

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2024

DOCKET NUMBER: AR20220011010

APPLICANT REQUESTS: His General Officer Memorandum of Reprimand (GOMOR), dated 10 April 2020 and associated documents and actions be removed from his Army Military Human Resource Record (AMHRR). He also request a personal appearance.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Personal statement (5 pages)
- Army Regulation (AR) 15-6 (Procedures for Administrative Investigations and Boards of Officers) Investigation (80 pages)
- General Officer Memorandum of Reprimand (GOMOR) (6 Pages)
- Show Cause Board of Inquiry (BOI)
- Report of Proceedings of Board of Officers (BOI)
- Commanding General approval
- Character References (25) submitted with BOI
- Officer Evaluation Reports and Awards
- Department of the Army Suitability Evaluation Board (DASEB) Proceedings; Applicant's request for review, and DASEB denial
- Request removal GOMOR post BOI and Commanding General (CG) denial
- 667 pages of his Service Record and the GOMOR related investigation that includes copies of the above documents and 219 of the pages are unrelated administrative documents

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states :

a. Regulations allows for the removal of a GOMOR if it is proven to have been unjust and untrue by an official investigation, sworn witness statements, and official

documents. He received a GOMOR for two general categories, toxic leadership and mishandling a sexual harassment complaint. New evidence was revealed during his subsequent Show Cause Board of Inquiry (BOI) that was not previously known to the originating General Officer. This information directly contradicts the evidence known to the GO at the time he received the GOMOR and makes the inclusion of the GOMOR in his record unjust. He has attached a Memorandum for Record (MFR) and accompanying documents to detail these issues.

b. The GOMOR is unjust and untrue, and this has been supported by the Board of Inquiry (BOI), dated 21 April 2021. The BOI clearly found that none of the allegations made within the GOMOR were true, and made this determination based on the new evidence that came through during the board. The Department of the Army Suitability Evaluation Board (DASEB) denied his request and cited to the lack of an investigation to substantiate the new evidence that made the GOMOR unjust. The BOI served as the "investigation" that established facts that contradicts the GOMOR. It is upon these facts laid out below that I am challenging the GOMOR.

3. On the applicant's DD Form 149, he indicates sexual assault/harassment as contributing and mitigating factor in the circumstances that resulted in his separation. However, it appears that the sexual assault/harassment he is referring to is related to one of the specifications for the GOMOR.

4. A review of the applicant's service record shows he was commissioned into the U.S. Army Reserve and ordered to active duty with a reporting date of 19 January 2001. He served in a variety of assignments and attained the rank of lieutenant colonel (LTC) in January 2017.

5. He was assigned to as commander of the 6th Ordnance Battalion, U.S. Army Materiel Support Command, Korea.

6. On 10 September 2019, an AR 15-6 investigation was conducted with the findings that the applicant had:

- Allowed Captain Bxxx to live in his residence;
- He was perceived as showing preferential treatment toward certain officers, in violation of AR 600-20 (Army Command Policy), section 4-14, paragraph b. (2);
- He failed to investigate claims of sexual harassment made against a first sergeant (1SG);
- He failed to treat subordinates with dignity and respect, by telling personnel within the unit to avoid LT Bxxxx, in violation of AR 600-20, paragraph 4-19, and AR 600-100, paragraph 1-11;
- He made false official statements; and
- He attempted to influence this investigation.

7. On 6 December 2019, the Investigation Officer (IO) provided updated Findings and Recommendations and its additional material was referred to the applicant for comment prior to final action by the approval authority in accordance with (IAW) AR 15-6, paragraph 5-4. The following findings were noted regarding the applicant:

- allowed Captain Bxxxx to live in his residence, in violation of AR 600- 20, section 4-14, paragraph b. (2) and (3)
- was perceived as showing preferential treatment toward certain officers, in violation of AR 600-20, section 4-14, paragraph b(2)
- failed to investigate claims of sexual harassment made against a 1SG
- failed to treat subordinates with dignity and respect, by telling personnel within the unit to avoid Lieutenant Bxxxx, in violation of AR 600-20, paragraph 4-19, and AR 600-100, paragraph 1- 1
- made false official statements; and attempted to influence this investigation

8. On 9 December 2019, a legal review was conducted and determined the documents and evidence pertaining to the AR 15-6 investigation, conducted by COL Cxxxx, was legally sufficient. The proceedings complied with legal requirements, there were no legal errors causing this investigation to be legally insufficient, and the recommendations were consistent with and supported by the findings.

9. On 10 April 2020, Brigadier General (BG) Sxxxx, Commander, Headquarters, 19th Expeditionary Sustainment Command, reprimanded the applicant as follows:

"You are reprimanded for failing as a leader to support SHARP, failing to treat subordinates with dignity and respect, fostering a perception of favoritism , and for allowing your personal feelings to influence both your behavior and your decisions. You demonstrated counterproductive leadership that damaged your command. The failure was your values and not the perceptions of those you lead. Living the Army Values is a requirement of Army leaders at all levels at all times. Your failure to do so broke the sacred bond of trust between you and those you lead. When you publicly belittled a junior officer, you failed to show respect for your subordinates. When you condoned harassment by incompetently investigating harassment and failing to hold the responsible party accountable, you failed to support SHARP and that victim of harassment. Displaying a gift with the name of the harasser proudly in your office for that victim to see, showed a complete lack of awareness and compassion. When told of the perception of favoritism, you made no changes to your behavior and practices and showed no understanding that the perception was pervasive and toxic. You then compounded these moral and leadership failures by reacting out of anger. Your actions demonstrated a fundamental

lack of primary concern for the health of your subordinates and your command."

10. On 17 April 2020, he submitted a rebuttal to the GOMOR. He requested the GOMOR be file locally. The GOMOR and investigative process has fulfilled its intended purpose. It has helped him identify his shortcomings and made him see himself in a better light. He contended that he would utilize this experience to a more knowledgeable and effective commander and officer.

11. On 23 April 2020, after having carefully considered the reprimand, the circumstances of the misconduct, and all matters submitted by the Soldier in defense, extenuation, or mitigation, if any, along with recommendations, the imposing general officer directed the GOMOR be placed permanently in the appellant's AMHRR. The applicant acknowledged the filing.

12. On 17 December 2020, elimination actions were initiated based on the applicant's GOMOR finding that he had:

a. Substantiated derogatory activity resulting in a GOMOR dated 10 April 2020. He was reprimanded for failing as a leader to support SHARP, failing to treat subordinates with dignity and respect, fostering a perception of favoritism, and for allowing his personal feeling to influence both your behavior and your decisions.

b. Conduct unbecoming an officer, as indicated by the above-referenced item.

13. The applicant acknowledged the action on 14 January 2021 and submitted supporting documentation in the form of his Officer Evaluation Reports, 16 Letters of support or character, photos of his volunteer activities, a Climate Survey, and his Officer Record Brief.

14. The board of inquiry convened on 20 April 2021, to determine whether the applicant should be separated from the U.S. Army for misconduct, moral or professional recklessness, and derogatory information. This is based on the actions the applicant took in response to a sexual harassment allegation made within his organization. AR 600-20 (Army Command Policy, July 2020), states that Soldiers, cadets, and family members aged 18 and over may file a sexual harassment complaint with the BOE SARC.

15. The board members heard arguments, read sworn statements, and examined evidence from various personnel involved in the matter, including the Soldier who reported the sexual harassment incident. The evidence showed that the applicant consulted with and received guidance from his brigade SARC, while conducting a battalion-level inquiry into the sexual harassment allegations. Additionally, he met with

the service member who reported the alleged sexual harassment on several occasions and confirmed that she did not intend to file a formal complaint at that time.

16. On 21 April 2021, a BOI rendered the following finding regarding the applicant:

a. Did not find the allegation that LTC W xxxxx [the appellant] has a GOMOR, dated 10 April 2020 in his AMHRR constituting derogatory information in accordance with AR 600-8-24, paragraph 4-2c is supported by a preponderance of the evidence.

b. Did not find the allegation as to whether LTC Wxxxx failed as a leader to support SHARP is supported by a preponderance of the evidence.

c. Did not find the allegation as to whether LTC Wxxxx failed to treat subordinates with dignity and respect is supported by a preponderance of the evidence.

d. Did not find the allegation as to whether LTC Wxxxx fostered a perception of favoritism is supported by a preponderance of the evidence.

e. Did not find the allegation as to whether LTC Wxxxx allowed his personal feelings to influence both his behavior and his decisions is supported by preponderance of the evidence.

f. Did not find the allegation as to whether the above referenced misconduct constitutes conduct unbecoming an officer is supported by a preponderance of the evidence.

g. The applicant provided numerous documents showing a successful career.

h. The applicant had provided numerous character reference statements. All of the letters spoke highly of the appellant's leadership, his proven track record, being a leader of great character, commitment to people first, dedication to Soldiers and their families, being a fixture in the community, ability to grow and learn, having unlimited potential, and outstanding future potential.

i. The BOI recommended that the applicant be retained in the United States Army.

17. On 17 January 2020, the applicant requested the imposing general officer remove the GOMOR based on the BOI findings. This request was denied on 28 February 2022.

18. On 12 May 2022, the applicant requested that the DASEB review his request for removal of the GOMOR based on the findings of the BOI.

19. On 12 July 2022, the DASEB completed its review rendering the determination that the evidence presented does not clearly and convincingly establish that the document under consideration was untrue or unjust.

20. The applicant provided a complete copy of his Service Record as released by the Document Control officer that included all of the above and numerous administrative documents that were unrelated to the issue of the GOMOR.

21. The records contained in the applicant's Integrated Personnel Electronic Records Management System lacking AR 15-6 documents and findings, the majority of the supporting documents for the applicant's appeals and rebuttal, and the supporting documentation for his BOI and DASEB reviews.

22. AR 600-37 (Unfavorable Information) sets forth policies and procedures to authorize placement of unfavorable information about Soldiers in individual official personnel files:

a. Paragraph 1-1 states, in relevant part, that the intent of AR 600-37 is to ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and, to ensure that the best interests of both the Army and the Soldiers are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

b. Paragraph 1-4 stipulates that the objectives of Army Regulation 600-37 are to apply fair and just standards to all Soldiers; protect the rights of individual Soldiers and, at the same time, permit the Army to consider all available relevant information when choosing Soldiers for positions of leadership, trust, and responsibility; to prevent adverse personnel action based on unsubstantiated derogatory information or mistaken identity; to provide a means of correcting injustices if they occur; and, to ensure that Soldiers of poor moral character are not continued in Service or advanced to positions of leadership, trust, and responsibility.

c. Paragraph 3-2c states that unfavorable information that should be filed in official personnel files includes indications of substandard leadership ability, promotion potential, morals, and integrity. These traits must be identified early and shown in permanent official personnel records that are available to personnel managers and selection board members for use in making decisions that may result in selecting Soldiers for positions of public trust and responsibility, or vesting such persons with authority over others. Other unfavorable character traits of a permanent nature should be similarly recorded.

d. Paragraph 7-2a, states that once an official document is properly filed in the AMHRR, it is presumed to be administratively correct and filed pursuant to an objective

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 AMHRR. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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.

a. An AR 15-6 investigation substantiated a finding of the applicant failing as a leader to support SHARP, failing to treat subordinates with dignity and respect, fostering a perception of favoritism, and allowing his personal feelings to influence both his behavior and decisions. As a result, he was reprimanded. He was given an opportunity to provide a rebuttal to this GOMOR. The imposing general officer reviewed the GOMOR and applicant's rebuttal and ordered the GOMOR filed in the applicant's AMHRR. The Board found no error or injustice in the administration and filing of this GOMOR. The applicant's receipt of the GMOR triggered a show cause board for retention. Accordingly, a BOI convened to determine whether the applicant should be separated from the U.S. Army for misconduct, moral or professional recklessness, and derogatory information. The BOI cleared him of any wrongdoing and determined none of the six allegations was supported by a preponderance of the evidence. The BOI also recommended his retention.

b. The Board noted that a GOMOR is primarily used as a tool for teaching proper standards of conduct and performance. Since receipt of this GOMOR and the BOI's recommendation for retention, the applicant continued to serve, improving himself personally and professionally, taking on positions of increasing responsibilities, and has since received excellent OERs (Proficient/Highly Qualified). He has proven through performance that he is dedicated to bettering himself. His attitude, which is normally recognized as a major ingredient in the success or achievement of an individual, is that of a Soldier who, despite the set-back, has Soldiered on with a strong desire to serve and grow. The GOMOR appears to have served its intended purpose.

c. The existence of the GOMOR on his AMHRR is a detractor that sticks out as soon as his records are reviewed. Therefore, the Board determined that although not in

error, in the interest of justice, the applicant's GOMOR should be removed from his AMHRR.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant a recommendation for relief. 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 10 April 2020 and associated documents from his records.

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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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 600-37 (Unfavorable Information) sets forth policies and procedures to authorize placement of unfavorable information about Soldiers in individual official personnel files:

a. Paragraph 1-1 states, in relevant part, that the intent of Army Regulation 600-37 is to ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and, to ensure that the best interests of both the Army and the Soldiers are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

b. Paragraph 1-4 stipulates that the objectives of Army Regulation 600-37 are to apply fair and just standards to all Soldiers; protect the rights of individual Soldiers and, at the same time, permit the Army to consider all available relevant information when choosing Soldiers for positions of leadership, trust, and responsibility; to prevent adverse personnel action based on unsubstantiated derogatory information or mistaken identity; to provide a means of correcting injustices if they occur; and, to ensure that Soldiers of poor moral character are not continued in Service or advanced to positions of leadership, trust, and responsibility.

c. Paragraph 3-2c states that unfavorable information that should be filed in official personnel files includes indications of substandard leadership ability, promotion potential, morals, and integrity. These traits must be identified early and shown in permanent official personnel records that are available to personnel managers and selection board members for use in making decisions that may result in selecting Soldiers for positions of public trust and responsibility, or vesting such persons with authority over others. Other unfavorable character traits of a permanent nature should be similarly recorded.

d. Paragraph 7-2a, states that once an official document is properly filed in the AMHRR, it is presumed to be administratively correct and filed pursuant to an objective 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 AMHRR. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.

3. AR 600-8-24, (Officer Transfers and Discharges), prescribes the officer transfers from active duty (AD) to the Reserve component (RC) and discharge functions for all officers on AD for 30 days or more. It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required to support officer transfers and discharges.

a. Paragraph 4-6 states the Board of Inquiry's purpose is to give the officer a fair and impartial hearing determining if the officer will be retained in the Army. Through a formal administrative investigation conducted under AR 15-6 and this regulation, the Board of Inquiry establishes and records the facts of the Respondent's alleged misconduct, substandard performance of duty, or conduct incompatible with military service. Based upon the findings of fact established by its investigation and recorded in its report, the board then makes a recommendation for the officer's disposition, consistent with this regulation. The Government is responsible to establish, by preponderance of the evidence that the officer has failed to maintain the standards desired for their grade and branch or that the officer's Secret-level security clearance has been permanently denied or revoked by appropriate authorities acting pursuant to DODD 5200.2-R and AR 380-67. In the absence of such a showing by the Government, the board will retain the officer. However, the respondent is entitled to produce evidence to show cause for his retention and to refute the allegations against him. The Respondent's complete AMHRR will be entered in evidence by the Government and considered by the Board of Inquiry.

b. Paragraph 4-15b (3) states the board may not recommend removal of documents such as OERs, Article 15s, and Memoranda of Reprimand from an officer's AMHRR. The board recommendations are limited to either retention (with or without reassignment) or elimination.

//NOTHING FOLLOWS//