

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 July 2024

DOCKET NUMBER: AR20230002153

APPLICANT REQUESTS: in effect:

- a. removal of the Summary of Credible Adverse Information under the Army Adverse Information Program (AAIP) from his records and
- b. retroactive placement on the Retired List in the rank/grade of brigadier general (BG)/O-7.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Memorandum for Army Board for Correction of Military Records (ABCMR) (Removal of Adverse Information), 6 January 2023
- Headquarters, 1st Theater Sustainment Command (TSC), Memorandum (Appointment as Army Regulation 15-6 (Procedures of Administrative Investigations and Boards of Officers) Investigating Officer (IO) – Equal Opportunity (EO) Complaint), 24 November 2015
- 14th Human Resources Sustainment Center Memorandum for Record (Findings and Recommendations for Army Regulation 15-6 Investigation of an EO Complaint filed with the 18th Financial Management Support Center (FMSC), 1st TSC, Fort Bragg, NC, on 18 November 2015), 12 January 2016, with allied documents
- 1st TSC Memorandum (Recommendations on EO Complaint Investigation (18th FMSC)), undated
- Memorandum (Request for Reconsideration of Army Regulation 15-6 Findings), 19 March 2017
- 1st TSC Memorandum (Request for Reconsideration of Army Regulation 15-6 Findings), 25 April 2017
- Office of the Assistant Secretary (Financial Management and Comptroller) Memorandum for Secretary of the Army (SECARMY) (Request for Consideration of Additional Matters in Support of (Applicant's) Fiscal Year 2020 (FY20) BG Officer Promotion Review), 5 January 2021

- U.S. Army Trial Defense Service Memorandum for Chief, General Officer Management Office (GOMO) (Request for (Applicant) to Submit Matters Supporting Retention on Promotion Selection Board (PSB) Report), 12 January 2021, with auxiliary documents
- Memorandum for Commanding General, 1st TSC, (Request to Remove Adverse Information – (Applicant)), 27 May 2022, with associated documents
 - 33 Character-reference and Endorsement Letters/Memorandums
 - Summary of Credible Adverse Information
- Headquarters, 1st TSC, Memorandum (Decision Memorandum Addressing Request to Remove Adverse Information), 17 August 2022

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. He served as the Director of the 18th FMSC at Fort Bragg, NC, from June 2015 to May 2016. During this time, he was subjected to an alleged EO complaint and investigation. The EO complaint was unsubstantiated and the investigation exonerated him completely, but the commanding general entered a corollary finding in the AAIP database stating he failed to act when made aware of the challenges in the 18th FMSC based on a command climate survey and that this facilitated a poor climate. This is incorrect.

b. In 2017, in accordance with Army Regulation 15-6, paragraph 2-9, he requested reconsideration of the Army Regulation 15-6 investigation findings based on mistake of fact, mistake of law, and administrative error. Simply stated, not only was the underlying investigation incomplete, it was legally deficient as it did not support the adverse finding against him by a preponderance of the evidence. Regardless, his appeal was not considered. He submitted a second appeal in 2022, including new evidence. The appeal was unfortunately disapproved and notably cited inaccurate information. The entire incident reflects a disappointing failure of the system and something he believes this Board has a duty to correct.

c. In 2019, he was selected for promotion by the FY20 BG PSB. Subsequent to this selection, he was required to undergo review by a promotion review board (PRB) because, unknown to him, the Army's GOMO failed to properly vet the adverse

information in his file prior to the PSB and realized they needed to correct this error retroactively. Notably, he was advised not to submit matters of consideration to the PRB as it would be perceived as "quibbling" and was unnecessary as the adverse information in his file was recognized as "benign." He was given multiple assurances by Army senior leaders on this. Unfortunately, and astonishingly to him, the PRB voted unfavorably – something for which no explanation is provided and something that contradicted everything he was told by GOMO. Several months later, he was instructed by GOMO to appeal the PRB to the SECARMY (at the time, the Honorable [REDACTED] in order to be retained on the BG selection list, which he did in January 2020. To his growing misfortune, the changeover in Presidential administrations caused the Honorable [REDACTED] to depart his office before taking action on his file. His case then sat for almost a year before the Honorable [REDACTED] assumed her role as the SECARMY. Without explanation, he was not afforded an opportunity to submit an appeal to her, yet was instead advised to appeal the original Army Regulation 15-6 investigation findings a second time to the current commander of the unit where he initially incurred the findings. He submitted that appeal in May 2022. The decision of that appeal was also declined consideration and redirected him to this Board.

d. The bottom line is that he was wrongly assigned accountability for an incident in which he had no part, as it was the most convenient means for the commanding general of that unit to "take action" and cover himself. The commanding general literally told him that and told him there was nothing he could do to change his decision because his lawyers had instructed him accordingly. Then years later after he was selected for BG, this incident came up and was allowed to take on an unnatural life of its own, interrupting his promotion. He can say quite factually that he doesn't believe any of the individuals to whom he submitted matters of consideration actually read them – if they had, they would clearly have understood this. His record should have been corrected at multiple opportunities but instead he was dropped from the promotion list. He seeks this Board's assistance by removing all trace of this action from his file as it should never have been allowed.

3. He was appointed as a Regular Army commissioned officer in the rank/grade of second lieutenant/O-1 and executed his oath of office on 29 May 1993. He was promoted to the rank/grade of colonel (COL)/O-6 effective 1 October 2014.

4. Headquarters, U.S. Army Garrison, Carlisle Barracks, Orders 121-09, 1 May 2015, assigned him to the 18th FMSC with a reporting date of no later than 30 June 2015.

5. An investigating officer (IO) was appointed on 24 November 2015 to investigate the facts and circumstances into an EO complaint against him filed by Major (MAJ) [REDACTED] 18th FMSC, on 18 November 2015. The IO was appointed and was instructed that the purpose of the investigation was to determine to the maximum extent

possible what actually occurred, to assess the validity of allegations made by the complainant, to advise the commander of any leadership or management concerns that might contribute to perceptions of unlawful discrimination and poor unit command climate, and to recommend appropriate corrective actions. The IO's scope consisted of:

- a. interviews with every individual who may have firsthand knowledge of the facts surrounding the validity of the allegations, including the complainant, any named witnesses, and the subjects;
- b. interviews with everyone who can substantiate the relationship or corroborate the relationship between the complainant and the subjects, including coworkers;
- c. review of unit climate, policies, and procedures as well as any concerns or observations of unit policy, procedures, and individual leadership or management techniques that may have a dysfunctional effect upon unit climate and foster discriminatory behavior and/or a hostile environment; and
- d. determination as to whether unlawful discrimination occurred and, if so, to what degree.

6. On 12 January 2016, the IO completed the Army Regulation 15-6 investigation and noted:

a. Summary of Findings.

(1) After reviewing the command's EO policies and interviewing 23 personnel, the evidence did not support unfair treatment or harassment based upon race, color, gender, national origin, sexual orientation, or religion. However, there were some comments and actions by the applicant and deputy director that facilitated a poor command climate. At times, their statements and behavior were inappropriate and not in accordance with the Army Values. This behavior, along with limited interaction with the Soldiers, significantly contributed to their failure to foster a positive command climate. Their leadership styles and actions may have caused Soldiers to believe there were EO problems within the 18th FMSC.

(2) All five officers in charge experienced difficulties with their supervisor, Lieutenant Colonel (LTC) [REDACTED] Deputy Director. However, the problems MAJ [REDACTED] and MAJ [REDACTED] had with LTC [REDACTED] were more publicly known. The officers in charge expressed their concerns to the applicant. It appeared that the applicant condoned the behavior since LTC [REDACTED] actions did not change. The applicant has never seen LTC [REDACTED] do anything unprofessional. The applicant stated that LTC [REDACTED] is a good officer who leads by good example and follows his guidance. Unfortunately, the

applicant has been an absentee leader and chose not to explore the possibility that LTC [REDACTED] actions may be part of the problem within the 18th FMSC.

(3) The rest of the summary is redacted.

b. Recommendations.

(1) She recommended issuance of a letter of reprimand to the applicant for failing to act when his organization has several personality issues that clearly affect a small unit. Several people have brought it to the applicant's attention, to include his sergeant major, but he brushed it off as though it were not important. Even though the applicant is not a commander, he is in charge and responsible for everyone and everything that happens within his organization. The applicant understands the Army mission and how to establish standards, but he does not consider how his comments as a senior leader can be considered insensitive or degrading to subordinates. When the applicant, as the director, was apprised of the complaints and accusations against LTC [REDACTED] it is expected that he would have inquired into the matter and attempted to resolve the problem. The applicant failed to address or resolve the issues within his organization that were brought to his attention. The applicant's failure to get involved has drastically affected the morale within the 18th FMSC.

(2) Redacted.

(3) She recommended that MAJ [REDACTED] deploy with the unit if LTC [REDACTED] is removed. If LTC [REDACTED] remains with the 18th FMSC, MAJ [REDACTED] should be reassigned out of the 1st TCS.

(4) Due to the distrust, lack of confidence, and poor command climate, she also recommended that the inspector general (IG) conduct an investigation as soon as possible. The investigation should occur even though the unit is getting ready to deploy. Since many of the Soldiers are afraid of reprisal, she also recommended that the IG continue to monitor the unit for at least 90 days once the investigation is completed.

7. The Headquarters, 1st TSC, memorandum from the EO advisor (EO Complaint Review, MAJ [REDACTED] 4 February 2016, concurred with the IO's findings that there were no violations of EO policies or regulations within the 18th FMSC. He also concurred with the IO that the actions and comments of LTC [REDACTED] and the applicant resulted in a poor command climate within the 18th FMSC.

8. The Headquarters, 1st TSC, Office of the Staff Judge Advocate, memorandum from the administrative law attorney (Legal Review of Army Regulation 15-6 Investigation – 18th FMSC EO Complaint), 4 February 2016, noted the investigation was legally sufficient and sufficient evidence supports the findings.

9. The 1st TSC memorandum for the Commander, 1st TSC, from the deputy commanding officer (Recommendations on EO Complaint Investigation (18th FMSC)), undated, states:

I have carefully reviewed the subject complaint, the investigating officer's Findings and Recommendations, dated 12 January 2016, and all of the investigation's exhibits and supporting documentation, including the Legal Review and EO Advisor's action, both dated 4 February 2016.

I recommend no further action by the investigating officer. I also recommend your approval of all of the investigating officer's findings and recommendations, with the following exceptions:

a. I recommend that you do not approve any findings of substantiated adverse information against [Applicant]. My reading of the investigation exhibits indicates to me that while [Applicant] may have made one or two remarks that, in hindsight, he likely regrets, I do not feel that he was directly responsible for a toxic command climate within the 18th FMSC. For his remarks, I recommend that you issue [Applicant] a written non-punitive rehabilitative counseling memo, and file it locally in his Military Personnel Records Jacket [MPRJ], to be destroyed after two years or upon his departure from your General Court-Martial Convening Authority, whichever occurs first.

b. Redacted.

c. I do not recommend that the IG conduct an investigation into the 18th FMSC command climate. This EO investigation was very thorough and subjecting the 18th FMSC to yet another investigation likely would duplicate efforts already covered in this investigation, and likely would not yield new, beneficial information. I do, however, recommend that the IG continue to monitor the 18th FMSC to ensure none of its members are subjected to acts of reprisal based on this investigation.

10. His memorandum for Commanding General, 1st TSC (Request for Reconsideration of Army Regulation 15-6 Findings), 19 March 2017, requested reconsideration of the findings of the investigation based on mistake of fact, mistake of law, and administrative error and, in turn, requested removal of adverse information from the AAIP database. He stated that not only is the underlying investigation incomplete, it is legally deficient as it does not support the adverse finding against him by a preponderance of the evidence.

a. The investigation fell short of being "supportable by a preponderance of evidence" and fell short of this standard as it: (1) was not comprehensive and (2) failed

to establish a direct or indirect correlation between my conduct and the finding, despite taking over 7 months to conclude.

b. He noted the areas of: (1) a lack of comprehensiveness, (2) a lack of correlation, (3) failing to act, and (4) that the IO failed to properly differentiate between himself and LTC [REDACTED] in her references.

c. In summary, when he arrived, the 18th FMSC Soldiers were fundamentally unhappy about their assignment to a deploying unit. As the deployment approached, apprehension grew, and typical Soldier venting increased. When MAJ [REDACTED] made her EO allegations, some of this natural venting was captured in Soldiers' sworn statements. The IO failed to ever discern this as she might have been looking to establish correlations that simply weren't existing. There certainly is no "preponderance of evidence" supporting her determination. Ultimately, the EO complaint was unsubstantiated and he strongly believes the finding imposed against him regarding command climate should also be vacated.

11. The 1st TSC memorandum from the commanding general (Request for Reconsideration of Army Regulation 15-6 Findings), 25 April 2017, stated:

I have considered the matters you submitted on 19 March 2017 requesting reconsideration of the findings of an investigation pursuant to Army Regulation 15-6.

Reconsideration of the findings at this point is not appropriate. In accordance with Army Regulation 15-6, paragraph 2-9, "[a] request for reconsideration is not permitted when the investigation resulted in administrative, nonjudicial, or judicial action, or any action having its own due process procedural safeguards." As a result of this investigation you received a letter of concern, an administrative action, having its own due process procedural safeguards. In particular, you received notice of the letter of concern and had an opportunity to respond. On 13 April 2016, you elected not to submit any matters before I took final action on this matter.

Furthermore, I have considered the matters you presented, and the material presented does not impact my approved findings.

12. His memorandum for the SECARMY (Request for Consideration of Additional Matters in Support of (Applicant's) FY20 BG Officer Promotion Review), 5 January 2021, requested retention of his name on the FY20 BG selection list. He believed a fair and accurate accounting of the facts and circumstances of his situation was not provided to the PRB. He was informed that the adverse information was a formality and would not affect his promotion status. The PRB was provided a false and tainted view of

his personal character and led to its wrong conclusion from one document presented from a flawed Army Regulation 15-6 investigation.

13. The U.S. Army Trial Defense Service memorandum for the Chief, GOMO, from his trial defense counsel (Request for (Applicant) to Submit Matters Supporting Retention on PSB Report), 12 January 2021, requested additional time to submit information to the PRB and supported the applicant's retention on the promotion list by the SECARMY. The memorandum included the applicant's 5 January 2021 memorandum, the Summary of Credible Adverse Information, numerous letters of support, and the applicant's last five officer evaluation reports as supporting documents.

14. His memorandum for the Commanding General, 1st TSC (Request to Remove Adverse Information – (Applicant)), 27 May 2022, with associated documents, states:

a. Purpose. To request reconsideration of the findings of an investigation and, in turn, request removal of adverse information from the AAIP database. In 2016, the 1st TSC Commanding General made an AAIP finding against him, suggesting he had failed to take immediate action with respect to a command climate survey and that this contributed to a poor command climate. He respectfully requests removal of this finding, as it is erroneous. The facts do not support this finding against him and the finding itself is both contradictory and illogical, as there is ample evidence that his actions contributed to an overall positive command climate.

b. Authority: In accordance with Army Regulation 15-6, paragraph 2-9, an officer against whom an adverse finding was made may request reconsideration of the findings of an investigation upon the discovery of new evidence, mistake of law, mistake of fact, or administrative error and the approval authority may reconsider and direct removal of an adverse finding. All of these criteria apply in his case. He also has good cause to submit this even though 1 year has passed because he needed to investigate the matter and gather new evidence. Additionally, and significantly, when his supervisor, MG [REDACTED] filed the AAIP in his records, he told him the action would have no impact on him for future promotion. The formal AAIP entry also explicitly states that. That was incorrect information (mistake of law, mistake of fact, and administrative error) as his promotion to BG has been held up by this AAIP entry several years later.

c. He was selected for promotion by the FY20 BG PSB, which convened on 19 November 2019. Due to the adverse information in his file, however, the Army delayed action on his subsequent appointment to BG. Now, nearly 3 years later, he is just 1 year from his mandatory retirement date. For both professional and personal reasons, he is seeking intervention to have his record corrected before his time and service in the Army ends.

d. His notes his basis for removal of the AAIP finding is classified into the following categories (see memorandum for further details):

(1) new evidence and per regulatory guidance, a successor in command can direct the removal of adverse information based on new evidence;

(2) mistake of law and per regulatory guidance, a successor in command can also remove an adverse finding if a mistake occurs when approving adverse information;

(3) mistake of facts and per regulatory guidance, a successor in command can remove an adverse finding if entered due to a mistake of fact; and

(4) administrative error and per regulatory guidance, a successor in command can remove an adverse finding if there was administrative error in the finding.

e. Conclusion. The Army Regulation 15-6 investigation that involved him was lengthy and full of numerous flaws. After reviewing the investigation, COL [REDACTED] the 1st TSC Deputy Commanding Officer, recommended that the commanding general disapprove any adverse findings and instead issue him a local counseling. The commanding general did something different because he had a mistaken understanding of the law, did not know all the facts, and misunderstood how the AAIP works. Since then, MG (Retired) [REDACTED] has tried to rectify this mistake by writing a letter of support.

15. He provided 33 letters, memorandums, and endorsements from senior leaders and general officers with whom he has served. He also provided a character-reference letter from Mr. [REDACTED] former Acting SECARMY, attesting to his character, professionalism, and leadership, and endorsing his Senate confirmation to BG.

16. The Summary of Credible Adverse Information states:

NAME: [Applicant]

AUTHORITY: 10 United States Code § 615 (a)(3) [Title 10, U.S. Code, section 615(a)(3)]

SOURCE: Investigation appointed by the Commanding General, 1st Sustainment Command (Theater), pursuant to Army Regulation 15-6, Procedures for Investigating Officers and Boards of Officers, 2 October 2006.

INVESTIGATION APPROVAL DATE: 12 April 2016.

SUBSTANTIATED FINDINGS: [Applicant] contributed to a poor command climate while serving as the Director, 18th Financial Management Support Center.

SYNOPSIS: [Applicant] failed to take immediate action to address the results of a command climate survey and made sarcastic remarks about the results. The comments contributed to a poor command climate within his section.

DISPOSITION: [Applicant] received a letter of concern.

COMMANDER COMMENT AUTHOR: Major General [REDACTED]
Commanding General, 1st Sustainment Command (Theater).

COMMANDER COMMENT: Based upon my extensive work with [Applicant], I am convinced this was a one-time event. [Applicant] immediately corrected all the concerns that I had. This issue should not impact his consideration for promotion.

17. The Headquarters, 1st TSC, memorandum from the Commanding General (Decision Memorandum Addressing Request to Remove Adverse Information), 17 August 2022, states:

I have received and carefully evaluated your request dated 24 June 2022 for reconsideration of adverse findings and removal of adverse information regarding an AR [Army Regulation] 15-6 investigation which MG [REDACTED] my predecessor-in-command, approved on 12 April 2016. As a result of the approved adverse finding, MG [REDACTED] issued you a Letter of Concern, and you elected not to submit any matters in response. Additionally, on 17 June 2016, LTG [Lieutenant General] [REDACTED] the USARCENT [U.S. Army Central] Commander, reviewed the findings and affirmed MG [REDACTED] findings and decision to issue you a Letter of Concern. You subsequently requested reconsideration of the adverse finding which MG [REDACTED] denied on 25 April 2017. I have reviewed the original AR 15-6 investigation, the subsequent appeal to USARCENT, and the action by the USARCENT Commander, as well as all matters that you and your counsel have submitted including the additional evidence you obtained.

After thorough consideration and consultation with my Staff Judge Advocate, I disapprove your request to modify the original findings and remove the entry for the Army Adverse Information Portal. This matter has undergone multiple legal reviews and has been reviewed twice by my predecessor and once by the ARCENT Commander. The AR 15-6 investigation is legally sufficient, and the materials submitted do not provide a sufficient basis to warrant modifying the approved findings IAW [in accordance with] AR 15-6 para[graph] 2-9(b). As you

were previously informed, you may submit your request to the Army Board of [sic] Correction of Military Records (ABCMR) which has broader authority to approve your request based on equitable grounds. Applications to the ABCMR may be submitted online at: <https://arba.army.pentagon.mil/online-application.html>.

18. His records do not contain any documentation relating to a PRB or documentation from the SECARMY referencing his removal from the FY20 BG PSB.

19. Headquarters, U.S. Army North (Fifth Army), Orders 271-1102, 28 September 2022, retired him effective 31 May 2023 and placed him on the Retired List effective 1 June 2023 in the grade of colonel with 30 years and 2 days of active federal service.

20. His memorandum for the Board (Removal of Adverse Information), 6 January 2023, reiterates his request for removal of the Summary of Credible Adverse Information from his records and placement on the Retired List in the rank/grade of BG/O-7.

21. He retired on 31 May 2023 in the rank/grade of colonel/O-6. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 30 years and 2 days of net active service during this period.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, a majority of the Board found partial relief is warranted.

2. A majority of the Board noted that the applicant was not afforded a final decision from the Secretary of the Army on his appeal of the PRB's recommendation that he should not be retained on a BG selection list. A majority of the Board found the lack of a final decision to be unjust and determined his case should be referred to the Secretary of the Army for a final decision. A majority of the Board determined there is insufficient evidence to support any further relief.

3. The member in the minority determined the applicant has failed to demonstrate by a preponderance of the evidence that an error or injustice occurred.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
█	:	█	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	█	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by referring his record to the Secretary of the Army to determine if his appeal of the PRB recommendation that he should not be retained on a BG selection list should be approved.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

1/6/2025

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.

ADMINISTRATIVE NOTE(S): Since the Summary of Credible Adverse Information is not filed in the applicant's Army Military Human Resource Record (AMHRR), the copy of the Summary of Credible Adverse Information document provided by the applicant will not be filed with the contents of the ABCMR record of proceedings in the applicant's AMHRR once finalized.

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 15-6 (Procedures for Administrative Investigations and Boards of Officers) establishes procedures for conducting preliminary inquiries, administrative investigations, and boards of officers when such procedures are not established by other regulations or directives. Even when not specifically made applicable, this regulation may be used as a general guide for investigations or boards authorized by another regulation or directive, but in that case, its provisions are not mandatory.

a. The primary function of any preliminary inquiry, administrative investigation, or board of officers is to ascertain facts, document and preserve evidence, and then report the facts and evidence to the approval authority. It is the duty of the investigating officer or board to thoroughly and impartially ascertain and consider the evidence on all sides of each issue, to comply with the instructions of the appointing authority, to make findings that are warranted by the evidence, and, where appropriate, to make recommendations to the approval authority that are consistent with the findings.

b. Paragraph 2-8c (Action of the Approval Authority – Referral of Adverse Information) states:

(1) When an investigation includes a finding containing adverse information (as defined in the glossary) regarding a field grade officer, the portion of the report of investigation and supporting evidence pertaining to the adverse information must be referred to that officer in accordance with paragraph 5-4.

(2) For those findings that are adverse to a field grade officer, which the approval authority intends to approve, the approval authority will give the officer notice and an opportunity to respond before taking final action. The servicing staff judge advocate (SJA) or legal advisor will ensure that the referral is properly made (see subparagraph (5) below).

(3) A redacted copy of the investigation will be referred to the officer by memorandum (see figure 2-6). The referral must notify the officer of the general nature of the adverse information. In addition, the referral must notify the officer that:

(a) the officer has the right to remain silent, and that anything the officer may say or submit in response to the adverse information may be used against him or her in

ongoing or subsequent adverse administrative or Uniform Code of Military Justice proceedings;

(b) adverse information from an officially documented investigation or inquiry must be furnished to a selection board for promotion to a grade above colonel in accordance with Title 10, U.S. Code, section 615, and may be provided to other selection boards; and

(c) the approval authority will consider any response the officer provides and may use it to approve, modify, or disapprove any relevant finding(s) or recommendation(s), or as evidence in current or future actions resulting from the investigation.

(4) The officer will be granted at least 10 business days to respond to the referral. Reasonable requests for an extension of this deadline should be granted for good cause to ensure that the officer has an adequate opportunity to gather evidence and prepare a response.

(5) Action on Receipt of Rebuttal.

(a) Upon receipt of any material in response to the adverse information, the approval authority's servicing SJA or legal advisor will package the materials as an exhibit to the report of proceedings and provide them to the approval authority for his or her consideration. If the subject officer elects not to respond, or fails to do so within the period authorized, the servicing SJA or legal advisor will attach a memorandum stating that the officer elected not to respond or did not respond within the period authorized, along with the referral documents, to the report of proceedings.

(b) When considering the officer's response and whether to substantiate any finding as adverse, the approval authority should consider only evidence that is relevant to the matter under investigation. For instance, evidence of the officer's character or past performance is relevant only to the extent that it reflects on the officer's integrity if his or her statements are contrary to the statements of others.

c. Paragraph 2-9 (Request for Reconsideration) states:

(1) Right to Request Reconsideration. A subject, suspect, or respondent (such as an officer against whom an adverse finding was made) may request reconsideration of the findings of an inquiry or investigation upon the discovery of new evidence, mistake of law, mistake of fact, or administrative error. New evidence is that information that was not considered during the course of the initial investigation and that was not reasonably available for consideration. New evidence neither includes character letters

nor information that, while not considered at the time of the original investigation, the subject of the investigation could have provided during the course of the investigation.

(2) Limitations.

(a) A request for reconsideration is not permitted when the investigation resulted in administrative, nonjudicial, or judicial action, or any action having its own due process procedural safeguards.

(b) Requests for reconsideration must be submitted to the approval authority within 1 year of the approval authority's approval of the investigation. The approval authority may entertain a request outside of 1 year for good cause. While not exhaustive, good cause is the discovery of new relevant evidence beyond the 1-year time limitation, which the requester could not have discovered through reasonable diligence, or the requester was unable to submit, because duty unreasonably interfered with his or her opportunity to submit a request. The approval authority's determination of good cause is final.

(c) Standing. A request for reconsideration will only be considered if the material presented impacts a finding concerning the requester.

(3) Procedure.

(a) All requests for reconsideration must be submitted through the Office of the SJA/legal advisor responsible for advising the approval authority at the time he or she approved the original investigation. If the approval authority has changed assignments or duty location, the SJA or legal advisor receiving the request, will present it to the approval authority's successor who, for purposes of the request for reconsideration, will be the approval authority.

(b) Upon receipt of a request for reconsideration, the approval authority will determine whether the material presented would impact any finding concerning the requester and, if so, whether the impact is such that the finding is no longer supportable by a preponderance of the evidence.

(c) If, after considering a request for reconsideration, the approval authority determines that the finding is no longer supportable, the approval authority will modify the approved findings and update any database or record where the original findings were sent.

(d) Whether or not the approval authority takes favorable action, he or she will ensure the requester is informed of the action taken on the request. The failure to

inform, however, does not create a substantive right that impacts the request or the original findings.

3. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to authorize placement of unfavorable information about Army members in individual official personnel files; ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and ensure that the best interests of both the Army and the Soldier are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

a. 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.

b. Paragraph 3-2c states 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.

4. SECARMY memorandum (Army Directive 2023-03 (Army Adverse Information Program)), 22 February 2023, states:

a. Purpose. Pursuant to the 2020 National Defense Authorization Act, the requirements in references 1a and 1b were broadened to include pre-board adverse information screening for officers O-4 and above in the Regular Army and officers O-6 and above in the Reserve Components. This directive updates and expands the AAIP, the repository for adverse information resulting from administrative investigations conducted pursuant to Army Regulation 15-6, to comply with the new screening requirements.

b. Applicability. This directive applies to the Regular Army, as well as the Army National Guard/Army National Guard of the United States and the U.S. Army Reserve (referred to collectively as the Reserve Components).

c. Policy.

(1) Army Regulation 15-6 is hereby amended as follows:

(a) Substantiated adverse findings from administrative investigations must be filed in the AAIP database for all officers in the grade of O-1 and above.

(b) Paragraph 3-19b is expanded to require adverse summaries against all officers O-1 and above to be filed in the AAIP and maintained in accordance with paragraph 3-19b.

(c) Paragraph 4-3b is expanded to include all officers in the grade of O-1 and above.

(d) The requirement to refer all potentially adverse information regarding an officer, currently limited to field grade officers in paragraph 2-8c, is expanded to include all officers in the grade of O-1 and above.

(e) The right to respond to adverse information, currently afforded to field grade officers in paragraph 5-4a, is expanded to include all officers in the grade of O-1 and above. Nothing precludes approval authorities from extending the right to respond to any individual who is the subject of adverse information. Only substantiated adverse information regarding officers in the grade of O-1 and above is required to be uploaded to the AAIP database.

(f) The approval authority is responsible for ensuring any adverse information contained in an administrative investigation conducted pursuant to Army Regulation 15-6 meets the requirements of reference 1c, enclosure 4, paragraph 1a, prior to approval and is recorded in the AAIP database. The approval authority's SJA or legal advisor is responsible for completing the administrative tasks necessary to record the information under the direction of the investigation approval authority.

(2) To comply with the new screening requirements, National Guard complex administrative investigations, conducted pursuant to reference 1e, with adverse findings against Army officers in the grade of O-1 and above will be uploaded to the AAIP database.

(3) Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers) and Army Regulation 600-8-29 (Officer Promotions) will be updated to reflect use of the AAIP database in the officer promotion process pursuant to references 1a through 1c.

(4) AAIP entries will be recorded in accordance with reference 1f, paragraph 3-19b.

d. Effective Date. The provisions of this directive are effective 30 calendar days from the date of signature and apply to all administrative investigations conducted pursuant to Army Regulation 15-6 approved on or after the effective date.

e. Proponent. The Judge Advocate General is the proponent for this policy and will ensure the provisions of this directive are incorporated into Army Regulation 15-6 within 2 years of the date of this directive. The Deputy Chief of Staff, G-1, will ensure its provisions are incorporated into Army Regulation 135-155 and Army Regulation 600-8-29 within 2 years of the date of this directive.

5. Army Regulation 600-8-29 (Officer Promotions) prescribes the officer promotion function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support officer promotions. This regulation supports the objectives of the Army's officer promotion system, which include filling authorized spaces with the best qualified officers. Additionally, it precludes promoting the officer who is not eligible or becomes disqualified, thus providing an equitable system for all officers.

a. Paragraph 2-10 (Approving Promotion Board Recommendations) states promotion boards make recommendations to the President of the United States. The President has delegated authority to the Secretary of Defense to approve or disapprove promotion board reports. The Secretary of Defense has retained disapproval authority, but has delegated approval authority to the Principal Deputy Under Secretary of Defense for Personnel and Readiness. Promotions to the grade of MAJ and above must be confirmed by the Senate in accordance with Title 10, U.S. Code, section 624. The SECARMY has authority to approve or disapprove promotion board reports for warrant officers' promotion, and all selective continuation, and promotion review boards.

b. Paragraph 2-12 (Post-board Screening).

(1) A post-board screening initiated by the Director of Military Personnel Management (DMPM) will be conducted on officers selected for promotion to captain through COL and chief warrant officer 3 through chief warrant officer 5 before the results of the PSB are forwarded to the SECARMY. A post-board screening will include, but is not limited to, a review of information in official files maintained by U.S. Army Criminal Investigation Command, the Department of the Army IG, the restricted portion of the AMHRR, and a query for suspension of favorable personnel actions (Army Regulation 600-8-2 (Suspension of Favorable Personnel Actions (Flag))). A board convened at Headquarters, Department of the Army (HQDA), will review any derogatory information from the post-board screening and advise the Deputy Chief of Staff, G-1, or

designee (normally the DMPM) whether the information is substantiated, relevant, and might reasonably and materially affect a promotion recommendation. An officer with adverse or reportable information that might reasonably and materially affect a promotion recommendation may not meet exemplary conduct requirements for promotion and may be recommended for a delay in promotion and referred to a PRB as prescribed in chapter 7. An officer who is pending investigation into potential adverse information may not meet exemplary conduct requirements for promotion and will be recommended for a delay in promotion until the matter is resolved.

(2) A screening and review process, similar to the post-board screening detailed in paragraph 2-12a, above, will be conducted for all first lieutenant/chief warrant officer 2 promotion nominations. The DMPM will initiate the screening and review process. The Deputy Chief of Staff, G-1, or designee (normally the DMPM) may refer any derogatory information to the promotion review authority (usually the general court-martial convening authority) for further review before a first lieutenant/chief warrant officer 2 promotion nomination proceeds. The DMPM or higher-level authority retains the authority to refer a second lieutenant/warrant officer 1 to a PRB in cases where circumstances warrant such a referral.

c. Paragraph 6-1 (Special Selection Boards (SSB)) states SSBs are governed by the same instructions provided to the boards that considered or should have considered an officer for promotion.

d. Chapter 7 (Promotion Review Boards) stated a report of a selection board exists after a promotion board issues a signed board report. The board report becomes a promotion list after approval by the President or his designee, or in the case of warrant officers, after approval by the SECARMY. If the SECARMY recommends removal of the name of an officer from a selection board's report and the recommendation includes information that was not presented to the selection board, the information will be made available to the officer. The officer will be afforded a reasonable opportunity to submit comments on that information to the officials making the recommendation and the officials reviewing the recommendation.

(1) Paragraph 7-2 (Basis for Referral) states HQDA will continuously review promotion lists to ensure that no officer is promoted where there is cause to believe that he or she is mentally, physically, morally, or professionally unqualified to perform the duties of the higher grade. An officer may be referred to a PRB for other adverse information received by HQDA but not filed in the AMHRR if the referral authority finds that the information is substantiated, relevant, and might reasonably and materially affect a promotion recommendation.

(2) Paragraph 7-9 (Notification of Results) states officers considered by a PRB will be informed of the results in writing through their chain of command. Notice will be

sent after appropriate authority takes final action on the PRB's recommendation. Barring extenuating circumstances, this notice should be sent within 180 days after the SECARMY makes a final determination.

(3) The Glossary, Terms, defines:

- promotion list – a list of officers, by competitive category, recommended and approved for promotion
- selected for promotion – an officer recommended for promotion by a Department of the Army PSB or SSB and approved by the proper authority

//NOTHING FOLLOWS//