

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

Miguel BOARD DATE: 31 March 2025

DOCKET NUMBER: AR20230001542

APPLICANT REQUESTS: in effect:

- Removal of a General Officer Memorandum of Reprimand (GOMOR) from the restricted portion of his Army Military Human Resources Record (AMHRR)
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's Response to Adverse Summary, FY23 LTC PSB, Promotion Selection Board
- Applicant's Response to AR 15-6 Investigation
- Army Review Boards Agency (ARBA) Resolution of Unfavorable Information for Docket AR20230001542

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, in effect:

a. The GOMOR he received is unjust and untrue; therefore, removal of the GOMOR from his AMHRR is warranted.

b. The allegations presented in the GOMOR are inconsistent with the facts and findings of an AR 15-6 investigation which states he reported the sexual assault to his commander and participated in the investigation.

c. The imposing authority relied on the investigating officer's (IO's) inconsistent conclusions to issue the GOMOR.

d. The victim's incident occurred with a foreign national in February 2019 on deployment. The victim reported the incident to the applicant in July 2019. The victim was embarrassed and did not want the applicant to report the incident, he only wanted to be reassigned or made undeployable. The applicant informed the victim of his obligation to report the incident to his commander.

e. The applicant's commander met with the victim, elected to honor the victims wishes, and directed not to report the incident. The victim was moved to non-deployable status and did not deploy with the unit.

f. The applicant maintained an excellent relationship with the victim until mid-2020 when he gave the victim a highly qualified rating. The applicant gave his 'top block' ratings to two Soldiers who deployed and made heroic contributions in combat.

g. The victim was angry he did not receive a 'top block' rating and retaliated by submitting a report alleging the applicant mishandled his sexual assault report.

h. The victim refused to cooperate with the Department of the Army Criminal Investigative Division (CID). However, an AR 15-6 investigation was launched to determine if the applicant mishandled the victim's sexual assault report. The IO found that service members from the unit who were aware of the situation confirmed the victim spoke with the commander about the incident.

i. However, the IO concludes there is no one who can corroborate the context of the conversation between the victim and the commander.

j. The commander to whom he reported the incident received a letter of concern, the chain of command recommended the applicant receive a locally filed GOMOR, but the imposing authority filed the GOMOR locally and ended the applicant's career.

3. A review of evidence provided by the applicant and the applicant's record shows:

a. On 13 May 2006, the applicant executed the oath of office after completing his course of study at Texas A&M International University in Laredo, Texas.

b. The applicant completed requisite military courses to include the Command and General Staff College. He was promoted to the rank and grade of Major (MAJ)/O4 on 1 October 2016. He deployed four times between 2008 and 2019.

c. On 8 March 2021, the commanding general of XVIII Airborne Corps at Fort Bragg, North Carolina reprimanded the applicant, in the rank of Major (MAJ), for failure to report a sexual assault allegation and wrongful interference with an administrative investigation. The applicant responded to the reprimand addressing the allegations

noted in the GOMOR and requested local filing of the GOMOR. However, on 25 March 2021 the imposing authority directed the permanent filing of the GOMOR in the appellant's AMHRR.

d. On 18 January 2023, the applicant appealed to the Department of the Army Suitability Evaluation Board (DASEB) requesting transfer of the GOMOR to the restricted portion of his AMHRR. The applicant contended transfer was warranted because the GOMOR was the result of one isolated incident, the incident was not indicative of his character, and he could continue to contribute to the Army's mission.

e. On 28 February 2023, in Board Docket AR20230001542, the DASEB granted relief and directed transferring the GOMOR with allied documents to the restricted portion of the applicant's AMHRR.

f. A review of the applicant's AMHRR revealed the GOMOR is filed with allied documents in the restricted portion of the record. Also, the applicant received a referred Officer Evaluation Report (OER) for the conduct addressed in the GOMOR for the period of service 7 June 2020 through 8 April 2021.

g. The AMHRR does not contain any information regarding the boards for which the applicant was not selected for promotion.

h. A review of the Integrated Workstation System (IWS) revealed the applicant applied for a waiver regarding his separation from service for two time non-selection for promotion on 24 April 2023. His request was denied.

i. The DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was honorably discharged from active duty on 1 October 2023. He completed 17 years, 3 months, and 28 days, with total inactive service of 1 year, 9 months, and 2 days. Separation Authority: AR 600-8-24, Separation Code: JGB, with Narrative Reason for Separation: Non-Selection, Permanent Promotion to LTC/O5.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the lack of any evidence the applicant was afforded all due process at the time of the GOMOR issuance, the Board concluded there was insufficient evidence of an error or injustice warranting removal of the GOMOR, as requested.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

//SIGNED//

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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 (AR) 600-37 (Unfavorable Information), currently in effect, sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's official military personnel file (OMPF).

a. Paragraph 3-2 (Policies). Unfavorable information will not be filed in a Soldier's OMPF unless the following has occurred:

(1) The Soldier was given the opportunity to review the documentation that serves as the basis for the proposed filing, and he/she was provided a reasonable amount of time to make a written statement in response.

(2) The issuing authority has fully affirmed and documented the unfavorable information.

(3) The unfavorable information meets Federal legal requirements for accuracy, relevance, timeliness, and completeness.

b. Paragraph 3-5 (Filing of Nonpunitive Administrative Memoranda of Reprimand, Admonition, or Censure – Filing in the OMPF). A memorandum, regardless of the issuing authority, may be filed in the OMPF, and managed by the U.S. Army Human Resources Command (HRC) or the proper State Adjutant General (for Army National Guard personnel) upon the order of a general officer (GO).

(1) The GO directing filing must exercise general court-martial convening authority (GCMCA) over the recipient, be the designee or delegate of the individual exercising GCMCA over the recipient, been a filing authority from the recipient's losing command.

(2) Memoranda filed in the OMPF will be placed in the Soldier's performance folder. Directions for filing in the OMPF must be contained in an endorsement or addendum to the memorandum.

c. Paragraph 7-2 (Appeals – Policies and Standards).

(1) Burden of Proof and Level of Evidence Required. 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 a competent authority.

(2) Removals. There is no time restriction for submitting a removal appeal.

(a) The recipient has the burden of proof to show, by clear and convincing evidence, to support assertion that the document is either untrue or unjust, in whole or in part.

(b) Evidence submitted in support of the appeal may include but is not limited to the following: an official investigation showing the initial investigation was untrue or unjust; decisions made by an authority above the imposing authority overturning the basis for the adverse documents; notarized witness statements; historical records; official documents; and/or legal opinions.

(c) Appeals that merely allege an injustice or error without supporting evidence or a compelling argument will not be considered.

(3) Transfers. Soldiers must have received at least one evaluation (other than academic) since imposition of the unfavorable information.

(a) As with removal, the recipient bears the burden of providing substantial evidence that the intended purpose has been served.

(b) Additionally, the recipient must indicate how the transfer of the unfavorable information would be in the best interest of the Army, thereby warranting transfer of the document to the restricted file of the OMPF. Such evidence may include, but is not limited to:

- Statements of support from the imposing authority, the Soldier's current chain of command, the Soldier's chain of command at the time of imposition
- Other memoranda of support
- Subsequent evaluation reports (other than academic)
- Notarized witness statements
- Official documents
- Court documents
- Statements of remorse
- Documents demonstrating rehabilitation
- Other documents proving the intended purpose of the document has been served

(4) The Deputy Assistant Secretary of the Army – Review Boards (DASA (RB)) is the final decision authority for removal of unfavorable information from the OMPF.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions,

official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

4. AR 15-185 (Army Board for Correction of Military Records (ABCMR), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b. Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR Hearings) states applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

//NOTHING FOLLOWS//