud" but that was not the case. The JCS Chairman also stated the applicant took full responsibility for the administrative errors.

(6) The former Chief of Staff of the Army stated the applicant should be "treated with the same dignity and respect with which he served and allowed to retire as GEN." The former Commander of USEUCOM and National Security Advisor viewed the applicant's demotion as "manifestly unfair, especially when one looks at the adjudication of far more serious recent infractions by senior members of our government, civilian and military alike." One former Commander of Army Materiel Command observed the applicant's continued demonstration of strong support for the Department even as he "witnessed other senior General and Flag officers from across the Services who faced far more serious substantiated allegations, being allowed to retire at their current grade." Another former Commander of Army Materiel Command stated the investigation was an attempt to undermine the applicant and his wife's outstanding record of service. He trusts the injustice will not be allowed to stand.

(7) After the applicant received his GOMOR, the Secretary of The Army directed the Army Criminal Investigation Division (CID) to conduct an administrative inquiry into the conduct of the applicant's Personal Security Team's (PST) travel security support and the applicant's authorization of a hardened vehicle to transport his spouse in Germany. The results of the CID inquiry contradicted with the IG's findings nullifying two of the bases for the reprimand and grade determination. The CID inquiry concluded the security detail conducted its activities prudently and in a manner consistent with established precedent, regulations, policy, and doctrine. It also concluded the applicant received contradictory information that led him to authorize the use of a hardened vehicle to transport his wife. Despite the contradictions between the two

investigations, the findings the applicant improperly authorized the use of a hardened vehicle for his wife and did not oversee the travel of his PST in a fiscally prudent manner remain part of the GOMOR.

(8) The applicant presented evidence regarding the finding of the IG that he accepted unsolicited theatre tickets and meals from a prohibited source and it did not fall within the close personal friend category. He received the tickets from a former Army enlisted Soldier who had been mentored by the applicant and enjoyed a close personal relationship with them for more than 10 years. The applicant had the Soldier's son take care of his yard and the Soldier sought the applicant's advice throughout his career. When the applicant retired, their relationship continued and they maintained an ongoing relationship and remained close by way of email and periodic phone conversations.

(9) The rule prohibiting accepting gifts from prohibited sources creates an exception for accepting such gifts from friends or those who enjoy a close personal relationship. The rule is designated to avoid having situations in which a person with government business provides gifts to a government official for the purpose of getting business. The applicant's relationship with the Soldier was personal in nature and not related to business. The IG stated in their investigation, "our review of emails between the applicant and the Soldier revealed no evidence of discussion regarding post-government employment." The exception to the rule should apply in this case

(10) There were discrepancies in the IG investigation in that the IG did not interview key individuals who handled the applicant's travel and other functions of the staff that were a focus of the investigation. The IG did not interview the applicant's executive officer or aide-de-camp who produced information documenting official travel. Both individuals were instrumental in establishing travel procedures for AFRICOM. They also identified key discrepancies between the IG investigation and their records. They were not interviewed so their perspectives and insights were not considered in the findings or unjust punishment.

(11) A significant portion of the information the IG relied on came from individuals who were biased against the application and they presented information in a misleading manner. This information shaped the IG's narrative. The IG asked the applicant if he knew of anyone who would be motivated to provide inaccurate or biased information concerning the matters under investigation. The applicant answered "no" because he had always done his utmost to treat everyone with dignity and respect. When the applicant reviewed the redacted summaries of the investigation, it became clear to him key witnesses were biased against him and their bias was reflected in the investigation. Two of the individuals who showed bias were the applicant's executive officers from AFRICOM. The executive officers supervised travel planning and a variety of other staffing functions. The IG never interviewed the Command's first AFRICOM executive officer even though he worked for the applicant in that role longer than the other two combined. The applicant removed one of the subsequent executive officers from the position because of lingering war injuries for which he needed help and his lack

of understanding of the position and overall mission. The executive officer resented the applicant for removing him from the position. He then provided the IG with inaccurate and biased information. He also negatively influenced his successor after the applicant's departure. This bias is addressed in a letter from the former Undersecretary of the Army.

(12) The ABCMR decided the applicant's request on 2 May 2017 and forwarded him a cover letter dated 28 September 2017. The applicant received the decision in October 2017. The decision denied the applicant's requested relief. The ABCMR's decision consisted of more than 28 pages. The discussion portion of the decision consisted of less than two pages. The rest of the decision, consisted of a listing of the DoD IG's findings, the regulations relied upon by the IG and a brief summary of the information the applicant provided to support his request.

g. There are two key reasons the ABCMR's original decision should be reconsidered and overturned.

- the ABCMR exceeded its authority in denying the applicant's request to be retired as an O-10 rather than an O-9.
- there is uncontroverted information in the GOMOR concerning the use of a hardened vehicle and the oversight of the applicant's PST, as described above, which should have resulted in the striking of those allegations from the GOMOR or elimination of the entire GOMOR

h. With respect to the applicant's request to be reinstated to the grade of O-10, the proper remedy would have been for the Board to forward the applicant's request to the Secretary of Defense, the only individual in the Department empowered to grant the request. If the ABCMR was not inclined to forward the applicant's request to the Secretary of Defense, it could have returned the application to the applicant, with a statement that the requested relief was not within the ABCMR's jurisdiction. The latter approach is allowed by Army Regulation 15-185 (Army Board for Correction of Military Records). The ABCMR, without providing further rationale, stated, "separate from the determination regarding the GOMOR, the Board determined the applicant and his counsel did not show by a preponderance of the evidence that the Secretary of Defense abused his discretion when he decided the applicant should retire in the rank/grade of LTG/O-9."

i. The applicant submitted his application to the ABCMR and made it clear in a cover letter from his attorney to the Director of the ABCMR he knew the Board lacked the authority to grant all of the requested relief. The Board's staff was aware of this position because it was mentioned in the ABCMR's opinion on multiple occasions. Despite the Board's awareness of this, they made the decision regarding grade determination without ever explaining the basis for how the Board had the authority to make such a decision regarding an O-9 or O-10. Only the Secretary of Defense had the power to retire the applicant as an O-10. Not only does the ABCMR lack the authority to make a decision with respect to retirement of an O-9 or O-10, the Secretary of the

Army also lacks the authority. Army Regulation 15-80 (Army Grade Determination Review Board (AGDRB) and Grade Determination) states the Secretary of the Army may retire such officers in O-9 or O-10 after the Secretary of Defense certifies in writing to the President and Congress that the officer has served satisfactorily on active duty in the grade of GEN or LTG.

j. In addition, the Secretary of Defense is able to grant the relief of restoration to the grade of O-10 as the applicant is seeking. Department of Defense Instruction (DoDI) 1320.04 (Military Officer Actions Requiring Presidential, Secretary of Defense, or Under Secretary of Defense for Personnel and Readiness Approval or Senate Confirmation) stated the Secretary of Defense retains the authority to determine satisfactory or non-satisfactory service for all officers in the grades of O-9 and O-10 who have adverse or reportable information that has been identified since the officer's first Senate confirmation to the grade in which retirement is requested. The applicant submitted his request to the Board, despite the ABCMR's lack of authority, as a mechanism for processing his request to the Secretary of Defense for remedying the earlier unfair discretionary decision.

k. The limitations of the BCMR were addressed in the United States Court of Appeal for the Federal Circuit case of ██████████. An Air Force General applied to the Air Force BCMR and requested to be retired as an O-8 because the time for delaying a promotion had expired when the President took action to remove his name from the promotion list. The Air Force BCMR ruled in the General's favor and took action to authorize his promotion; however, the DoD General Counsel disagreed and took the position that only the Secretary of Defense or the President could authorize such a promotion. The Secretary of the Air Force changed its position and the General sued to enforce the Board's original decision. The Federal Circuit decided the Board could not legally correct the General's records. He had not been appointed to O-8 and only the President could do so. Since the President had not taken that action, the Board did not have the power to do so. The facts in that case are different than the applicant's; however, the principle is the same. The Board cannot decide a matter which is beyond its power to decide. When the ABCMR decided a matter for which it had no authority to make a decision, it acted contrary to law and regulation; therefore, the ABCMR should vacate its decision as it pertains to the applicant's retirement grade.

l. The ABCMR exceeded its authority by making a decision regarding whether the applicant should be reinstated to the rank and grade of GEN/O-10 and retired in that grade. The Board could have granted the applicant's request to forward his application to the Secretary of Defense as he requested or it could have returned the application to the applicant. Instead, the Board ignored the fact that information contained in the applicant's GOMOR has been proven to be untrue. The Board should have either removed the disproven information (concerning the hardened vehicle and conduct of the applicant's PST) or removed the GOMOR entirely. The Board did neither. It is in the interest of justice to reconsider and overturn the ABCMR's decision.

3. The applicant, through his attorney, sent a letter to the Under Secretary of the Army on 28 September 2016 stating:

- he is providing the Under Secretary of the Army the packet the applicant submitted to the ABCMR
- the applicant was seeking restoration of his rank and grade as GEN/O-10 effective 31 December 2012 and recoupment of lost pay since that time
- he is asking for removal of the GOMOR from his official military records
- the applicant's case is unique because only the Secretary of Defense has the power to retire him in the grade of O-10
- it was unclear how the matter would be processed
- the attorney wrote to the Director of Army Review Boards requesting special handling of the applicant's application
- he sent the packet to the Under Secretary of the Army for situational awareness

4. The applicant's attorney sent a letter dated 28 September 2016 to the Deputy Assistant Secretary of the Army (DASA) (Review Boards) which states:

- the applicant is seeking restoration of his rank and grade as a GEN/(O-10) effective 31 December 2012
- recoupment of lost pay since that time
- removal of the GOMOR from his official military records
- he was writing to the DASA to request special handling of the applicant's application
- he's making the request because despite the expansive powers given to the ABCMR by Congress only the Secretary of Defense has the power to act on the applicant's request
- the Secretary of Defense retains the authority to determine satisfactory or non-satisfactory service for all officers in the grades of O-9 and O-109 who have adverse or reportable information since the officer's first Senate confirmation to the grade in which retirement is requested
- the former Secretary of Defense retired the applicant in the grade of O-9 and only the Secretary of Defense can grant the relief of restoration requested
- the applicant submitted the request to the ABCMR because he was unaware of a mechanism for processing this type of request in the Office of the Secretary of Defense
- he also submitted the request to the ABCMR because the Secretary of the Army has the power to submit a recommendation to the Secretary of Defense and the Board is in a position to facilitate processing the action.

5. The Board should refer to the applicant's submitted evidence for AR20160016289 to render a decision in this case. The applicant provided a letter to the Secretary of Defense with his application dated 26 September 2016 which states:

a. He is requesting reversal of the grade determination action taken in November 2012 that retired him as a LTG, restoration of his rank and grade as GEN effective 31 December 2012 the date of his retirement, recoupment of lost pay since that time, and removal of the GOMOR from his official records.

b. He proudly served his country with honor and distinction for over 40 years. He was nominated and confirmed as a GEN in 2006 and held the rank for five years. He never engaged in malfeasance or unprofessional conduct. His actions were never inspired by a desire for personal gain. His service as the first AFRICOM Commander was the highlight of his career. Despite opposition and distrust domestically, the Command's beginnings were solid and its stance only got stronger. He handled his responsibility well, accomplished a tremendous amount, and laid a foundation that continues to underwrite the effectiveness and posture of the Command today. For much of his tour at AFRICOM, he was the military's only black 4-star general and he willingly took on many tasks and engagements to support the Army's and DoD's diversity goals. He was restricted from discussing his case with anyone; however, others with an agenda to destroy him did discuss his case including in the undisciplined social media courtroom. As such the punishment he received has threatened the trust in the US Military by substantial segments. He's always taken responsibility for administrative miscues and other issues the DoD IG investigation identified. He reimbursed the US government for instances in which the former Secretary of the Army directed repayment. The grade determination unfairly characterized his service as an O-10 and as a combatant commander. It levied a lifetime financial sanction and did not accurately characterize his actions and his intent. For those reasons he is asking for restoration of his rank, back pay from the date of his retirement, removal of the GOMOR from his official records, and to allow him to retire as an O-10.

c. He was tasked with standing up AFRICOM which was a highly publicized and politically controversial command. He had no relevant template to set up the command and limited resources. Despite having minimal personnel, he was given an immediate mission of regional responsibility of 53 African nations with no or minimal sustained prior US military presence. The environment on the African continent was unsettled throughout the period of his command. During his tenure, they paid a great deal of attention to their military-to-military programs.

d. He relinquished his command of AFRICOM in April of 2011. Just prior to his scheduled retirement in May 2011, the DoD IG informed him he was under investigation. He was instructed not to contact anyone with knowledge of the circumstances surrounding the investigation. He followed those instructions and was interviewed by the IG investigators on two occasions in August 2011. The report of investigation was not issued until June 2012. The investigation lasted for nearly a year and a half. He was issued a GOMOR by the Army Vice Chief of Staff on 12 September 2012. The applicant responded to the GOMOR and the GOMOR was finalized and filed in his OMPF. He was notified he would retire in the rank of LTG on 12 November 2012. He retired on 31 December 2012. The saga subjected his wife and himself significant emotional, physical, and financial strain and hardship. The grade determination



continues to unfairly impugn his character and negatively characterize his service and career accomplishments.

e. Several of the IG's findings and conclusions were not characteristic of the applicant. Aside from the actions he accepted responsibility for, none of which rise to a level of demotion, the allegations are false, defy logic, and misrepresent facts and circumstances. He provided letters in support of his request by people who knew he diligently performed his duties and rarely took any personal time off. The IG focused a great deal of time on the travel of his wife on military aircraft. They failed to account for the official nature of her travel and her positive contributions to military children and families that were the primary focus of her travel.

f. The applicant is convinced some of the key allegations in the investigation were the product of a report that was tainted by information deliberately biased and inaccurate. The way this information was portrayed in the investigation led to a false characterization of his served and resulted in a report that lacks objectivity and reads more like a one-sided advocacy document. When the investigation found administrative discrepancies, like missing ITOs, instead of giving the applicant the benefit of the doubt the investigation maligned him and drew negative inferences that the documents never existed. Administrative errors and innocent inattentiveness by his inexperienced staff were attributed to his personal misconduct.

g. The applicant found it inconceivable that he was treated in this manner, especially when other General and Flag officers were excused for far more serious missteps and allowed to fully retire. Individuals who wrote letters of support opined the punishment he received was biased in the sense that it was out of proportion to how other cases have been handled. An author of one such letter of support stated the applicant should be treated with the same dignity and respect with which he served and be allowed to retire in the rank of GEN. Another author viewed the applicant's demotion as manifestly unfair, especially when one looks at the adjudication of far more serious recent infractions by senior members of our government, civilian and military alike.

h. He is not submitting his application in an effort to point fingers at others or to evade responsibility. That is inconsistent with who he is. He humbly submits that the lifetime stigma and financial penalty of the demotion on top of the reprimand and the repayment of the assessed debt is excessive and unjust. This is particularly true when he has always acted in good faith and never for personal gain. He committed no crime. He did not engage in immoral activities. He caused no embarrassment to the uniform. He did not violate any trust or compromise his integrity. He was punished as no other. He acted in good faith and trusted his staff to do their jobs and handle administrative processes. For those reasons he requests the officer grade determination be reversed and the mitigation of the other adverse actions taken against him.

i. Many things came to light in support of the reversal of the grade determination. After his retirement CID conducted an inquiry that contradicted the IG's findings regarding the conduct of his PST and the authorization of a hardened vehicle to

transport his wife. The IG failed to interview key personnel with knowledge of his travel practices and other matters that were the focus of the investigation. The IG relied on information from biased individuals. Senior officer cases involving far more serious conduct have been handled in a manner that did not involve demotion.

(1) The results of the CID investigation contradicted the IG's findings and nullified two of the basis for the reprimand and grade determination. The investigation concluded the PST conducted its activities in a manner consistent with regulations, policy, and doctrine. It also concluded he received contradictory information that led him to authorize the continued use of a hardened vehicle to transport his wife. This was a practice that was followed by his predecessors and he inherited.

(2) The IG failed to interview key individuals who handled his travel and other staffing functions which were the focus of the IG report. Letters from his first executive officer and his aide-de-camp verify this. Neither of these officers were interviewed by the IG despite the fact that they both had intimate knowledge of his travel practices. His executive officer had information to show the IG was mistaken regarding some of the travel details for which he was censured.

(3) The lack of favorable information was magnified by those who were biased against him and presented information in a misleading manner. The biased information shaped the IG's narrative. When the applicant was initially interviewed, he was asked if he knew of anyone who would be motivated to provide inaccurate or biased information to which he answered no. He had done his utmost to treat everyone with dignity and respect. After reviewing the redacted summaries of the interviews, it was clear some key witnesses were biased against him and their bias was reflected in the report. Two of the individuals were his executive officers who worked for him at AFRICOM. Those executive officers supervised travel planning and other staffing functions. The applicant finds it ironic the IG never interviewed his first executive officer even though he worked for the applicant for a longer period of time than the other two executive officers combined. The applicant had to remove one of the executive officers due to war injuries and his lack of understanding of the position. That executive officer resented being removed from the position.

(4) Other senior officer cases involving proven misconduct of far greater magnitude have been adjudicated and the Department found ways of striking a balance between accountability and past accomplishments and did not result in grade reduction. As a general officer said in a letter of support, the lifetime penalty of retirement in a lower grade that was applied to the applicant is manifestly unfair especially when one looks at the adjudication of far more serious recent infractions by senior members of the government, civilian and military alike.

j. The applicant provided the Board with an updated response to the allegations that served as the basis for the GOMOR and the rationale for the grade determination. He's also provided more than 30 letters of support from individuals in a range of duties and perspectives, some of whom have direct knowledge of the investigation and have

known the applicant for years. Others who wrote letters were present, with direct knowledge, during the trips in which the applicant was accused of misconduct. All of the authors speak favorably of the applicant's character and manner of performance and the way he represented our great nation. Administrative missteps are not misconduct. He's always acted in good faith and never for personal gain. He did not commit any crimes, did not engage in immoral activities, or make any disparaging remarks. He caused no embarrassment to the uniform or to his office. He did not violate any trust or compromise his integrity. He represented his Nation with honor, worked to help DoD achieve its diversity goals, effectively contributed to the national security of the United States, created effective relationships with interagency partners, and worked to cause AFRICOM to become a joint assignment of choice. He did his utmost to serve with honor and knows that he did so. He's asks the Secretary of Defense for his favorable consideration and correction of the injustices levied upon the applicant's character, his service, and himself.

6. The applicant makes reference to a CID investigation that contradicts the IG's investigation. The applicant's record is void of, and the applicant did not provide the CID investigation for consideration by the Board. He also makes reference to an email authorizing the use of hardened vehicles for his wife, the applicant's record is void of and the applicant did not provide a copy of that email for consideration by the Board.

7. The applicant received a redacted GOMOR on 12 September 2012. It was filed in the applicant's official military file on 9 October 2012 by the United States Army Vice Chief of Staff. The GOMOR stated:

- the applicant was reprimanded for engaging in misconduct related to travel
- the misuse of military aircraft
- authorizing his spouse to use a hardened government vehicle
- misusing ORF
- misusing his position while serving as the Commander, AFRICOM
- accepting gifts based on his position and not a valid personal friendship

8. The applicant provided his rebuttal, dated 3 October 2012, to the GOMOR. The rebuttal stated, in part:

a. He requested the GOMOR be modified to more accurately reflect his mistakes as Commander of AFRICOM. The IG report did not consider in many of its findings the context or analysis of all pertinent facts. The report combined what he acknowledged to be his oversights and mistakes with picayune issues that exaggerate out of proportion his mistakes. He responded to the IG report but in many respects his response was ignored by the IG. He also requested the GOMOR be filed locally.

b. He served his country in uniform for 40 years. He believed his service had been honorable and never had he acted to receive personal gain. Much of his service was at great personal sacrifice, including to his health. He had no regrets but was deeply

troubled because the investigation and its release had created a public image in the eyes of some that unfairly damaged his reputation and disgraced his family.

c. His wife also served our country for decades in her role as a military spouse. She served with distinction and honor. Her primary motive was to make the situation better for the military families and especially the children. Her efforts in AFRICOM produced concrete and tangible benefits to military dependents and to the children of the African continent. Her service came at great personal sacrifice and the attacks on her character by anonymous witnesses were the most troubling aspect of the IG investigation.

d. The applicant states he is not without fault. He made mistakes in his career. He takes full responsibility for his shortcomings and would provide restitution where it was deemed appropriate. He disagreed with the investigation's characterization he extended temporary duty (TDY) trips seven times for personal reasons. He did not understand where the evidence could lead someone to that conclusion. AFRICOM reached Full Operational Capability in October of 2008. For the remainder of 2008 and through 2009 they resided in temporary spaces, lacked basic equipment, and were constantly disrupted by moves. There were frequent operations shutdowns in 2010 because of security requirements related to building renovations and nearby construction. AFRICOM Headquarters began to approach a sense of normal operations within 6 months of his departure from command. These conditions were not conducive to good record keeping and administrative discipline

e. He began to build room in his itineraries for the frequent trips to Capitol Hill, the Pentagon, and the Interagency for requests for opportunity meetings. Several of his planned trips were not appropriate for recording on itineraries such as promotion boards and high level classified meetings at federal agencies with African Interests. Regardless of his location, he constantly worked long hours and never extended TY for personal reasons. He realized he was responsible for the poor record keeping and was prepared to reimburse government as funds where deemed appropriate.

f. He fully accepted responsibility for not using his government travel card. He offered remarks in mitigation to the investigation but realizes the failure on his part. His response to the IG investigation addressed the quality of the investigation to that point and suggested leads to pursue to assure a thorough, objective review of the facts. He did not address his own accountability for matters, which he acknowledge in detail in his response to the GOMOR.

g. He understood the letter openers and command coins were purchased with ORF (official representation funds). He learned after the fact the purchases were made with ORF funds and recognized in hindsight that ORF were misused in many instances. He was fully responsible for the misuse. He should have managed the funds more carefully given the limited availability of them and strict criteria for their use. He should and would reimburse the government for the misuse.

h. He disagreed with the representation that 15 military aircraft flights that included his wife were not for official purposes or did not provide an unquestionably positive public relations or diplomatic benefit to the United States. His wife worked tirelessly on behalf of military and African families. If she did not have an official purpose, she did not travel. He failed in not properly supervising his staff and verifying the proper documentation for the flights was executed and maintained. Regardless of the real and tangible benefit to military and African families and to the United States national interests, the perception created by his failure as the commander was unacceptable and he would reimburse the costs of those flights.

i. He was also responsible for the costs for times he was reimbursed in excess of per diem without documented justification and authorization. He was responsible for failing to supervise his subordinates properly in providing documentation. He believed reimbursement in each case would have been appropriate if they had followed procedures to document their decision making. Because they did not he should and would reimburse the government for the overpayment.

j. The investigation implied the primary purpose for his trip to New York in July 2010 was for personal leisure and that his business with Ms. F\_\_\_\_\_ H\_\_\_\_\_ was a pretext for the trip. This is not true. This is one example of the assumptions made by the IG and where the investigation pays short shrift to context to the point of implying lack of good faith without facts that support an inference of personal motive. The fact that Ms. F\_\_\_\_\_ H\_\_\_\_\_ had a long and storied relationship with the DoD and the fact she co-authored the "Be Know and Do" doctrine with GEN (Retired) S\_\_\_\_\_ was missing. Her organization's involvement with senior government officials had been both pervasive and mutually beneficial for decades. His visit to her institution followed her visit to Germany to discuss leadership issues. Her visit was followed by the Eighth Annual Investment in America Forum which was attended by US Cabinet and Department level Secretaries, ten Army generals, and ten Social Sector CEOs. The Investigation discounted his meeting with Ms. F\_\_\_\_\_ H\_\_\_\_\_, however, the Leader to Leader Institute lauded he and his wife's contributions at the formal roundtable dialogue on leadership. Ms. F\_\_\_\_\_ H\_\_\_\_\_ 's multi-decade relationship with top leaders was missed by the investigators or ignored in their findings. If his characterization of the trip as official was mistaken, he would reimburse the cost of the trip.

k. The investigation also implied events in New York were for leisure. Those events were an afterthought on the part of the applicant, but they were highly productive and beneficial. His discussions with M\_\_\_\_\_ J\_\_\_\_\_ and K\_\_\_\_\_ F\_\_\_\_\_ centered around the Fisher House activities and programs to benefit deployed and wounded Soldiers and their families. However, those discussions were not the purpose of the trip. They added official value to an official trip that was important to and of benefit to the DoD.

l. The investigation questioned a trip of the applicant to Atlanta. Though the IG pointed to emails that suggested it was official, the applicant also believes the trip was official in nature. The applicant had a standing and well known interest in visiting with

Forces Command (FORSCOM) about forces for AFRICOM. His concern was long-standing due to the lack of identified forces for Africa because of troop requirements for deployment. His concerns became more urgent one month prior to his trip when he attended a Four Star conference and the Army Chief of Staff announced because of pending deployment drawdown, units would be identified and made available for theater engagement missions in AFRICOM. The announcement made it imperative the applicant coordinate directly with FORSCOM leadership as a predicate for the respective staffs to commence detailed planning.

m. The applicant believes his attendance at the Trumpet Awards was appropriate official business. Throughout his service as a General Officer, he was strongly encouraged by the Army, especially the Accessions Command, to hold himself out publicly as an example of the Army's success story on diversity. As a prior recipient and honored guest at the 2011 Trumpet Awards, he was presented with the opportunity to do what the Army asked of him, and he was also able to promote AFRICOM. The trip was what he perceived to be his duty as a very public military figure.

n. He accepted the criticism for not effectively overseeing his PST travel and operations to ensure they were fiscally prudent in all actions. He would note that he had one of the learner PSTs for similarly situated officials. He would also note the investigation did not correctly describe his PSTs travel and operations. The investigation noted a PST member was in Virginia for 49 days when the applicant was only in the area for 18 days. The investigation did not consider the circumstances surrounding the member's stay in Virginia. He conducted advances and was snowed in for many days during one of the worst snowstorms in Washington D.C. history. The applicant understands the member took leave during this period and two PST members graduated from advanced training in West Virginia in June of 2010 and were diverted to the Baltimore mission with the rationale that an extra day of TDY was more prudent fiscally than flying to Germany only to return on the very next flight back to the US.

o. The applicant also provided the investigators with doctrinal information regarding the proper conduct of PST operations. The Investigation largely ignored this and ignored the documented threats to him and his family.

p. The applicant should have taken several steps to prevent many of the missteps. He should have monitored his staff's responsibilities and performance more closely. He should have personally recorded his daily activities and it may have prevented anonymous complaints. He should have been more vigilant in stopping loyal, willing subordinates from extending personal favors, and could have redoubled his efforts to instill a more fiscally disciplined command climate. He should have ensured proper completion and maintenance of records. He realizes he could have done more as the commander. He understands fully that as the commander he was and is ultimately responsible for everyone and everything that occurred in his command. He offered his sincerest apologies to the nation, the DoD, the Department of the Army, and those service members who served with him.

q. The applicant takes full responsibility as the commander. He notes the investigation nowhere accounted for the growing pains that accompany any completely new combatant command. A new organization that lacks any processes or experienced personnel creates extenuating circumstances which help account for many of the technical errors. He should have managed the command more closely to minimize the mistakes experienced. He would have hoped the investigation findings had given the command the benefit of context, of the magnitude of many of the tasks at hand, of existence of established precedent, of mission impact, of good faith intent, and of the myriad quasi-diplomatic challenges that often required improvisation that doesn't always work smoothly when viewed through the prism of hindsight. He tried to reconstruct some of the context with his interviews with the investigators. He also provided a 19 page response to the interim report that addressed concerns raised. He provided many clear and tangible investigative leads that are nowhere reflected in the final report. The outcome reflected in the interim report wasn't tempered with a thorough investigation of facts and circumstances. The investigation did not address the public threats made against the applicant and his family by a terrorist organization.

r. The investigation did not account for the applicant being directed to be responsible for the first newly established overseas combatant command in decades. The command had no inherited processes and was viewed skeptically by leaders on three continents and the US interagency.

s. The investigation did not note the applicant rarely took time off, working himself to exhaustion whether in Europe, Africa, or the US. Instead investigators characterized the bulk of his command time as leisure and personal. He spent nearly every waking hour either working on AFRICOM business or promoting the DoD and Army's stated goals.

t. Numerous personnel with relevant information were never interviewed. Known and public threats by terrorist organizations to his family were ignored. A DoD General Counsel legal opinion was ignored. The confusion within DoD over programs such as the use of hardened cars was ignored as was established doctrine.

u. Throughout his command he relied on and trusted his staff to provide sound, professional advice and to perform their duties as consummate professionals so he could focus on command, global, strategic, and operational issues. He acted under the assumption that validated processes were in place to do things correctly and legally. He did his utmost to perform his duties with honor and integrity. He never acted out of self-interest, but always with a goal of accomplishing a difficult mission, the well-being of his teammates, and bringing credit upon the institutions of the DoD and interagency partners. His mistakes were never for self-aggrandizement.

v. He served every day for 40 years with the motivation to do his best at whatever was asked of him and his family. He did so with pride and humility. Though he sought perfection, he made mistakes. He hopes the personal sacrifices made offsets those mistakes. He believes anyone who knows him knows that he is anything but self-

serving. He believes his career culminated in a command whose actions have been acclaimed as successful, on target, honorable, and genuinely appreciated. Since his 1971 Commission there had never been any incident of public embarrassment or discredit. His record was without blemish prior to the investigation and the leaked pre-decision to the press. His record is not tarnished irreparably. He believes a more objective and balanced wording of a reprimand could ameliorate the tarnish.

w. Apart from reimbursement of government funds and his sincerest apologies, all he has left to offer is his career and reputation. He asks that who and what he has been for over 40 years as a leader and commander be allowed to offset any misplaced belief any of his actions have been motivated by personal gain.

x. He sincerely apologized for his mistakes and shortcomings. It was painful to ask for an objective consideration as to what is fair in the wording of a reprimand after 40 years in uniform.

9. The applicant received a letter from the Secretary of Defense dated 12 November 2012 which states:

- he has determined to retire the applicant in the grade of LTG
- he cannot certify the applicant served satisfactorily in the grade of GEN
- the IG substantiated numerous serious acts of misconduct by the applicant
- he regrets having to take the action but believe he must in these circumstances

10. The applicant provided an updated response to the allegations in the GOMOR dated 20 September 2016 which states in part:

a. He provided the updated response because new information came to light with respect to some of the allegations. Several of the allegations that were the basis of the GOMOR and presumably the grade determination should have been unsubstantiated based on all available information. He set out the allegations he was reprimanded for and provided his updated responses.

b. Expending appropriated funds on travel to New York City in July 210 when the primary purpose of the trip appears to have been unofficial, without the permission of the Secretary of Defense.

(1) He disagrees with the characterization. The primary purpose of the trip was to meet with Ms. F\_\_\_\_ H\_\_\_\_\_, President and CEO of the F\_\_\_\_\_ H\_\_\_\_\_ Leadership Institute and her staff to discuss the Leader to Leader program. He saw the trip as a strategic engagement that would be helpful in furthering AFRICOM's outreach objectives. If F\_\_\_\_ H\_\_\_\_\_ and staff were not available for the meeting, the trip would not have occurred. Part of his duties in AFRICOM involved engaging in strategic outreach, as a result he went to New York to meet with F\_\_\_\_\_ H\_\_\_\_\_. The trip led to the publication of an article in the Fall 2010 edition of Leader to Leader Magazine.



(2) His wife, on her own official itinerary, participated in the meeting because F\_\_\_\_\_ H\_\_\_\_\_ and her staff were interested in the command's impact on families and women on the African continent. His wife was also in conversation with several New York City based organizations who were providing well-being benefits to military children and families. She met with the Sesame Street Foundation to bring their programs for military children to Europe and Africa. She also met with Scholastic Publishers to get books to Africa in French, Arabic, and English.

(3) The IG concluded the trip was personal because, the applicant accepted meals and tickets to a play that were paid for by his friend Mr. M\_\_\_\_\_ J\_\_\_\_\_. His interactions with Mr. J\_\_\_\_\_ was not the primary purpose of the trip. He and his wife would not have been in New York City if it not had been for the Leader to Leader meeting. The IG concluded the trip was personal and was motivated by the applicant's desire to interact with M\_\_\_\_\_ J\_\_\_\_\_ or to attend a play. This conclusion needlessly impugned the applicant's integrity and there was no reason for them to have done so. Even though he disagreed with the IG's conclusion, the applicant reimbursed the government for the trip.

c. Expended appropriated funds on round-trip travel in January 2011 from DC to Atlanta when the primary purpose was person.

(1) He disagrees with this characterization. However, when he was asked to reimburse the US government for the cost of the trip, he did so. The purpose of the trip was to meet with the Commander of FORSCOM; however, at the last minute the commander could not meet with him, so he met with the deputy commander. He had a desire to have a discussion with the FORSCOM commander about force generation for AFRICOM. Though he tried to coordinate the meeting with other travels to Atlanta, his schedule did not align with the FORSCOM commander's. When the FORSCOM commander's schedule changed on this occasion, he decided to continue with the trip and to meet with the deputy commander since the trip was occurring within three months of the end of his command. He did not want to leave the issue unaddressed for his successor.

(2) He also attended the Trumpet Award program while on the trip. He was under the impression he was cleared to attend the event in an official capacity due to the event's potential to promote DoD's diversity goals. He had been honored at the event the year prior and was invited as a guest in 2011. He was interviewed by several media outlets and took advantage of the opportunities to promote the Army's messages regarding diversity, opportunity, and requirements. He furthered the DoD's messages about AFRICOM's purposes. His legal staff informed him if his wife attended the Trumpet Awards, she would need to do so in a personal capacity. Months later when he was interviewed by the IG, he learned his Staff Judge Advocate had given a legal opinion since he wasn't receiving an award, his attendance at the event was personal rather than official. He also learned, members of his staff inquired into the feasibility of obtaining the Secretary of Defense's approval for him to use military aircraft to travel to the awards for personal purposes. He never instructed his staff members to make the

inquiry. Throughout his career, he sought to avoid the appearance of impropriety and relied upon the legal advice he received. He was aware his legal staff concluded if his wife were to attend the awards, she would need to do so in her personal capacity. She did not travel that leg of the trip with him.

(3) He would not have invented a reason to attend an event his lawyer opined was not official. As one of the authors of his letters of support stated, the applicant was known as someone who operated within the lines and the author never had a reason not to completely trust the applicant. A member of his AFRICOM staff who assisted with travel matters stated she never knew the applicant to contradict advice from his executive officer or legal staff. The applicant went to Atlanta for the FORSCOM meeting and the Trumpet Awards was an ad-on. It wasn't as portrayed by a disgruntled staff member.

d. Extending the length of TDY trips seven times for apparently personal reasons, yet received per diem reimbursement for the extra days.

(1) He takes exception to this finding. However, he reimbursed the government. Early in his command when he traveled to the US, he missed opportunities to conduct follow-up coordination in the Pentagon with the Intelligence Community and interagency partners because he lacked flexibility in his schedule. He often had no other option but to return as scheduled and miss opportunities for discussion and meetings. He was deluged with requests for his time from many governmental agencies, the media, and many private organization considered partners or influencers.

(2) He and his staff learned building flexibility into his schedule allowed him to take advantage of numerous, short notice opportunities. His former aide-de-camp stated, the fluid nature of scheduling office calls, particularly with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, with limited time, forced several instances of rescheduling. It happened often enough the front office discussed courses of action to mitigate the lost opportunities.

(3) Members of AFRICOM's Washington Liaison Office spoke to the fact the applicant was extremely busy with official duties while in Washington. His schedule was filled during his trips to the area. He worked tirelessly in attending planned and unplanned meetings of opportunity. Every moment of his time in the National Capital region was put to good use. Almost every one of his visits to the US included a myriad of meetings with governmental agencies. Schedules were often made with space to support mandatory but opportunistic add-ons.

(4) It was not possible for pre-travel itineraries to capture all of the meetings of opportunity and there were gaps in documentation. The applicant's aid-de-cam- was intimately involved in the planning and execution of his travel. The IG investigators did not interview him. In his letter of support, the aid-de-camp stated he did not recall a single trip executed according to plan where the electronic record would provide the executed itinerary. This is because the applicant participated in promotion boards and

other activities which would have been inappropriate to add to his office itinerary. What appeared on his itinerary as unscheduled time was usually an integral and critical piece of his activities. He never extended the length of a trip for personal reasons and then claimed and received benefits. Members of his staff may have failed to properly memorialize changes to his schedule after changes occurred.

e. Failing to use a Government Charge Card. The GOMOR is correct, the applicant did not have or use a government charge card. When he had a government charge card, at one point, he had difficulty using it. His government card was declined while traveling overseas and he used his personal card. He never replaced the government card. This was not to achieve some special advantage and he met all of his financial obligations. The requirement to use a government charge card was never brought to his attention as an issue. When the requirement came into effect, he was on assignment with a direct mission reporting to the Secretary of State and was not apprised of the requirement.

f. Permitting his spouse to accompany him on 15 military air flights for purposes that were not unquestionably official or for which evidence did not reflect a diplomatic or public relations benefit to the United States.

(1) He takes strong exception to this allegation. He made it a priority to forge domestic and overseas partnerships, establish constituencies and institute family member well-being programs into the AFRICOM Command. His wife had been a champion of military families and children. She was a major partner in their efforts with respect to family members and well-being programs. He ensured there was an unquestionably official purpose bringing substantial diplomatic, public relations, and/or well-being benefit to the command for every trip his wife accompanied him in an official capacity. He was surprised to learn from the investigation some of the documentation for his wife's travel was inadequate. ITOs were missing or were accomplished after the travel had occurred. He relied on his staff to handle these administrative requirements and had no prior indication the documentation to support the travel was not present. Every trip his wife took had an official purpose of the objectives and mission of the Command and DoD.

(2) Despite the characterization by the IG, positive results flowed from his wife's efforts both in Africa and Europe, which attests to the official nature and diplomatic and public relations benefit of her travel. He is astonished the IG disregarded the contributions of his wife and ignored the attention and emphasis being placed on families and well-being programs in the military by all.

(3) When his wife accompanied him, it was for official purposes and she had a full itinerary to benefit the United States. When, as a result of staffing or his independent judgment it was determined that no official reason was present for her to travel, she did not travel. The IG report indicated on every instance in which his wife accompanied him it was because he had determined such travel was in an official

capacity. That is not the case. Travel regulations required him to reimburse the government if his wife accompanied him in an unofficial capacity.

(4) The notion his wife's travel did not serve the interest of the United States is inaccurate. Her efforts added to mission accomplishment, enhanced positive US perceptions, and contributed to the well-being of our families. This contributed to turning around several initial negative impressions of the command into it later being overwhelmingly perceived as a force for good and a good place to serve.

(5) There is a portrayal in the investigation the applicant and his wife were hunting for reasons and exerting pressure on the staff to find reasons for his wife to travel. This characterization is false and reflects the complete lack of knowledge of the existence of opportunities to enhance family readiness on the part of a biased subordinate who was completely unaware of and ambivalent to the importance of these well-being initiatives.

(6) The bottom line is, whenever the applicant decided to take his wife on a trip it was because she could participate in briefings and establish relationships with organizations and personnel beneficial to advancing quality of life initiatives and thus, added value to the mission. Travel was not fun for his wife and resulted in many sacrifices on her part. When she traveled, she did so in support of command objectives. The applicant learned, from reading the investigation, the IG did not always find administrative documentation to support the official nature of his wife's travel.

g. Permitting his spouse, the spouse of another general officer and members of the media to fly on military aircraft without evidence of ITOs or Individual Travel Authorizations. The IG did not interview the applicant's aide-de-camp who disagreed with the notion a general officer and spouse were permitted to fly in July 2009 without an ITO. The common practice during the aide-de-camp's tenure was to release seats to space available passengers. The applicant learned of the conflicting information after he had received the GOMOR and retired from the military. This issue could have been resolved long ago had the IG interviewed the applicant's aide-de-camp. The media travel in question was an imbedded Al-Jazeera crew who accompanied the applicant to do a documentary on the security assistance efforts in Africa. It was fully supported by and coordinated with OSD Policy and Public Affairs.

h. Not preventing his staff from using official time and motor vehicles rented at Government expense to run personal errands and to transport his spouse for unofficial purposes. The applicant takes full responsibility for the limited instances this occurred. He wants to stress the allegation speaks to rare occurrences. After reading the investigation, he realizes there were select and very rare situations in which his staff members picked up an item of a personal nature for himself or his wife, incidental to what they were already doing. His wife also rode to a Military Child Education Conference as an invited Command representative which was determined by his legal staff his wife would be serving in a personal capacity. The IG had access to all of his AFRICOM emails and those of his staff. Despite that, they uncovered nothing to

suggest this was a systematic issue or pattern of behavior or practice on my part. The applicant does not believe any of the isolated incidents created an embarrassment for the DoD or the United States government.

i. Failing to effectively oversee PST travel and operations to ensure they were performed in a fiscally prudent manner in violation of the JER and JFTR. CID, the subject matter experts, conducted an inquiry which was completed after the applicant's retirement. The findings completely contradict the IG's findings on this issue. CID's investigation determined the PST travel and length of stays were dictated by the applicant's schedule, weather delays, and staff decisions to leave the PST in the US rather than flying back to Germany and returning to the US. The PST was in compliance with army regulation and did not act improperly concerning its travel. This allegation should have been unsubstantiated and not used as a substantial basis for his GOMOR or grade determination.

j. Accepting complimentary meals and Broadway show tickets in excess of \$20.00 in value for me and my spouse.

(1) The applicant was reprimanded for accepting gifts from a prohibited source. He accepted the gift of meals and complimentary tickets to a Broadway show for he and his wife. One can accept complimentary items when the gifts are based on a personal relationship. He accepted the lunch meal and the theater tickets from M\_\_\_\_\_ J\_\_\_\_\_ a former enlisted Soldier he had known for more than 10 years. Mr. J\_\_\_\_\_ 's son took care of the applicant's lawn and he would seek the applicant out for mentoring from time-to-time. When the Soldier retired, he sought the applicant's advice and counsel regarding whether he should retire to pursue opportunities outside of the Army or accept promotion to Sergeant Major. They didn't see each other often, but remained close by way of email and periodic phone conversations.

(2) The applicant and M\_\_\_\_\_ discussed how he might support troops in AFRICOM. He had provided support to deployed troops in Iraq and Afghanistan and they discussed ways he could do the same for the troops in Africa. The day the applicant accepted the theatre tickets, they were meeting the Chairman of the Fisher House Foundation. While the applicant and M\_\_\_\_\_ were not drinking buddies they had a close ongoing relationship that had existed for several years.

(3) The rule prohibiting accepting gifts from prohibited sources is designed to avoid having individuals giving gifts to government officials in the hopes of getting government employment or contracts. The relationship he shared with M\_\_\_\_\_ was personal in nature and not related to business. He did not discover M\_\_\_\_\_ was a prohibited source, because he was a DoD contractor, until the IG interviewed him. to the best of his knowledge M\_\_\_\_\_ J\_\_\_\_\_ never had business with AFRICOM nor did they discuss business he had with DoD other than his attempts to support deployed Soldiers. The investigation stated their review of emails between the applicant and M\_\_\_\_\_

J\_\_\_\_ revealed no evidence of discussions regarding post-government employment. For these reasons, the exception should have applied.

k. Misusing a hardened Government vehicle in Germany, in violation of 10 U.S. C. section 2637, the JER and DOD 4500.36.R.

(a) The applicant respectfully submits based on the guidance of his staff, he did not misuse a hardened government vehicle in Germany, the inquiry conducted by the CID bears that out. The CID report states the applicant received conflicting information concerning his authority to authorize an armored vehicle for his wife.

(b) During the challenge of standing up the command, several developments began to occur. Documents began to change the administrative requirement for the use of hardened cards. He instructed members of his staff to investigate and make sure they were doing things properly.

(c) The applicant was not familiar with all the nuances of the hardened car program and relied on his staff members. He knew his staff was engaged on the issue with the program officials at DoD. They were operating on established precedent and prior history that he and his wife were vulnerable in Europe. CID acknowledged he had received conflicting guidance on the use of hardened vehicles and found no impropriety in his use of such vehicles.

l. Authorizing the presentation of gifts purchased with ORF to ineligible DoD officials and US personnel in violation of DoD Instruction 7250.13. Members of the applicant's staff proposed using ORF to purchase gifts for foreign dignitaries. Prior to that, coins had been used for that purpose as well. The gifts did not arrive until after his final series of command visits to Africa. He did not direct the gifts for the foreign dignitaries be used at his farewell dinner and did not learn until later they had been distributed to ineligible personnel. He reimbursed the government for those items.

m. It is the applicant's opinion predominantly administrative shortcomings characterized by missing or incomplete records, circumstantial and biased misrepresentations and procedural misunderstanding served as the basis for the allegations in the GOMOR and the officer grade determination decision. The actions relied on a IG report that had false and misguided conclusions. The IG did not interview key witnesses who had insights into the matters they were investigating. The CID inquiry negated the IG's findings with respect to the operation and supervision of his PST and the alleged misuse of hardened vehicles. Considering all the information under objective standards, should result in several allegations being found to be unsubstantiated, with others mitigated to such a degree that maintaining the actions taken against him could easily be seen as unwarranted and discriminatory.

11. The applicant provided several letters of support concerning his retirement grade and removal of the GOMOR from his official file. The letters are from individuals who

served in high levels of the Army and government. The complete letters are available for the Board to review. The letters state, in part:

- the applicant is an officer of the highest character who possessed and demonstrated a commensurate ethical ethos
- he always operated within the lines and the author never had a reason to not completely trust him
- the author was not familiar with the facts, the details or findings
- he's sure the applicant was prepared to take full responsibility
- senior leaders must be held to the highest standards
- the author hopes the board can find enough room in the case to make a final determination that would allow the applicant to retire in the pay grade of GEN/O-10
- the author strongly supports the applicant's request
- the conduct in the IG investigation is completely out of character with the dealings the author has had with the applicant
- it is inconceivable to the author the applicant's accomplishments setting up a combatant command, could be overshadowed by bad staff work and poor records keeping
- he deserves to retire at the rank of GEN
- when one weighs the applicant's stellar career against the matter for which he was penalized in his retirement, the Board will see it is time to adjust the record
- the applicant always maintained the highest standards of integrity, moral ethics, and professionalism
- he is an officer of unquestionable high moral character, and highly professional in all his undertakings
- the recommendation for his reduction to the retirement grade of LTG was excessive
- the entirety of his distinguished 40 year career was not taken into proper consideration
- he remains one of the most admired and respected General officers within the Army and Joint Force
- consider the applicant's request and restore honor to this exceptional General Officer
- to do otherwise would further the injustice he and his family have already endured
- the officer grade determination and the IG investigation that was its basis were miscarriages of justice
- the applicant is the ultimate example of a professional, caring, competent, honest, and trustworthy officer and leader
- what happened to the applicant and his wife is a deliberate attempt to undermine their outstanding record of service
- the applicant is a role model, mentor, and selfless leader who would never have done anything to jeopardize his integrity, character, or legacy

- allow the applicant to retire as an O-10
- the applicant is totally selfless devoted to Country and Soldier, humble, serving as a charismatic leader, tireless worker, and laser focused on the mission
- the applicant may have relied too heavily on others to handle some administrative matters in standing up AFRICOM
- an investigative report should read to have been objectively fair and leaders truly deserve a presumption of innocence
- the author does not believe the Board can read the investigation and conclude it was objectively fair
- the applicant's honor and rank can be restored without condoning anything the Board concludes were shortfalls in his final command
- the applicant deserves the respect and gratitude of the US government not its disparagement
- the author strongly urges the Board to reconsider the unfortunate way the applicant was treated by the organization he so deeply respects and dedicated his life to
- the author believes the officer grade determination at the applicant's retirement was unfair
- he requests the Board reverse the decision and restore the applicant to his justly deserved grade of O-10 in retirement
- the IG investigation mischaracterized the applicant's actions and needlessly tarnished his reputation
- the applicant relied on his staff to handle travel itineraries and other administrative details
- the applicant took full responsibility and repaid the government for instances in which the IG either uncovered miscues or did not find evidence to exonerate him
- for the applicant to be retired at a lower grade was unjust and unfairly placed a cloud over his remarkable career
- undo this injustice by allowing him to retire as an O-10
- when the applicant's wife supported a mission the author was part of, she always had an itinerary and an official purpose for traveling
- the applicant's aide-de-camp states no one from the DoD IG's office contacted him about the investigation and allegations of impropriety
- the DoD IG investigation and subsequent report do not accurately portray the applicant's character
- some events were taken out of context or relied on inaccurate records
- the aide-de-camp would have been happy to contribute to facts in the report and could have provided the context surrounding many events
- the author finds the IG report to be egregious and simply untrue
- the applicant is not the officer described in the IG's report
- the author was surprised when the applicant's executive officers failed to adequately understand the importance of team building, interagency



inclusion, and family dynamics all required to effectively operate in a 4-star command

- two of the applicant's executive officers were obsessed with flag officer rank and felt the applicant did not do enough to sponsor them up the ranks
- one of the executive officers was more veiled in his malicious activities and often recorded items in his green book that he did not fully understand and failed to do any additional fact finding to resolve his personal misconceptions
- the two executive officers failed to display the courage of their convictions and were unsuccessful in adjusting to the rigors of a dynamic and complex 4-star command
- only individuals who provided negative information were interviewed
- it was common knowledge in the command that both executive officers were less than fond of the applicant's wife and the author believes she was also their target
- the applicant should have been afforded the honor and distinction of retiring as a 4-star general
- the Board must acknowledge that race and politics in the Pentagon played a major factor in the decision making at the highest levels in this case
- the author coordinated the applicant's travel itineraries when he was traveling to the US
- he assisted in deconflicting the applicant's wife's engagements during these trips
- the author clarified the use of hardened vehicles for dependents of high risk personnel with the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict and Interdependent Capabilities, the proponent for high risk personnel policy
- the office provided the author with a General Counsel email stating the commanders could provide their spouse hardened vehicle support
- the author told the applicant his executive officer was creating a division amongst the staff
- the executive officer was purposefully spreading misinformation both inside and outside the command about the applicant and his wife
- the executive officer was purposely trying to sabotage the applicant
- the executive officer made a litany of allegations against staff members that were not true and particularly seemed to have a disdain for women to include the applicant's wife
- some administrative mistakes were made but the applicant was not motivated by personal gain
- the author states the applicant is unequivocally the best he ever had the pleasure of serving for and would proudly work with him again
- both the applicant and his wife maintained intensive schedules during their travels which is expected for the applicant but could be easily overlooked for his wife

- the applicant's wife always operated on her own official travel itinerary during all travel and was completely separate from the applicant's
- having known the applicant for forty years over several assignments together, including assistant professors at West Point as captains to their days serving in the Pentagon on 9/11 and beyond, the findings are totally inconsistent with the Soldier and man he knows the applicant to be
- As was pointed out, there were no determinations of fraud, deceit, dishonesty, lapses integrity or character flaws...his punishment was harsh and severe to degrees experienced by no others
- Over the past seven years in retirement, applicant has continued to serve and support DOD with honor and integrity

12. The DASA (Review Boards) wrote a letter to the applicant's attorney dated 20 October 2016, which stated

- in his letter, he correctly pointed out that only the Secretary of Defense has the authority to conduct a retirement grade determination for officers in the grade of O-9 to O-10
- the ABCMR may, however, review cases such as your client's and render written recommendations to higher authority, including to the Secretary of the Army
- the Secretary of the Army in turn may then offer to the Secretary of Defense his recommendation as to the proper disposition of your client's case.

13. The ABCMR considered the applicant's case on 2 May 2017 and denied the applicant's request. An information paper regarding the applicant's case was completed by the ABCMR on 12 September 2017. It stated, the ABCMR was unable to find any reason to believe the Secretary of Defense's decision to retire the applicant at the lower grade was illegal, improper, or unjustified. There are, however, factors in the applicant's case that might persuade a decision authority to conclude that restoration of the applicant's retirement grade back to General (O-10) is warranted. These factors include:

a. Relatively Minor Misconduct. The DOD Inspector General's Report of Investigation, and the GOMOR, admonish the applicant more for his inattention to detail than for a callous or profligate disregard for government expenditures. There is no indication the applicant plotted with premeditation to divert government funds or services to himself or his family for personal gain. His infractions appear to have resulted from negligence rather than deliberate malfeasance. Furthermore, AFRICOM was as a newly-formed Combatant Command at the time. AFRICOM's headquarters staff may therefore have lacked well-established staffing and overview procedures that characterize and benefit combatant commands that have been in existence for decades. These circumstances tend to mitigate the applicant's overall culpability and support the notion that the misconduct at issue can fairly be described as minor.

b. The applicant Endured Well-Publicized Indignities. As the culminating assignment of an exemplary military career, the applicant, and his superiors no doubt intended his

command at AFRICOM to be his final duty position prior to his retirement from the Army. Instead, the applicant relinquished his AFRICOM command and was then required to assume the duties of "special assistant" for more than a year while the DOD IG investigation proceeded. Due to the ongoing investigation, he was not permitted to retire. In the interim, the applicant reverted to his permanent grade of major general. This de facto demotion and his relegation to "special assistant" were surely noted by the many colleagues, peers, and friends the applicant had acquired throughout his career. Though perhaps not humiliating, this experience must have been humbling for a man of the applicant's stature and achievement. The media attention drawn to the applicant's difficulties no doubt exacerbated the situation. Taken together, these several indignities and embarrassments can be construed as a form of punishment that supports the argument that additional adverse action, such as a retirement grade reduction, was and remains unnecessary.

c. Significant Decrease in Basic and Retirement Pay. After relinquishing command at AFRICOM, the applicant served as "special assistant" to the Vice Chief of Staff of the Army until his retirement. This period covered approximately 21 months (April 2011 through December 2012). Due to the DOD IG investigation, he was not permitted to retire until the investigation was completed. During this time, he was no longer filling a four-star position, and therefore was relegated to his permanent rank of major general. The decrease in basic pay from general to major general using 2012 and 2013 pay tables was approximately \$5,000 per month. Over 21 months, this translates to about \$105,000. Consequently, the applicant incurred a significant decrease in basic pay while the Army investigated his case and contemplated how to discipline him. With regard to retirement pay, the decision to retire the applicant at the grade of lieutenant general instead of general had an obvious and significant monetary impact. Using rough estimates, the decrease in his monthly retirement pay is approximately \$2,000 per month. The decision to reduce his retirement grade has therefore cost him about \$112,000 in retirement pay over the 56 months since his 31 December 2012 retirement.

14. Army Regulation 15-180 (Army Grade Determination Review Board (AGDRB) and Grade Determination) states:

a. The Secretary of the Army retains the prerogative to accomplish discretionary grade determinations without referral to the AGDRB. The Secretary of the Army retains sole authority to make discretionary grade determinations in cases involving general officers. Under the provisions of Title 10, U.S. Code, section 1370, in the case of an officer who is requesting retirement in the grade of GEN or LTG, the Secretary of the Army may retire such officers in one of those grades only after the Secretary of Defense certifies in writing to the President and Congress that the officer has served satisfactorily on active duty in the grade of GEN or LTG. The Secretary of the Army retains authority to take final action in any case in which a subordinate authority, including the AGDRB, would otherwise be authorized to take final action.

15. The ABCMR has the authority to consider the case. While the Secretary of Defense - not the Secretary of the Army or the ABCMR - has the authority to conduct

retirement grade determinations for officers in the grade of O-9 to O-10, the ABCMR has the authority to review cases like this one and render recommendations as to disposition to the Secretary of the Army who may offer recommendations to the Secretary of Defense. The DASA (Review Boards) has been delegated authority to make final decisions for the Secretary of the Army in ABCMR cases except those for which authority has been expressly withheld.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. There are two issues at hand here: removal of the GOMOR and restoration of the retired grade back to O-10 (General) with pay.

1. The evidence of record shows the DOD IG initiated an investigation to address allegations that while serving as Commander, AFRICOM, the applicant engaged in misconduct relating to official and unofficial travel and other matters. The investigation focused on allegations relating to his official travel, travel by his spouse on military aircraft, use of government resources and personnel, and acceptance of gifts from a prohibited source. The DOD IG an ROI to the Secretary of the Army substantiated allegations of misconduct against the applicant.

a. The evidence of record shows on 12 September 2012, the VCSA reprimanded the applicant for engaging in misconduct related to travel and use of military aircraft, authorizing his spouse to use a hardened Government vehicle in Germany, misusing Official Representation Funds (ORF), misusing his position while serving as the Commander, AFRICOM, and accepting gifts based on your position and not a valid personal friendship.

b. The evidence further shows the applicant acknowledged receipt and responded via a rebuttal wherein he addressed each allegation. The imposing officer considered matters submitted by the applicant and/or his response and based upon reconsideration of certain findings made in the DOD IG ROI, the VCSA decided to strike certain language in the GOMOR to more accurately reflect the applicant's misconduct. After careful consideration of his response to the GOMOR dated October 2012, as well as the nature of his misconduct, the imposing general officer directed that the redacted GOMOR be filed in his official military personnel file (OMPF).

c. The Board reviewed context and outcome of the IG investigation and the nature of the misconduct and compared to the totality of the applicant's service. The Board determined that applicant's misconduct was minor: the misconduct relates to minor negligence in processing administrative forms, leisure, complementary meals, engraving of gifts, minor misuse of ORF, and unsanctioned spouse travel. The Board believed the applicant may have failed to supervise his subordinates properly; however, he did not intentionally commit misconduct. It is also important to know that the

applicant was responsible for a newly established, understaffed, and under-resourced major overseas combatant command, with a complex military and political challenges.

d. Despite his long, dedicated, and honorable service to our country, there is no doubt that the applicant endured publicized indignity in addition to the loss of money. The Board determined that although the GOMOR is not in error, and although it does not contain administrative or substantive errors or that it was not prepared in compliance with applicable regulations and policies, the impact that this GOMOR has had on the applicant's service and subsequent retirement has been very harsh and unjust. The Board unanimously voted to remove it from his record.

2. On 29 April 2011, the U.S. Army Human Resources Command published orders reducing the applicant from General to Major General effective 8 May 2011 by authority of Title 10, U.S. Code, section 601, by order of the Secretary of the Army, and with senate confirmation.

a. On 12 November 2012, the Secretary of Defense decided to retire the applicant in the grade of Lieutenant General (O-9) because he could not "certify that [he] served satisfactorily in the grade of General." The applicant retired from the Army on 31 December 2012.

b. In September 2016, he applied to the ABCMR asking the ABCMR to remove the GOMOR from his official file and to recommend to the Secretaries of the Army and the Defense that he be retired in the grade of General (O-10). In May 2017, the ABCMR denied his request. The ABCMR has the authority to consider the case. While the Secretary of Defense - not the Secretary of the Army or the ABCMR - has the authority to conduct retirement grade determinations for officers in the grade of O-9 to O-10, the ABCMR has the authority to review cases like this one and render recommendations as to disposition to the Secretary of the Army who may offer recommendations to the Secretary of Defense. The DASA (RB) has been delegated authority to make final decisions for the Secretary of the Army in ABCMR cases except those for which authority has been expressly withheld.

c. The Board acknowledges that the Secretary of Defense certifies in writing to the President and Congress that the officer has served satisfactorily on active duty in the grade of General or Lieutenant General. However, it is the Secretary of the Army who may retire such officers in one of those grades only after the Secretary of Defense certifies in writing to the President and Congress that the officer has served satisfactorily on active duty in the grade of General or Lieutenant General. In that regard, and with the Board voting to remove the GOMOR from the applicant's service record, the recommends the Secretary of the Army submit a recommendation to the Secretary of Defense to reinstate the applicant's retired grade of General.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20160016289, on 2 May 2017. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- removing the General Officer Memorandum of Reprimand (GOMOR), dated 12 September 2012, from the applicant's official military personnel file (OMPF)
- the Secretary of the Army of the Army submit a recommendation to the Secretary of Defense to reinstate the applicant's retired grade of General.

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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. Army Regulation 15-180 (Army Grade Determination Review Board (AGDRB) and Grade Determination) establishes policies, procedures, and responsibilities for the AGDRB and other organizations delegated authority to make grade determinations on behalf of the Secretary of the Army.

a. The Secretary of the Army retains the prerogative to accomplish discretionary grade determinations without referral to the AGDRB. The Secretary of the Army retains sole authority to make discretionary grade determinations in cases involving general officers. Under the provisions of Title 10, U.S. Code, section 1370, in the case of an officer who is requesting retirement in the grade of GEN or L TG, the Secretary of the Army may retire such officers in one of those grades only after the Secretary of Defense certifies in writing to the President and Congress that the officer has served satisfactorily on active duty in the grade of GEN or LTG. The Secretary of the Army retains authority to take final action in any case in which a subordinate authority, including the AGDRB, would otherwise be authorized to take final action.

b. The Assistant Secretary of the Army (Manpower and Reserve Affairs), after consultation with the Army Chief of Staff, will appoint general officers for the AGDRB, which the Secretary of the Army will direct to consider cases involving general officers. The Assistant Secretary of the Army (Manpower and Reserve Affairs) retains the authority to take final action in any case in which a subordinate authority, including the AGDRB, would otherwise be authorized to take final action.

2. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). It states, the ABCMR staff will review each application to determine if it meets the criteria for consideration by the ABCMR. The application may be returned without action if—

- the applicant fails to complete and sign the application
- the applicant has not exhausted all other administrative remedies
- the ABCMR does not have jurisdiction to grant the requested relief
- no new evidence was submitted with a request for reconsideration.

3. Army Regulation 600-37 (Unfavorable Information) provides that an administrative memorandum of reprimand may be issued by an individual's commander, by superiors in the chain of command, and by any general officer or officer exercising general court-martial jurisdiction over the Soldier.

a. The memorandum must be referred to the recipient and the referral must include and list applicable portions of investigations, reports, or other documents that serve as a basis for the reprimand. Statements or other evidence furnished by the recipient must be reviewed and considered before a filing determination is made.

b. A memorandum of reprimand may be filed in a Soldier's OMPF only upon the order of a general officer-level authority and is to be filed in the performance folder. The direction for filing is to be contained in an endorsement or addendum to the memorandum. If the reprimand is to be filed in the OMPF, the recipient's submissions are to be attached. Once filed in the OMPF, the reprimand and associated documents are permanent unless removed in accordance with chapter 7.

c. Once an official document has been properly filed in the OMPF, it is presumed to be administratively correct and to have been filed pursuant to a decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF.

d. Only memoranda of reprimand, admonition, or censure may be the subject of an appeal for transfer to the restricted folder. Normally, such appeals will be considered only from Soldiers in grades E-6 and above, officers, and warrant officers. The above documents may be appealed on the basis of proof that their intended purpose has been served and that their transfer would be in the best interest of the Army. The burden of proof rests with the recipient to provide substantial evidence that these conditions have been met.

4. Department of Defense Instruction (DoDI) 1320.04 (Military Officer Actions Requiring Presidential, Secretary of Defense, or Under Secretary of Defense for Personnel and Readiness Approval or Senate Confirmation) establishes policy, assigns responsibility, and prescribes procedures for the submission of military officer personnel actions for grade O-10 and below.

a. Adverse Information. Adverse information is any substantiated adverse finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be credible, the information must be resolved and supported by a preponderance of the evidence. To be adverse, the information must be derogatory, unfavorable, or of a nature that reflects clearly unacceptable conduct, integrity, or judgment on the part of the individual.

(1) The following types of information, even though credible, are not considered adverse:

(a) Motor vehicle violations that did not require a court appearance.

(b) Minor infractions without negative effect on an individual or the good order and discipline of the organization that were not identified because of substantiated findings or conclusions from an officially documented investigation or did not result in more than a non-punitive rehabilitative counseling administered by a superior to a subordinate



(2) Adverse information does not include:

(a) Information previously considered by the Senate pursuant to an earlier nomination of the officer.

(b) Information attributed to an individual 10 or more years before the date of the personnel action under consideration, except for substantiated conduct any single act of which, if tried by court-martial, could have resulted in the imposition of a punitive discharge and confinement for more than 1 year. The date of the substantiated adverse finding or conclusion from an officially documented investigation or inquiry is used to establish the time period, not the date of the incident