

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 May 2024

DOCKET NUMBER: AR20220011881

APPLICANT REQUESTS:

- through counsel, removal of DA Form 67-10-1 (Company Grade Plate (O1-O3; WO1-CW2) Officer Evaluation Report (OER)) covering the period from 1 April 2016 through 15 September 2016 from her Army Military Human Resource Record (AMHRR) or in the alternative transfer the OER to her restricted fiche.
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel Legal Brief with Enclosures:
 - Enclosure 1 – OER, 15 September 2016
 - Enclosure 2 – Power of Attorney, 4 December 2020
 - Enclosure 3 – Letter of Concern, 25 October 2016
 - Enclosure 4 – Administrative Attempts to Obtain Investigation or Relief, various dates.
 - Enclosure 5 – Whistleblower Reprisal Complaint
 - Index
 - Opening Letter
 - Whistleblower Reprisal Complaint Form
 - Summary of Events
 - Memorandum of Record (MFR), 15 June 2015
 - MFR, 7 October 2015
 - MFR, 29 October 2015
 - MFR, 8 March 2016
 - MFR and Sworn Statement, 31 March 2016
 - Annual OER, 31 March 2015 and 30 March 2016
 - MFR, 4 April 2016
 - MFR, 5 April 2016
 - MFR, 8 April 2016

- MFR, 20 April 2016
 - MFR, 12 May 2016
 - OER Support Form (DA Form 67-10-1A) and Quarterly Update, 11 April 2016 and 6 June 2016
 - MFR, 7 June 2016
 - MFR, 17 June 2016
 - Emails, Equal Opportunity (EO) Complaint and Inspector General (IG) Complaint Against Rater, 1 September 2016 and 27 September 2016
 - Letter of Concern from Director, J-3, 25 October 2016
 - Email and Letter from the Assistant Inspector General (AIG), 9 November 2016
 - Email chain following up on status of EO complaint, (1 October 2016, 13 October 2016, 2 December 2016) and finding (22 November 2016)
 - Email from senior rater letting applicant know her OER was available through EES with OER signed from rater, 13 December 2016
 - Called COL [REDACTED] Director J-3 to discuss points in tab, 19 December 2016
 - Additional email correspondence through EO office from Master Sergeant (MSgt) [REDACTED] with MAJ [REDACTED] (Judge Advocate General's Corps (JAG)) legal counsel advice, various dates
 - OER changes
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- Enclosure 6 – EO Complaint
 - Enclosure 7 – OER Support Form
 - Enclosure 8 – IG Complaint (Redacted)
 - Enclosure 9 – Comments to Referred OER, 6 March 2017

FACTS:

1. The applicant's Counsel states in his legal brief:

a. "The applicant was the victim of a hostile work environment from her immediate supervisor who openly disparaged her in the presence of her peers and subordinates causing them to disrespect and mistreat her as well. The applicant attempted to resolve this within her chain of command, but when nothing was done after repeated requests for assistance, she met the EO representative to find out what she could do next. This immediately resulted in the applicant being threatened for her actions, and afterwards, a noncommissioned officer (NCO) in the section filed an EO complaint against her. Despite the applicant being assured that nothing was going to come of the complaint and subsequent investigation, and specifically that nothing would permanently reflect this in her records, she was ultimately issued a referred OER for the purportedly substantiated EO complaint.

b. Because the underlying EO complaint was not processed and investigated in accordance with Army Regulation (AR) 600-20 (Army Command Policy) and the applicant's OER was not processed in accordance with AR 623-3 (Evaluation Reporting System), her due process rights were denied, preventing her from defending herself against the allegation(s) forming the basis for the referred OER. Moreover, the chain of command has compounded the harm to her by continuing to obstruct her right to examine the report of investigation that was supposedly "substantiated," thereby precluding her from mounting any kind of defense. Removal of the OER is necessary to correct a material error, remove inaccurate information, and stop the continued injustice flowing therefrom."

c. The complete brief has been provided to the Board for review.

2. The applicant's counsel provides:

a. The applicant's OER covering the period 1 April 2016 through 15 September 2016, which addressed her duty performance as the Operations Officer of the 2nd Weapons of Mass Destruction – Civil Support Team (WMD-CST), 1 Air National Guard. Her rater is shown as Major (MAJ) [REDACTED] Deputy Commander. Her senior rater is shown as Lieutenant Colonel (LTC) [REDACTED] Commander. The rater and the senior rater digitally signed the OER on 6 February 2017 and 8 February 2017. The applicant digitally signed the OER on 6 March 2017. The contested OER shows in:

(1) Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block b (This Officer's overall Performance is Rated as), she was rated as "Unsatisfactory", and the rater entered the following comments:

[Applicant's] performance has not met the standards required of an Army Officer and is not commensurate with her current rank. During this period this Officer had a substantiated EO complaint concerning sexual harassment showing a lack of the Army Values, professionalism, and military bearing.

(2) Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block c1 (Character), the rater entered the following comments:

[Applicant] did not promote a climate of dignity and respect or adhere to the requirements of the Commander's EO and Sexual Harassment/Assault Response and Prevention (SHARP) Programs. There was a substantiated EO complaint concerning sexual harassment against this Officer during the rating period which resulted in her being transferred out of the unit.

(3) Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block c2 (Presence), the rater entered the following comments: "[Applicant]

had difficulty maintaining her military bearing during this rating period as reflected in the substantiated EO complaint concerning sexual harassment.”

(4) Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block c4 (Leads), the rater entered the following comments: “[Applicant] failed to lead by example and foster a climate of dignity and respect with her section.”

(5) Part VI (Senior Rater), block a (Potential Compared with Officers Senior Rated in Same Grade), she was rated as “Qualified.”

(6) Part VI, block c (Comments on Potential), her senior rater entered the following comments:

[Applicant] had an EO complaint filed against her in this rating period that was substantiated. This officer has great potential for continued service and should be considered for promotional opportunities with her peers. Her experience as the 2nd CST Operations Officer has set the conditions for a successful transition into the Human Resources branch where she will thrive.

b. A Power of Attorney dated 4 December 2020, which designated Counsel’s law firm to serve as the applicant’s attorneys in all matters relating to and/or arising out of her employment by the federal government of the United States of America.

c. Letter of Concern, dated 25 October 2016, wherein Colonel (COL) [REDACTED] the Director, J-3 states he reviewed the investigating officer’s (IO) report and supporting documentation regarding the alleged opportunity violations committed by the applicant against another Soldier in the 2nd CST and the letter of concern did not constitute an adverse action, but, as an officer and leader she should be mindful of the concerns represented herein. He stated that the document would not be filed in any systems or record maintained by the Army.

d. Emails between the applicant and the [REDACTED] State Equal Employment Manager (SEEM) from 19 August 2020 to 20 September 2020, wherein the applicant is requesting information and assistance pertaining to the results of the investigations filed against her.

e. Whistleblower reprisal complaint, which shows the applicant filed a complaint against her rater. The applicant stated that she was filing the complaint because her rater took unfavorable personnel action against her due to previously filed EO and IG complaints against her. The complaint contains the following information:

(1) An opening letter, which states:

(a) She reasonably believed that her rater and the complainant of the alleged EO complaint that was filed against her worked in tandem and shared a protected communication/disclosure. Her rater then used the information and cited a “substantiated SHARP complaint” on her evaluation. By regulation, her rater is not listed as someone to receive the information and if her rater did receive the information, she would know there was not a substantiated SHARP complaint against her.

(b) Her rater made several comments in multiple areas on her OER which is not in accordance with Army Regulation (AR) 623-3 (Personnel Evaluation – Evaluation Reporting System), Department of the Army Pamphlet (DA PAM) 623-3 (Personnel Evaluation – Evaluation Reporting System), and she has evidence that her rater cited adverse false accusations on her OER, which automatically created a referred OER and confirms unfavorable action was taken against her by her rater. Her rater has the potential to affect her career, such actions include promotions and performance evaluations. She never received counseling from her rater regarding the alleged EO complaint against her. When the chain of command gave her rater the opportunity to change the evaluation, she made minor changes, and the evaluation now reflects additional false statements.

(c) On 15 June 2015, she had a discussion with her senior rater regarding her Executive Officer’s (XO) (rater) toxic treatment towards her. During the discussion she brought up six issues that she started documenting in February 2015. Her senior rater acknowledged the variations of treatment compared to her peers but told her to fix it. She documented encounters through 17 June 2016.

(d) On approximately 9 August 2016, a team member filed an EO complaint against her.

(e) On 11 August 2016, she was told to report to the J3-DO while the investigation took place. She explained to the directors that she believed she was being targeted. The directors supported her filing her own complaint.

(f) On 27 August 2016 she filed an EO complaint against her rater based on gender and on 1 September 2016 she filed an IG complaint against her rater for maltreatment.

(g) Approximately mid-September, the Director discussed the EO complaint that was filed against her and told her that there would be no adverse actions, or anything put in her permanent file, and they understood there were mitigating circumstances that had taken place. Based on her ongoing investigation she was offered a new position and on 15 September 2016, she was moved to the Recruiting and Retention Battalion.

(h) On 22 September 2016, MAJ [REDACTED] (JAG) sent an email concerning her OER to the new 2nd CST Commander, LTC [REDACTED]

(i) On 25 October 2016, the Director J-3 and the applicant met regarding the Letter of Concern based on the EO complaint. The letter did not indicate a substantiation nor adverse action. The Letter of Concern was the only documentation she ever received.

(j) On 15 December 2016, she received an email from her senior rater informing her that her OER was available in the Evaluation Entry System (EES). Her rater indicated that a completed DA Form 67-10A (Officer Evaluation Support Form) was received and considered during the rating period. On the evaluation her rater cited unsatisfactory performance and stated she had a substantiated SHARP complaint, which was signed on 13 December 2016.

(k) On 15 December 2016, the applicant spoke to the State SHARP Representative, Captain (CPT) [REDACTED] who validated that she did not have a substantiated SHARP complaint. The applicant called the EO Representative, MSgt [REDACTED] who confirmed she had a substantiated EO complaint against her.

(l) On 16 December 2016, she continued corresponding through email with MSgt [REDACTED] who told her that she could not get a copy of the investigation. MSgt [REDACTED] stated that in accordance with National Guard Regulation (NGR) 600-22 (National Guard Military Discrimination Complaint System), 4-3b, a redacted copy goes to the complainant and a copy is only released to those agencies listed that have a need to know. The applicant also verified that the EO substantiated complaint was closed on 16 September, which was after her rating period.

(m) On 16 December 2016, the applicant received an email from MSgt [REDACTED] and noticed it contained an email chain from 22 September 2016 between the 2nd WMD-CST commander and the JAG. She noticed that her rater was a part of the email chain so she questioned the reason for her rater reaching out to MSgt [REDACTED] because she was not the commander, nor the complainant and if she [applicant] could not obtain information, why would her rater.

(n) On 19 December 2016, the applicant spoke with COL [REDACTED] regarding the comments on her OER and how they were not in accordance with AR 623-3, and how her boss may have been provided documents from the complainant as if she was a need to know, in accordance with NGR 600-22, 4-3b.

(o) On 20 December 2016, the applicant received an email from the EO representative stating that the EO complaint against her was completed on 2 September 2016.

(p) On 12 January 2017, she met with COL [REDACTED] and LtCol [REDACTED] about the EO complaint that she filed against her rater and her OER. She was told that minor changes were made to her OER, and it was ready in EES. She was told that it would be a referred OER, and that her EO complaint was not substantiated. She requested a formal complaint that day.

(q) On 12 January 2017, the applicant reviewed the updated OER and saw that her rater had included additional SHARP comments and made significant negative comments.

(r) On 13 January 2017, she met with IG to discuss reprisal and they stated that the substantial EO complaint against her was closed on 28 August 2016. At that point she had been given three different alleged dates that the EO complaint was closed, 16 September 2016, 2 September 2016, and 28 August 2016.

(2) Whistleblower Reprisal Complaint Form submitted by the applicant.

(3) A summary of events, which summarizes the 12 MFRs submitted with the Whistleblower Reprisal Complaint and explained the details of the applicant's complaint.

(4) DA Forms 67-10-1 which show for the rating period that ended on 31 March 2015, the applicant was rated as "Proficient" by her rater and "Highly Qualified" by her senior rater. For the rating period that ended 30 March 2016, she was rated "Proficient" by her rater and "Most Qualified" by her senior rater. CPT promotable (P) B_ and LTC [REDACTED] are listed as her rater and senior rater for both covered rating periods. Both evaluations state that the applicant has a zero tolerance for EO offenses and sexual harassment violations, and fully supports EO, Equal Employment Opportunity (EEO), and the Commander's SHARP program.

(5) An OER support form which was initiated on 11 April 2016 and the applicant's quarterly counseling, dated 6 June 2016.

(6) Emails dated 1 September 2016 and 27 September 2016, which shows senior master sergeant (SMSgt) [REDACTED] the AIG and MSgt [REDACTED] the [REDACTED] National Guard Equal Employment Specialist, provided the applicant with the required documents to submit the EO and IG complaints.

(7) An email and letter from SMSgt [REDACTED] the AIG, dated 9 November 2016, which states the applicant requested assistance from the [REDACTED] State Command Inspector General Office regarding her allegations of cruelty and maltreatment and provided her with the case file number. The AIG stated that based on the information that the applicant provided, the IG office consulted with the EEO regarding the allegations on

her behalf. It was determined that the EEO was the appropriate agency for handling most of her allegations and her case was referred on 31 October 2016.

(8) Multiple emails between 1 October 2016 and 2 December 2016, wherein the applicant is requesting the status of the complaint that she submitted on 27 September 2016. On 3 December 2016, MSgt [REDACTED] the Acting State Equal Employment Manager, responded to the applicant's email and informed her that based on the informal fact-finding, the allegations were not the result of illegal gender discrimination. The applicant could either accept the results and sign the NGB Form 333 (Discrimination Complaint in the Army and Air National Guard) or appeal by filing a formal discrimination complaint.

(9) An email dated 15 December 2016, from the applicant's senior rater informing her that her OER was available for signature in EES.

(10) On 19 December 2016, the applicant emailed COL [REDACTED], the [REDACTED] Division of Military and Naval Affairs, Director, J-3, concerning several inaccuracies that needed to be corrected before she signs the evaluation.

(11) Emails between the applicant and MSgt [REDACTED] from December 2016, which shows the Acting State Equal Employment Manager informed the applicant that the commander inquiry from the case made against her was completed on 2 September 2016. This was the date the complaint was substantiated. The close out date on the NGB 333 is the internal date used by their office, which was 16 September 2016. MSgt [REDACTED] also stated that the results of the case are determined by the report of investigation (ROI). The ROI is done before the complainant is notified of the results. The complaint was made against the applicant during the FY16 rating period; therefore, the evaluation would reflect the outcome of the investigation. If the ROI was completed after the rating period, it would be put in the next rating period. Either way, the results would be put in one of her evaluations.

f. An EO complaint, which shows the applicant filed an informal complaint against MAJ [REDACTED] (Rater and Deputy Commander) and CPT [REDACTED] (Survey Team Leader). The NGB 333 shows the basis of the complaint was Gender. This form shows in block 12 (Check for Specific Allegations and Issues), harassment, non-sexual and training/education.

g. Redacted IG complaint, which shows the complainant (CP) [applicant] filed an informal complaint on 27 September 2016, of gender-based discrimination alleging that she was denied opportunity due to her gender. An inquiry was conducted in accordance with NGR 600-22/ANGI 36-3 (Investigating Military Discrimination Complaints) and it was determined that her allegations were unsubstantiated.

(1) On 11 January 2017, the applicant was advised of the findings of the initial inquiry. She was not satisfied by the resolution and a more in-depth investigation commenced.

(2) On 23 January 2017, an IO was assigned to conduct an investigation into the issues, and to determine the facts and circumstances which precipitated the complaint.

(3) After speaking at length with the IO and presenting a binder of evidence that the applicant gathered, the applicant framed her allegations as follows:

(a) Gender-based discrimination. The applicant was discriminated due to her gender when she was denied the opportunity for which she was fully qualified when she was not permitted to go temporary duty station (TDY) to teach at the operations course at the NGB, when a male counterpart was permitted to attend courses at NGB and when she was forced by her commander and XO to resign her position as WMD-CST Operations Chair at NGB.

(b) Disparate treatment: the applicant was treated differently than her male counterparts in that the XO would chastise the applicant in front of her peers and subordinates, speak to her in a condescending and _____ berated her. The XO would not treat male members who _____ treatment in this manner. The XO always treated male subordinates with respect. The XO would permit male service members to bully the applicant and to create an environment wherein other service members, despite their rank, could treat the applicant in a disrespectful manner.

(c) Retaliation: the applicant engaged in a protected communication, that being that she was the subject matter of an EO complaint. The applicant's rater (XO) took unfavorable action against her when she gave the applicant a referred OER. The XO knew about the protected communication.

(4) The findings were as follows:

(a) The applicant was not discriminated against based on her gender when she was denied the opportunity to teach the course at the NGB and continue as the Operations Chair at the NGB. The applicant failed to establish the fourth prong of the prima facie case of discrimination in that she did not show that "other personnel with similar qualifications, who were not members of the applicant's class (i.e., males), were allowed such opportunities at the time that the applicant was denied." Further, had she established a prima facie case, the leadership at the 2nd WMD-CST provided appropriate reasons not motivated by discriminatory intent for not providing the applicant the opportunity. The applicant was unable to show by a preponderance of the evidence that the articulated reasons were a pretext for discrimination.

(b) The applicant was not discriminated against by receiving disparate treatment based on her gender. The applicant could not establish the prima facie case by a preponderance of the evidence to show that she was treated differently than her male counterparts or that her male counterparts were allowed to bully her thus creating an environment in which other members of the CST felt it was permissible to treat the applicant in a discriminatory manner.

(c) The applicant was not retaliated against by her XO because she engaged in a protected communication. The IO stated that it was very difficult, even after speaking with the applicant and reading her MFRs and complaint, to ascertain what specific "protected communication" the applicant was referring to. Thus, the IO addressed two possibilities. It appeared that the applicant was referring to an EO complaint filed by another against her as the "protected communication." If that was the case, that did not qualify as a protected communication. If the applicant was referring to this EO complaint, she still did not show a case of retaliation because MAJ C_ had no choice but to give the applicant a referred OER. Per AR 623-3, paragraph 3-25(b)(1), a substantiated EO complaint requires comments on evaluation reports. The personnel action was not motivated by retaliation.

h. Comments to referred OER, dated 6 March 2017, the applicant listed the following violations, errors, and inaccuracies:

(1) Part IV, block b – a completed DA Form 67-10-1A was received with this report and considered in her evaluation and review was checked "YES" by the rater. The applicant initiated DA Form 67-10-1A through EES on 11 April 2016 (initial) and subsequent 6 June 2016, and is currently in EES not signed by the rater.

(2) Her rater rated her overall performance as "Unsatisfactory." The applicant stated that due to her rater's lack of counseling, she was unaware of the rater's criteria and standard to be a "Capable," "Proficient," or "Excels." She stated that she was selected by the NGB to provide input and instruct at their National Level Operations Course, voted in by peers to be the WMD-CST National Level Chair (2-year term), was a project officer for the design of the new generation tactical operations center (TOC) project, exceeded the commander's 250 and above Army Physical Fitness score, and enrolled in the Army Advanced Operations Course (AOC).

(3) In the comments section her rater cites an inaccurate comment "substantiated EO Complaint." In the letter of concern, issued by COL [REDACTED] and dated 25 October 2016, following the rating period, there was an alleged EO violation and nothing regarding sexual assault or harassment was indicated as a finding of the investigation. Additionally, the letter states it would not be filed in any systems of record maintained by the Army and no adverse actions were taken against the applicant. The letter of concern was the only formal correspondence that she received, and she was

never formally counseled by her rater or senior rater regarding the results of the investigation or closure actions of the allegations against her or afforded the opportunity to take corrective actions. The OER was the first correspondence she had seen regarding the allegations being substantiated.

(4) The rater lists “a substantiated EO complaint” and it is false. The rater did not document this on the OER support form, and she never received formal counseling regarding the outcome of the alleged EO complaint. The rater also stated that she was transferred from the unit based on the “substantiated EO complaint,” which is a false statement. She was temporarily removed from the unit on 11 August 2016 while the alleged EO complaint against her was under investigation. The applicant requested the transfer from the unit when she filed an EO and IG complaint against her rater.

(5) Part IV, block c4 (Leads), the rater stated that she failed to lead by example and foster a climate of dignity and respect. She never received counseling nor has her rater ever provided guidance for corrective action. The comments are negative in nature and do not list her contributions to extend influence beyond the chain of command as the National Level Chair and the work she did with the NGB.

(6) Part VI (Senior Rater), the applicant states she was never counseled by her senior rater regarding the alleged EO complaint. The letter from COL [REDACTED] states that no adverse action regarding the EO complaint, which is contradictory to statement.

(7) She was never flagged, per AR 623-3, paragraph 3-28.

3. A review of the applicant’s service record shows the following:

a. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the [REDACTED] ARNG on 17 December 2001 and she was honorably discharged on 25 June 2005 to be commissioned in the [REDACTED] ARNG.

b. On 26 June 2005, she took her oath of office as an Army National Guard Officer as a second lieutenant (2LT).

c. Orders Number B-12-811604, issued by the U.S. Army Human Resources Command, Fort Knox, KY, dated 31 December 2018, shows the applicant was promoted to MAJ, effective 28 September 2018.

d. A review of her AMHRR shows the contested OER and the letter of concern are filed in the performance folder.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board found the applicant was, at a minimum, misled when she was given a letter of concern that expressly stated it would not be filed in any systems of record maintained by the Army and then, a few months later, her rater and senior rater signed a referred OER that essentially made a matter of record the issue addressed by the letter of concern. The Board noted the letter of concern was also filed in her AMHRR, which was contrary to the intent expressed in the letter. Based on a preponderance of the evidence, the Board determined both the letter of concern and the contested OER should be removed from her 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 the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army and Army National Guard records of the individual concerned be corrected by removing from her AMHRR the letter of concern dated 25 October 2016 and by removing the OER for the period ending 15 September 2016 and replacing it with a statement of non-rated time.

9/16/2024

X 

CHAIRPERSON


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 623-3 (Personnel Evaluation – Evaluation Reporting System), prescribes the policy and tasks for the Army's Evaluation Reporting System, including officer, non-commissioned officer, and academic evaluation reports focused on the assessment of performance and potential. The regulation provides that:
 - a. Paragraph 1-9 states, evaluation reports are independent assessments of how well the rated Soldier met duty requirements and adhered to the professional standards of the Army Officer or Noncommissioned Officer Corps. Performance will be evaluated by observing action, demonstrated behavior, and results from the point of view of the values, leadership framework and responsibilities identified on the evaluation forms, counseling forms, and as explained in Department of the Army Pamphlet 623-3 (Evaluation Reporting System).
 - b. Paragraph 2-12 states the rater will provide a copy of their support form, along with the senior rater's support form, to the rated Soldier receiving an OER or NCOER at the beginning of the rating period and discuss the scope of the rated Soldier's duty

description with them within 30 days after the beginning of the rating period. Use support forms for officers, grades WO1 through COL, DA Form 67-1A is mandatory for use throughout the rating period. Provide an accurate assessment of the rated Soldier's performance and potential (as applicable), using all reasonable means, including personal contact, records and reports, and the information provided by them on the applicable support form or associated counseling documents.

c. Paragraph 3-6 states the rated officer will draft their DA Form 67-10-1A within the first 30 days of the rating period, using the rater's and/or senior rater's DA Form 67-10-1As as input for goals and objectives. Submitting written performance objectives for approval must be followed up by a face-to-face counseling or an alternative follow up discussion. During the rating period the rated officer will maintain a working copy of the DA Form 67-10-1A with the duties and objectives throughout the rating period. Rated officers will make additions and deletions to the duties and objectives on the working copy as changes occur and will discuss any changes with raters. Face-to-face counseling is the most effective forum for these updates. Counseling should focus on learning that occurred, the rated officer's progression toward meeting goals and objectives, and what the officer needs to complete or improve upon in their duty performance. The rated officer will prepare a final DA Form 67-10-1A at the end of the rating period, sign, date, and submit the form to the rater. Dates of the initial and follow up discussions from the working copy of this form will be reentered with initials on the final copy of the DA Form 67-10-1A. The final DA Form 67-10-1A will be considered by the rating officials in preparing the OERs.

d. Paragraph 3-17 states each evaluation report will be an individual stand-alone evaluation of the rated Soldier for a specific rating period. An evaluation report will not refer to performance or incidents occurring before or after the period covered or during periods of nonrated time. The determination of whether an incident occurred during the period covered will be based on the date of the actual incident or performance; it will not be based on the date of any subsequent acts, such as the date of its discovery, a confession, or finding of guilt, or the completion of an investigation. An exception to this policy is granted when a substantiated EO, EEO, or SHARP complaint as a result of an AR 15-6 investigation.

e. Paragraph 3-20 states any mention of unproven derogatory information in an evaluation report can become an appealable matter if the derogatory information is shown to be unfounded. No reference will be made to an incomplete investigation (formal or informal) concerning a Soldier. References will be made only to actions or investigations that have been processed to completion, adjudicated, and had final action taken before submitting an evaluation report to Headquarters, Department of the Army (HQDA). This restriction is intended to prevent unverified derogatory information from being included in evaluation reports. It will also prevent unjustly prejudicial information from being permanently included in a Soldier's AMHRR. Any verified derogatory

information may be entered on an evaluation report. This is true whether the rated Soldier is under investigation, flagged, or awaiting trial. While the fact that a rated Soldier is under investigation or on trial may not be mentioned in an evaluation until the investigation or trial is completed, this does not preclude the rating chain's reference to verified derogatory information. For example, when an interim evaluation report with verified information is made available to a commander, the verified information may be included in evaluation reports. For all evaluation reports, if previously reported information later proves to be incorrect or erroneous, the Soldier will be notified and advised of the right to appeal the evaluation.

f. Paragraph 3-26 states:

(1) Adverse actions encompass a variety of situations that are not in accordance with Army Values, Leadership Requirements Model, and/or good order and discipline, which need to be addressed appropriately in reports. In addition to addressing special interest items in counseling and evaluation processes, Army Regulation 600-20 (Army Command Policy) allows that the following items may be mentioned in a Soldier's evaluation report when substantiated by a completed command or other official investigation (for example, Commander's or Commandant's Inquiry, AR 15-6 investigation, EO investigation, and/or investigations by official military or civil authorities):

- (a) Criminal acts.
- (b) Conviction of a driving under the influence charge.
- (c) Acts of sexual misconduct or physical or mental abuse.
- (d) Inappropriate or unprofessional personal relationships.
- (e) Involvement in extremist organizations and/or activities.
- (f) Acts of reprisal.
- (g) Behavior that is inconsistent or detrimental to good order, conduct, and discipline.
- (h) Activities or behavior otherwise prohibited by AR 600-20.

(2) The following items require comments on evaluation reports when substantiated by an Army or Department of the Army (DOD) investigation or inquiry:

- (a) Substantiated EO complaints.

- (b) Substantiated findings of sexual harassment and/or sexual assault.
- (c) Substantiated failure to report a sexual harassment and/or sexual assault.
- (d) Substantiated failure to respond to a complaint or report of sexual harassment and/or sexual assault.
- (e) Substantiated retaliation against a person making a complaint or report of sexual harassment and/or sexual assault.

g. Paragraph 3-27 (Referred DA Form 67-10 Series) states OERs with the following entries are referred or adverse reports, such as any negative or derogatory comments contained in Parts IV, V, or VI of the OER. Such OERs will be referred to the rated officer by the senior rater for acknowledgment and an opportunity to comment before being submitted to HQDA. The rated Soldier's participation in an official investigation and/or providing investigating officials information protected under Public Law 101-12, known as the Whistleblower Protection Act of 1989, and/or information provided to officials as part of official or unofficial investigations will not be mentioned in Army evaluation reports.

h. Paragraph 4-7 states an evaluation report accepted for inclusion in the rated Soldier's AMHRR is presumed to be administratively correct, have been prepared by the proper rating officials, and represent the considered opinion and objective judgment of the rating officials at the time of preparation. An appeal will be supported by substantiated evidence. An appeal that alleges an evaluation report is incorrect, inaccurate, or unjust without usable supporting evidence will not be considered. The determination regarding adequacy of evidence may be made by the HQDA Evaluation Appeals Branch. Appeals based on administrative error only will be adjudicated by the HQDA Evaluation Appeals Branch. Alleged bias, prejudice, inaccurate or unjust ratings, or any matter other than administrative error are substantive in nature and will be adjudicated by the Army Special Review Board. These are generally claims of an inaccurate or an unjust evaluation of performance or potential or claims of bias on the part of the rating officials.

i. Paragraph 4-11 (Burden of Proof and Type of Evidence) states the burden of proof rests with the appellant. Accordingly, to justify deletion or amendment of an evaluation report, the appellant will produce evidence that establishes clearly and convincingly that:

- (1) the presumption of regularity will not be applied to the report under consideration; and

(2) action is warranted to correct a material error, inaccuracy, or injustice.

j. Paragraph 4-11d states for a claim of inaccuracy or injustice of a substantive type, evidence will include statements from third parties, rating officials, or other documents from official sources. Statements from rating officials are also acceptable if they relate to allegations of factual errors, erroneous perceptions, or claims of bias.

3. Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The AMHRR includes, but is not limited to the OMPF, finance-related documents, and non-service-related documents deemed necessary to store by the Army. Paragraph 3-7 provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by Boards of the Army Review Boards Agency such as the Army Board for Correction of Military Records, Army Discharge Review Board, DA Suitability Evaluation Board, Army Special Review Board, or the Army Physical Disability Appeal Board.

4. Army Regulation 600-37 (Unfavorable Information) provides that 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 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 OMPF. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.

5. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//