

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 December 2023

DOCKET NUMBER: AR20230002469

APPLICANT REQUESTS: transfer of the following documents from the performance folder to the restricted folder of his Army Military Human Resource Record (AMHRR):

- memorandum of reprimand, 19 August 2020, with auxiliary documents
- DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW5) Officer Evaluation Report (OER)) covering the period 5 July 2020 through 4 July 2021 (hereafter referred to as the contested OER)

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)
- Applicant's Memorandum for the Department of the Army Suitability Evaluation Board (DASEB) (Request for Transfer of General Officer Memorandum of Reprimand (GOMOR)), dated 19 August 2020 and OER, dated 5 July 2020 through 4 July 2021 of (Applicant), 13 February 2023, with enclosures –
 - Enclosure 1 – Headquarters, U.S. Military Entrance Processing Command Memorandum (Letter of Reprimand – (Applicant)), 19 August 2020, with allied documents
 - Enclosure 2 – OER covering the period 5 July 2020 through 4 July 2021
 - Enclosure 3 – Headquarters, U.S. Army Garrison, Fort Jackson, Fort Jackson, SC, Orders 178-1323, 27 June 2022
 - Enclosure 4 – OER covering the period 28 September 2021 through 1 June 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 requests transfer of the memorandum of reprimand and contested OER from the performance folder of his AMHRR to the restricted folder. His memorandum for the DASEB (Request for Transfer of General Officer Memorandum of Reprimand (GOMOR)), 13 February 2023, states:

...I understand that Department of Defense Instructions (DODI #1320.11), [paragraph] 4.2 states "A Special Selection Board *shall not*, under [Title 10, U.S. Code] Section 628(b) or 14502(b) of reference (b), consider any person who may, by maintaining reasonably careful records, have discovered and taken steps to correct that error or omission in which the original board based its decision against promotion." I further understand that I was afforded the opportunity to submit documents to my Official Military Personnel File (OMPF), My Board File and to correspond to [sic] the President of the Board of possible administrative deficiencies in my records or to bring special attention to any matter I considered important during consideration and that failure to do so does not constitute "material unfairness" or a "material error".

It was recently brought to my attention that the Memorandum of Reprimand dated 20200819 [19 August 2020] in my OMPF was erroneously filed in violation of AR [Army Regulation] 600-37 [Unfavorable Information], para[graph] 3-5 (3)b "A memorandum, regardless of the issuing authority, may be filed in the AMHRR, and managed by HRC [U.S. Army Human Resources Command] or the proper State Adjutant General (for Army National Guard personnel) upon the order of a GO." The Memorandum of Reprimand that I received was issued erroneously upon the order of a Colonel (COL/O6) and not a General Officer (GO). I request the OER dated 20200705-20210704 [5 July 2020 through 4 July 2021] that referenced content from the erroneously filed Memorandum of Reprimand be also transferred to the restricted section of my AMHRR.

I ask the Board to note that an official U.S. Army Board, the *U.S. Army Selective Continuation Board* has already determined the documents in question to be erroneous and masked them during my successful board process which revoked my service discharge (Enclosure 3) and allowed me to finish my military career.

I ask the Board to also note the enclosed OER dated 20220603 [3 June 2022] (Enclosure 4) which denotes my exemplary service since the imposition of the GOMOR.

3. Although his appointment order is not available for review, his records indicate he had prior enlisted service in the Regular Army and upon completion of the Officer Candidate School, he was appointed as a commissioned officer in the Regular Army in the Finance Corps effective 30 June 2005.

4. He was promoted to the rank/grade of major/O-4 effective 1 November 2015.
5. The DA Form 8003 (Command Referral for a Substance Use Disorder (SUD) Evaluation) shows his commander referred him for evaluation for SUD on 18 August 2020. The reason for referral was his civil conviction for driving under the influence (DUI) of alcohol and noted: "SM [service member] received a DUI on September 29, 2018 (Misdemeanor) and it was adjudicated on October 16, 2018. For those actions, he will be receiving a General Officer Memorandum of Reprimand which is to be presented to him on August 19, 2020. The reason for lateness is due to the incident just coming to light with in the last four months due to the Continuous Evaluation Review conducted by the Defense Counterintelligence and Security Agency (DCSA)." On 28 August 2020, the licensed medical professional assessed him for no enrollment in mandatory SUD treatment at this time.
6. His records do not contain an investigation or evaluation documenting this incident, nor does he provide any documentation for review.
7. He was reprimanded in writing by the Commander, U.S. Military Entrance Processing Command, Colonel [REDACTED], U.S. Marine Corps. The Headquarters, U.S. Military Entrance Processing Command, memorandum (Letter of Reprimand – Applicant), 19 August 2020, states:

You are hereby reprimanded for operating a motor vehicle while under the influence of alcohol on 29 September 2018, and for failure to report the conviction for such as required by Army Regulation (AR) 600-20, Army Command Policy, 24 July 2020, paragraph 4-23.

As a commissioned officer and a leader at the United States Military Entrance Processing Command (USMEPCOM), your actions are inexcusable, unsafe, wrong, and unprofessional. Your actions compromised your trustworthiness as an individual and as a leader. As a commissioned officer, I expect you to be a leader in USMEPCOM and an example of the Army Values. Your actions fell well below the standards expected of an officer in the United States Army. Your behavior demonstrates not only a complete lack of judgment, responsibility, and integrity, but also raises serious doubts about your ability to be a leader in the United States Army. As an officer, I expect you to conduct yourself according to the highest standards of responsibility and professionalism. I also expect you to follow the Army Regulations and governing bodies and to be upfront and honest when you make a mistake, rather than try to hide your wrongdoings.

Your terrible decision to drive under the influence, could have killed yourself and numerous people. You were disrespectful to the police and asked for "professional courtesy" because of your position in the Army. This behavior

brings shame upon yourself, USMEPCOM, the Army, and the entire United States Military. Further, by hiding the resulting conviction you have placed your security clearance in jeopardy. I am deeply appalled by your actions and your choices, which leads me to lose faith in you as an officer.

This is an administrative reprimand imposed under the provision of AR 600-37, Unfavorable Information, 10 April 2018, and not as punishment under Article 15, Uniform Code of Military Justice. I intend to direct that this reprimand be filed in your Official Military Personnel File. However, before making my final filing decision, I will consider any rebuttal or matters in extenuation and mitigation you submit. You must submit, through the Chain of Command, any such matters that you wish for me to consider within ten (10) calendar days from the date you received this memorandum. You will also acknowledge receipt of this memorandum by signing the enclosed acknowledgement. If you do not timely submit matters, I will file this letter as stated without your input.

8. He acknowledged receipt of the reprimand and submitted rebuttal matters in his behalf on 20 August 2020 to explain the contributing events leading up to the incident and his mindset at the time. He apologized for his behavior and acknowledged his actions were inexcusable, unsafe, wrong, and unprofessional. He stated:

a. He returned from a deployment to Iraq in 2017 in support of Operation Inherent Resolve and could tell his marriage had changed. In the summer of 2018, he and his wife divorced after 14 years of marriage. About a month after his divorce, he was assigned to USMEPCOM and his ex-wife married an enlisted Soldier and moved their children to Fort Benning, GA.

b. After his assignment to USMEPCOM he felt the need to integrate himself as quickly as possible to contribute. Despite feeling angry, upset, hurt, and depressed during this period in his life, he worked long hours. He had little to no relationships outside of the workplace and adjusting was difficult for him. He went on his first date after his divorce; he was nervous and to calm his concerns, made the mistake of drinking more alcohol than he was accustomed. Therefore, he was intoxicated beyond the legal limit.

c. He did not report the incident to his chain of command because he felt ashamed. He had only been in the command for 3 months and did not want to start his new assignment with such a horrible impression. He now realizes that decision put his integrity in question. All legal matters have been processed and are complete. He has completed alcohol abuse training. He wants to continue to serve in the Army.

9. The USMEPCOM Staff Judge Advocate memorandum (Staff Judge Advocate Advice on Filing Letter of Reprimand for (Applicant)), 7 October 2020, noted the applicant's DUI

of alcohol conviction, the applicant's rebuttal, and the applicant's failure to report the arrest, and recommended filing the memorandum of reprimand in the applicant's OMPF.

10. After carefully considering the circumstances of the misconduct, extenuation, or mitigation, and recommendation of the subordinate commander, Colonel [REDACTED], U.S. Marine Corps, having general court-martial convening authority, directed filing the memorandum of reprimand in the applicant's AMHRR.

11. A review of his AMHRR revealed the memorandum of reprimand and allied documents are filed in the performance folder.

12. The applicant's contested OER covering the period 5 July 2020 through 4 July 2021 addressed his duty performance as the Senior Command Budget Analyst for Headquarters, USMEPCOM, Great Lakes Naval Training Center, Chicago, IL. The reason for submission is shown as "Annual." His rater is shown as [REDACTED], General Schedule (GS)-14, Deputy Director, and his senior rater is shown as [REDACTED], GS-15, Director. The rater and senior rater digitally signed the OER on 20 July 2021 and 21 July 2021, respectively. The applicant digitally signed the OER on 22 July 2021. The contested OER shows in:

a. Part II (Authentication), block d (This is a Referred Report, Do You Wish to Make Comments?), a checkmark was placed in the block signifying to the applicant that he was receiving a referred report and a checkmark was placed in the "No" block indicating the applicant did not wish to make comments;

b. Part II, block f1 (Supplementary Review Required), a checkmark was placed in the "Yes" block; and block f2 (Name of Reviewer), shows Colonel [REDACTED], Commander, Eastern Sector, USMEPCOM, digitally signed the contested OER on 22 July 2021 and did not attach any comments; and

c. Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block d1 (Character), the rater commented: "As a field grade finance officer, [Applicant] holds a position requiring he utmost integrity and personal courage in his duties as a steward of taxpayers' dollars. He willfully failed to report a 2019 arrest and conviction for driving under the influence that was discovered during a background check this rating period."

d. Part IV, block e (This Officer's Overall Performance is Rated as), his rater rated his overall performance as "Proficient";

e. Part VI (Senior Rater), block a (Potential Compared with Officers Senior Rated in Same Grade), his senior rater rated his overall potential as "Highly Qualified."

13. A review of his AMHRR shows the contested OER is filed in the performance folder.

14. Headquarters, U.S. Army Garrison, Fort Jackson, Orders 178-1323, 27 June 2022, revoked Orders 139-1306, 18 May 2022, pertaining to his discharge. (Note: U.S. Army Garrison, Fort Jackson, Orders 139-1306, 18 May 2022, are not available for review).

15. His change-of-duty OER covering the period 28 September 2021 through 1 June 2022 (8 months) shows his rater rated his overall performance as "Excels" and his senior rater rated his overall potential as "Highly Qualified."

16. He was honorably discharged on 1 October 2022 in the rank of major under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharges) by reason of non-selection of permanent promotion. He completed 17 years, 3 months, 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, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, military records, and regulatory guidance. The Board agreed that the applicant's willful actions reflected the intent to deceive and did not adhere to the standards of responsibility and professionalism. Documentation available for review does not reveal evidence of administrative irregularity.

2. The Board further agreed that any documentation provided by the applicant did not contradict evidence of record or indicate that any information regarding the adverse action was untrue or unjust in whole or in part to weigh in favor of the applicant. After due consideration of the request, the Board determined the evidence presented did not meet the burden of proof in determining the basis for the adverse action was untrue or unjust, in whole or in part and a recommendation for relief is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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 and moving neither memorandum of reprimand nor DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW5) Officer Evaluation Report (OER)) covering the period 5 July 2020 through 4 July 2021 to the restricted folder of his Army Military Human Resource Record is not warranted.

2/28/2024

X [Redacted Signature]

CHAIRPERSON

[Redacted Title]

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 15-185 (Army Board for Correction of Military Records), prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation 190-5 (Motor Vehicle Traffic Supervision), 22 May 2006, establishes policy, responsibilities, and procedures for motor vehicle traffic supervision on military installations in the continental United States and overseas areas. This includes but is not limited to the following: (1) granting, suspending, or revoking the privilege to operate a privately owned vehicle; (2) registration of privately owned vehicles; (3) administration of vehicle registration and driver performance records; (4) driver improvement programs; (5) police traffic supervision; and (6) off-installation traffic activities. Paragraph 2-7 (Army Administrative Actions against Intoxicated Drivers) states Army commanders will take appropriate action against intoxicated drivers. These actions may include the following:

a. A written reprimand, administrative in nature, will be issued to active duty Soldiers in the cases described below. Any general officer, and any officer frocked to the grade of brigadier general, may issue this reprimand. Filing of the reprimand will be in accordance with the provisions of Army Regulation 600-37. Conditions include:

(1) conviction by courts-martial or civilian court or imposition of nonjudicial punishment for an offense of drunk or impaired driving either on or off the installation;

(2) refusal to take or failure to complete a lawfully requested test to measure alcohol or drug content of the blood, breath, or urine, either on or off the installation, when there is reasonable belief of DUI of alcohol or drugs;

(3) driving or being in physical control of a motor vehicle on post when the blood alcohol content is 0.08 percent or higher, irrespective of other charges, or on off post when the blood alcohol content is in violation of the law of the State involved; or

(4) driving, or being in physical control of a motor vehicle, either on or off the installation, when lawfully conducted chemical tests reflect the presence of illegal drugs.

b. Review by the commander of the service records of active duty Soldiers apprehended for offenses described in paragraph a above is required to determine if any of the following actions should be taken:

(1) administrative reduction per Army Regulation 600-8-19 (Enlisted Promotions and Demotions),

(2) bar to reenlistment per Army Regulation 601-280 (Army Retention Program),
or

(3) administrative separation per Army Regulation 635-200 (Active Duty Enlisted Administrative Separations).

4. Army Regulation 623-3 (Evaluation Reporting System) prescribes the policy for completing evaluation reports and associated support forms that are the basis for the Army's Evaluation Reporting System.

a. Paragraph 3-26 (Referred Evaluation Reports) states any report with negative remarks about the rated officer's Values or Leader Attributes/Skills/Action in rating official's narrative evaluations will be referred to the rated officer by the senior rater for acknowledgment and comment before being forwarded to Headquarters, Department of the Army (HQDA).

b. Paragraph 3-28 states the referral process ensures the rated Soldier knows that his/her OER contains negative or derogatory information and affords him/her the opportunity to sign the evaluation report and submit comments, if desired.

(1) The senior rater will refer a copy of the completed OER (an OER that has been signed and dated by the rating officials) to the rated Soldier for acknowledgment and comment.

(2) Upon receipt of the rated officer's acknowledgment (for example, receipt of a signed OER, email, signed certified mail document, signed acknowledgment statement accompanying memorandum, submission of signed comments, and so forth), the senior rater will enclose it, any written comments provided by the rated officer, and the referral memorandum, with the original OER for forwarding to the reviewer (if applicable).

(3) If the senior rater decides the comments provide significant new facts about the rated Soldier's performance that could affect the evaluation of the rated Soldier, he or she may refer the comments to the other rating officials, as appropriate. The rating

officials, in turn, may reconsider their evaluations of the rated Soldier. The senior rater or reviewing official will not pressure or influence another rating official. Any rating official who elects to raise his/her evaluation as a result of this action may do so. However, the evaluation may not be lowered because of the rated Soldier's comments. If the OER is changed but still requires referral, the OER will again be referred to the rated Soldier for acknowledgment and the opportunity to provide new comments, if desired. Only the latest acknowledgment ("YES" or "NO" on OER signed by the rated Soldier) and the rated Soldier's comments, if submitted, will be forwarded to HQDA.

c. Paragraph 4-7 states evaluation reports accepted for inclusion in the official record of an officer are presumed to be administratively correct, been prepared by the proper rating officials, and represent the considered opinion and objective judgment of rating officials at the time of preparation. To justify deletion or amendment of a report, the appellant must produce evidence that establishes clearly and convincingly that the presumption of regularity should not be applied to the report under consideration or that action is warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence must be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. The burden of proof rests with the appellant.

d. Paragraph 4-11a-b states an evaluation report accepted for inclusion in the official record of a rated Soldier's OMPF is presumed to be administratively correct, to have been prepared by the proper rating officials, and to represent the considered opinion and objective judgment of the rating officials at the time of preparation. The burden of proof rests with the appellant. Accordingly, to justify deletion or amendment of a report, the appellant must produce evidence that establishes clearly and convincingly that the presumption of regularity should not be applied to the report under consideration and action is warranted to correct a material error, inaccuracy, or injustice.

e. 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 (see Department of the Army Pamphlet 623-3 (Evaluation Reporting System)). Third parties are persons other than the rated officer or rating officials who have knowledge of the appellant's performance during the rating period. Such statements are afforded more weight if they are from persons who served in positions allowing them a good opportunity to observe firsthand the appellant's performance as well as interactions with rating officials. Statements from rating officials are also acceptable if they relate to allegations of factual errors, erroneous perceptions, or claims of bias. To the extent practicable, such statements will include specific details of events or circumstances leading to inaccuracies, misrepresentations, or injustice at the time the report was rendered.

f. Paragraph 4-13a(2) states limited support is provided by statements from people who observed the appellant's performance before or after the period in question (unless performing the same duty in the same unit under similar circumstances); letter of commendation or appreciation for specific but unrelated instances of outstanding performance; or citations for awards, inclusive of the same period.

5. Department of the Army Pamphlet 623-3 (Evaluation Reporting System) provides procedural guidance for completing and submitting evaluation reports and associated support forms to Department of the Army.

a. Paragraph 2-28 provides that:

(1) If a referred OER is required, the senior rater will place an "X" in the appropriate box in Part IId of the completed OER. The OER will then be given to the rated officer for signature and placement of an "X" in the appropriate box in Part IId.

(2) The rated officer may comment if he/she believes the rating and/or remarks are incorrect. The comments must be factual, concise, and limited to matters directly related to the evaluation rendered in the OER; rating officials may not rebut rated officer's referral comments.

(3) The rated officer's comments do not constitute an appeal. Appeals are processed separately. Likewise, the rated officer's comments do not constitute a request for a Commander's Inquiry. Such requests must be submitted separately.

6. Army Regulation 600-37 (Unfavorable Information), 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 AMHRR.

a. An administrative memorandum of reprimand may be issued by an individual's commander, by superiors in the chain of command, and by any general officer or officer exercising general court-martial jurisdiction over the Soldier. The memorandum must be referred to the recipient and the referral must include and list applicable portions of investigations, reports, or other documents that serve as a basis for the reprimand. Statements or other evidence furnished by the recipient must be reviewed and considered before a filing determination is made.

b. A memorandum of reprimand may be filed in a Soldier's OMPF only upon the order of a general officer-level authority and is to be filed in the performance folder. The direction for filing is to be contained in an endorsement or addendum to the memorandum. If the reprimand is to be filed in the OMPF, the recipient's submissions

are to be attached. Once filed in the OMPF, the reprimand and associated documents are permanent unless removed in accordance with chapter 7 (Appeals).

c. Paragraph 7-2 (Policies and Standards) states 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.

d. Paragraph 7-3(c) states an officer who directed the filing in the AMHRR of an administrative memorandum of reprimand, admonition or censure, may request its revision, alteration, or removal, if evidence or information indicates the basis for the adverse action was untrue or unjust, in whole or in part. An officer who directed such a filing must provide the DASEB a copy of the new evidence or information to justify the request.

7. 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 3-6 provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or another authorized agency.

8. Army Regulation 600-8-24 (Officer Transfers and Discharges) prescribes the officer transfers from active duty to the Reserve Component and discharge functions for all officers on active duty for 30 days or more. It provides principles of support, standards of service, and policies to support office transfers and discharges. Chapter 5 (Miscellaneous Types of Separations) prescribes disposition and procedures concerning miscellaneous types of separations whereby an officer may be dismissed, released, separated, and discharged from active duty. Paragraph 5-6 states commissioned officers and chief warrant officers on the Active Duty List twice nonselected for promotion to the grade of captain, major, lieutenant colonel, chief warrant officer three, or chief warrant officer four will be involuntarily released or discharged.

9. Army Regulation 600-8-29 (Officer Promotions) prescribes the officer promotion function of military human resources support operations. Paragraph 7-1b states before the selection board report is approved by the President or President's designee, the name of an officer in a grade above second lieutenant recommended for promotion by a selection board may be removed from the report of the board only by the President,

Secretary of Defense, or Deputy Secretary of Defense pursuant to Title 10, U.S. Code, section 618(d).

10. Army Regulation 600-20 (Army Command Policy) prescribes the policies and responsibilities of command, which include the Army Ready and Resilient Campaign Plan, military discipline and conduct, the Army Military Equal Opportunity Program, the Army Harassment Prevention and Response Program, and the Army Sexual Harassment/Assault Response and Prevention Program. Paragraph 4-23 (Self-reporting of Criminal Convictions by Officers and Senior Enlisted Members) states:

a. All U.S. Army commissioned officers, warrant officers, and enlisted members above the grade of E-6 will report, in writing, any conviction of such member for violation of a criminal law of the United States – whether or not the member is on active duty or inactive duty at the time of the conduct which provides the basis for the conviction. The member will report using either a DA Form 4187 (Personnel Action) or a memorandum (see Army Regulation 600-8-6 (Personnel Accounting and Strength Reporting)). Reporting is required for any criminal conviction announced on or after 1 March 2008.

b. The report will be made to the Soldier's commander within 15 days of the date the conviction is announced, even if sentence has not been imposed or the Soldier intends to appeal the conviction.

//NOTHING FOLLOWS//