

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 September 2024

DOCKET NUMBER: AR20230002592

APPLICANT REQUESTS:

- reconsideration of her previous requests to remove a referred DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW4) Officer Evaluation Report (OER)) for rating period 20150701 through 20151027
- as a new request, promotion to lieutenant colonel (LTC)/O-5, retroactive to 2018
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- U.S. Representative Privacy Release Authorization
- Letter to Promotion Board President
- Counsel's Letter to the Army Grade Determination Review Board (AGDRB) with Attachments
- Letter to Chairman Joint Chiefs of Staff
- Email and input for the Colonels Command Assessment Program
- Army Review Boards Agency (ARBA) Letter
- Applicant's Rebuttal to ARBA Medical Advisory Opinion (AR20170010418)

FACTS:

1. Incorporated herein by reference are military records, which were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers:

- AR20170019322 on 6 March 2018,
- AR20190003574 on 13 July 2020

2. The applicant states she is requesting the removal of the referred OER based on guidance within Army equal opportunity (EO) regulations, the report is false and unjustified. She additionally requests the Board to retroactively promote her; she argues, the consistent injustice (of failing to remove the referred OER) prevented her from being promoted in 2018 and resulted in lost wages to include affecting her retired

grade of rank and retirement pay. It also had her serve in the grade of rank of major (MAJ)/O-4 for exactly 10 years and 6 months prior to retirement.

a. She received the response from ARBA to her congressional complaint to [applicant's U.S. representative] regarding her documented discriminatory and prejudicial treatment of black Army applicants' appeals to ARBA. She was informed by that she is required to provide yet another appeal to the same 4-month OER that prevented her from being promoted with her peers in 2018. She has provided over 800 pages of factual evidence in black and white from regulatory sources from the beginning (in 2015) which substantiated this injustice and summarily has been ignored.

b. She is writing this letter to file yet another appeal to the referred OER which remains in her permanent military records to date whilst her white peer, MAJ T__ B__, was exonerated post haste and promoted with a backdated promotion date of December 2020. She had two general officer memoranda of reprimand (GOMOR), a referred OER, and was retained by a show cause board.

c. The applicant goes on to state, she was hard-pressed to get any information reference her appeal(s), the most recent of which she filed by the due date of April 2019, she (now MAJ T__ B__) was able to get updates telephonically on a regular basis. While it took each one of her appeals over a year to process and to receive a denial for, she was able to file her appeals and get all her derogatory information purged from her records in a matter of mere months. By removing her derogatory information, it allowed her to get promoted (as she deserved and should have been). Once she informed me of her promotion in early 2022, she then knew then that all her appeal denials were personal in nature and based solely on her race.

d. From the very beginning, this referred OER should never have been made permanent in her files solely based on the governing EO regulation at that time in 2015. Initial command climate surveys cannot be used as punitive measures absent any substantiated criminal activity or violation of the Uniform Code of Military Justice (UCMJ) – none of which were supported by the initial command climate survey investigation during her last and 6th deployment in 2015 while in command.

e. Her subsequent appeal included the findings and conclusions from the investigating officer who was by that time incarcerated for fighting with police officers and violating a restraining order (which she provided factual documentation for which clearly proved his lack of credibility for any investigation. His word was taken as gospel, and 17 Black and Hispanic Officers and noncommissioned officers received irreparable damage for this initial command climate survey based solely upon his fantasized conclusions – none of which were based on evidentiary documentation or reality. All officers involved in issuing this punishment were white – from the brigade commander

down to the battalion commander, who destroyed careers, yet none of this was taken into consideration.

f. The glaring fact of the matter is that race should NOT have played ANY part of this because it was clearly written in the EO regulation that command climate surveys could not be used as punitive measures absent any substantiated criminal activity, UCMJ violation(s) etc. as outlined within the regulation. She has even worked at ARBA as an analyst and written many cases for review by the board. She knows that they were taught to be fair and impartial when writing and to base everything upon what was in front of them.

g. She is a Soldier who was deployed six times and can attest to the fact that, during Operation Iraqi Freedom I, communication was challenged for their 15-month deployment from April 2003 to July 2004. Communication was not challenged in 2015 in Kuwait, where they were co-located with the higher headquarters.

h. Not only was she blackballed from being promoted, but she was also both sexually and physically assaulted by the battalion command sergeant major (CSM) immediately upon her redeployment from her 6th and last deployment in the Army. The ARBA medical advisor even wrote that there were no mitigating circumstances that would warrant her defending her person as human being and a field grade commissioned officer – against a 6'3" white male battalion CSM. Not one commander in his chain of command investigated him. Not one. The Fort Drum military police did not even contact her attorney for her statement.

i. She finally got the courage to report this incident – the same incident that one of the analysts excavated to their report for her OER appeal even though this incident was involved in her GOMOR appeal and had already been adjudicated and exonerated. Nothing was investigated once she did report the incident – the same way nothing was investigated when the incident occurred. Fort Meade U.S. Army Criminal Investigation Command closed the case for lack of probable cause and stated that they did not have the resources to investigate her case and that too much time had passed since the incident occurred.

3. The applicant provides documents from the Board's previous considerations of her case, along with the following:

a. Privacy Act Release, dated January 2023 that included an explanation of the resolution the applicant was seeking.

b. Memorandum, dated 27 August 2021, from the applicant to the president of a LTC promotion board.

(1) The applicant argued the credible adverse information is false and unsubstantiated. It should not be in her records, according to the decision memo. The admonishment was issued for the initial command climate survey she conducted within 45 days boots on ground as the incoming Financial Management Support Unit (FMSU) Commander. It was conducted in accordance with local EO guidance that all units were to conduct an initial command climate survey within 60 days. As stated in the admonishment disposition memorandum, it was to be filed locally and destroyed after 2 years or upon transfer to another general court-martial convening authority, whichever occurred first.

(2) In reference to the GOMOR, she was provoked and given false information by the former 10th Mountain Division SBDE, STB Commander. After receiving this information, she was then physically assaulted from behind by the former STB CSM in a suffocating combatives hold. She could not breathe nor could she move any part of her body. Continuously re-addressing and re-living this incident is certainly re-traumatizing, but she feels it is important to put all of this information into context for the board members. Both the elimination board of inquiry (BOI) and ABCMR have adjudicated these matters. She was granted full relief from the public GOMOR filing on 27 November 2017. The BOI voted unanimously to retain her in the Army. She has not been promoted since partially due to the referred 120-day report, which remains visible in her records to date.

c. Counsel's memorandum, dated in July 2022 and addressed to the AGDRB, in which he conveys the applicant's request to be retired in the rank/grade of MAJ/O-4.

(1) In support of the applicant's request, counsel argues the applicant satisfactorily completed over 20 years of active duty service and, indicative of her value as an Army officer, she was given the option of the selective continuation of her service after her non-selection for promotion. Further, the level of her duty performance, as reflected in her officer evaluation reports, affirmed she excelled both before and after her alleged minor misconduct.

(2) Concerning medical considerations, counsel states the applicant deployed 6 times and those deployments caused her to incur post-traumatic stress disorder (PTSD). At the time her rating chain gave her the referred OER, the applicant was already dealing with the effects of her PTSD. In addition, the applicant was "physically and sexually assaulted by her battalion CSM, which led to [applicant] filing an unrestricted report of sexual assault. Despite having PTSD and being subjected to military sexual trauma, [applicant] continued to excel in her duties and as officer, Soldier, and most importantly in this context, as a MAJ."

(3) The referred OER resulted from a locally filed letter of admonishment; at the time, the applicant had been the unit commander for a mere two weeks before the initial

command climate survey was administered. "She did not have time to get this unit squared away prior to this climate survey or the letter of admonishment....The conduct alleged in the OER we continue to dispute."

d. The applicant submits her personal health information, which contains a "Problem List History," showing diagnoses for Adjustment Disorder with mixed anxiety and depressed mood; Major Depressive Disorder, single episode, severe without psychotic features; and PTSD.

e. Applicant's letter to the Chairman Joint Chiefs of Staff, dated in August 2017, wherein she requests an office call and a letter of support due to her pending BOI.

(1) The applicant stated, "I feel that this elimination is premature and unjust. It is a targeted effort to extinguish my stellar military career at almost 18 years of service. I have not been passed over for any promotion that I have earned. My primary zone promotion board to Lieutenant Colonel is next year in 2018."

(2) The applicant went on to list a timeline of significant events and added, "Everyone who has denied my appeals and requests have been white males every step of the way and the elimination board most recently consisted of three white males. I had to request that at least one member of the board be a minority, preferably black or African American if you will, and if possible a female, if not both. I have been notified that the third member of the board is indeed an African American female, but MDW (Military District of Washington) has yet to provide my attorney with a picture of this individual."

(3) The applicant concluded, "Sir, I respectfully request your support in my endeavor to continue my career and reach my 20-year retirement. I also request that these unfair, unjust, covert practices to attrit minorities out of the military be stopped. There is no doubt in my mind that the punishment for my one offense is excessive and prejudicial."

f. Email, in which the applicant was asked to provide input for a CCAP pertaining to her former battalion commander and rater for the referred OER during her 2015 deployment to Kuwait. In response, the applicant submitted two pages, which began, "COL K__ is the most overtly racist officer I have ever worked with in my entire career. I have been passed over 3 times because of a 4-month referred OER he issued me for an initial command climate survey."

(1) The applicant went on to detail how COL K__'s actions ensured she would not receive due process, and that 90 percent of the officers and noncommissioned officers to whom COL K__ issued letters of reprimand were black. "COL K__ even went so far as to convince my home station BDE CDR, COL D__ V__ G__ to put me out of

the Army. When I arrived from my 6th deployment, on the day before Thanksgiving, 25 Nov 2015, I was informed by the 10th STB CDR, COL L__ (G__) C__ that I was flagged for involuntary elimination from the Army after 16 yrs of dedicated service based SOLELY upon this initial command climate survey."

(2) "Prior to ever working with or for COL K__, I had a bright career. Now I continue to take 3 different psychiatric medications due to these events. He should be investigated and demoted. The fact that he has tried to kill my family and my career is evidence that I am not the only one he has done this to. He has done irreparable damage to my career and almost got my hard earned retirement taken away from me along with any subsequent benefits – solely based on an initial command climate survey. He needs to be put in a mental institution away from others. He systematically investigated all of his subordinate units with black First Sergeants and tried to have them all relieved of their positions. The only unit he did not investigate or harass was an MP unit because they were all white male Soldiers...."

4. A review of the applicant's service record shows:

a. On 8 August 2002, after completing over 2 years of enlisted service in the Regular Army and graduating from officer candidate school, the applicant executed her oath of office as a U.S. Army Reserve commissioned officer, branched in the Finance Corps. On an unknown subsequent date, the Army integrated the applicant into the Regular Army.

b. Effective 1 January 2012, she was promoted to MAJ/O-4. In or around June 2012, orders reassigned the applicant from U.S. Army, Europe to Fort Drum, NY; she held the position of Financial Management Support Operations Officer until on or about 1 June 2014, when she assumed command of the FMSU at Fort Drum. On 21 June 2015, the applicant deployed with her unit to Kuwait; by this point, she had completed five prior deployments.

c. On 21 September 2015, COL A__ T. C__ appointed LTC N__ J. H__ as an AR 15-6 investigating officer (IO) to address the facts and circumstances surrounding command climate concerns within the FMSU. On 15 October 2015, the IO submitted his report.

(1) In the report, the IO identified an instance where the applicant allegedly forced a first lieutenant (1LT) to drive himself to training in Indiana, despite having a physical profile that stated, no temporary duty)/extensive travel for 60 days; the 1LT had undergone eye surgery.

(2) Additionally, the IO stated that the applicant's "Failure to support the SHARP (Sexual Harassment/Assault Response and Prevention) program by not ensuring

continued progress on her Soldiers' cases back at Fort Drum. The command climate surveys show a deterioration of unit morale, lack of faith in leadership, an erosion of trust in leadership from MAR 2015 to AUG 2015."

(3) Further, the IO indicated the applicant had not set up an officer development plan; she had failed to "recognize and prevent multiple instances of fraternization in the unit between NCOs and junior enlisted"; and the applicant's section had trouble meeting its requirements, as evidenced by late payments, poor supervision, and being unprepared for "financial triad meetings."

(4) The IO cited 14 officers and NCOs for failing to recognize and advise the command of fraternization. Concerning the question as to whether any FMSU leaders had committed acts of discrimination, the IO identified three NCOs for "treatment of Soldiers not of African descent vs. their treatment of African American Soldiers"; specifically referring to the alleged mistreatment of an Asian American Soldier. "These NCOs showed favoritism to two Soldiers based on their race at the detriment of other Soldiers in the detachment."

(5) As to whether any of the leaders in the FMSU were toxic, the IO stated, "On multiple occasions, [applicant] ostracized and belittled Soldiers and leaders in her unit." Additionally, the IO stated that he found the applicant "derelict" in the following ways:

- Applicant failed to ensure the functionality of her unit through a lack of engagement and an inability to prioritize, guide, and focus her subordinates' efforts
- Applicant's "state of mind is of imminent concern"; "being in a position of authority with such an elevated level of paranoia should put [applicant] under strong consideration to be removed from command"
- Applicant used a 1LT's OER to retaliate against him for calling the IG (inspector general) on another officer (CPT B__)

(6) The IO recommended the leadership immediately remove the applicant from command and advocated for other officers and NCOs to receive administrative reprimands and/or nonjudicial punishment.

d. On 13 November 2015, the 1st Sustainment Command (Theater) Commanding General (CG) issued the applicant a Memorandum of Admonition for substandard leadership while serving as the FMSU detachment commander. Citing the AR 15-6 investigation report, the CG stated, "your decision to use the unit's non-tactical vehicle for your personal use in violation of 1st Sustainment Command (Theater) policy, and your apparent lack of authentic concern for your subordinates' welfare, indicate that you do not always exercise the level of sound judgment required of an Army leader. Additionally, I have serious concerns that your leadership style permitted an

environment in which several of your subordinates, both officers and enlisted, engaged in significant misconduct about which you were unaware, unconcerned, or were unwilling to halt."

e. In or around January 2016, the applicant's rater (COL R__ W. K__) and senior rater (COL A__ T. C__) rendered a referred OER for the duty position of FMSU commander during the rating period 20150701 through 20151027.

(1) While the rater lauded the fact that the applicant had scored 300 points on her Army Physical Fitness Test and had demonstrated "absolutely superb" technical and tactical ability, he observed that an informal AR 15-6 investigation had shown she "struggles with her intrapersonal skills and with that has difficulties maintaining a positive command climate."

(2) After rating the applicant as "Capable," the rater added, "[Applicant's] performance as the Disbursing Officer within the FMSU was nothing short of stellar. She flawlessly maintained accountability of over \$15 million in government funds and consistently exceeded standards for DFAS processing rates. In addition, [applicant] reduced the government's interest requirement by over \$50 million and received 100 percent green ratings during the internal controls operational review."

(3) The senior rater rated the applicant as "Qualified" and stated, "[Applicant's] technical and problem solving skills are exceptional. She possesses unlimited potential to lead systems and processes."

f. On 5 January 2016, the Commanding General, Headquarters, Fort Drum issued the applicant a GOMOR because, while being counseled by her battalion commander (LTC L__ (G__) C__), the applicant used profanities and knocked items off the battalion commander's desk, causing damage to a laptop and requiring the battalion CSM to physically restrain her.

g. On 26 January 2016, the applicant provided comments pertaining to the referred OER; she declared the report was "incorrect and not an accurate reflection of my performance during the four month rating period....it reflects unfairness and a lack of objectivity based upon four very important facts." The applicant argued the following:

(1) The applicant noted her rater did not issue her any negative counseling statements and never addressed any "intrapersonal skills" issues. In the contrary, the rater "provided me with consistent, positive feedback about my performance during the rating period...."

(2) As noted in the report, the AR 15-6 investigation was an informal inquiry into the results of a command climate survey; that initial survey was conducted within

45-days of the unit's arrival in Theater and, as such, there was insufficient time to accurately assess the applicant's "intrapersonal skills."

(3) The applicant maintained the adverse rating was in retaliation for a previous OER she had rendered on a 1LT; in that OER, she rated the 1LT's performance as "Capable." The applicant's rater in the referred OER also was the 1LT's senior rater, and he pressured the applicant to revise her assessment.

(4) The language that required the OER to be referred (i.e., intrapersonal skills) appeared nowhere in the AR 15-6 investigation as a substantiated finding.

(5) Rather than issuing a referred OER, the rater should have given the applicant and her unit the opportunity to address the issues identified in the survey/sensing sessions. The applicant pointed out that, if she had had severe issues with her "intrapersonal skills," her leadership would never have selected her for command.

(6) "Furthermore, it is apparent that this evaluation is an injustice as I was not relieved of command nor was I informed prior to the end of the rating period, on 27 Oct 15, and subsequent redeployment, on 24 Nov 15, that I would receive a referred report for substandard performance regarding my intrapersonal skills. At no time was I informed during the rating period by the rater or senior rater that my performance and potential would be rated as capable and qualified respectively. I was not counseled, advised or mentored on ways to improve my performance and potential, nor was I provided the opportunity to correct any perceived deficiencies prior to the close of the rating period."

h. On or about 1 March 2016, orders reassigned the applicant to the Office of the Deputy Chief of Staff, G-2 in the Pentagon. On 29 April 2016, the applicant filed an appeal on the referred OER; she requested the redaction of comments on her OER and that her overall ratings be changed. With her appeal she included a personal statement, letters of support from members of her former command, and two prior OERs.

i. On 16 May 2017, the U.S. Army Human Resources Command (HRC) initiated elimination action against the applicant, requiring her to show cause for retention, under the provisions of AR 600-8-24 (Officer Transfers and Discharges), paragraph 4-2 (Reasons for Elimination) (b (Misconduct, Moral or Professional Dereliction, or in the Interests of National Security) and c (Derogatory Information)).

j. On 4 July 2017, the applicant petitioned the ABCMR to remove or transfer the 5 January 2016 GOMOR to her restricted folder. On 8 August 2017, the Officer Special Review Board (OSRB) determined that the overall merits of the applicant's request to redact and revise her referred OER did not warrant the requested relief.

k. On 23 August 2017, a BOI convened to determine whether the applicant should be retained on active duty; the applicant was present and represented by counsel. After hearing testimony and reviewing documentary evidence, the BOI determined that the "allegation that [applicant] had substantiated derogatory activity resulting in a...referred Officer Evaluation Report for the period 1 July 2015 – 27 October 2015...is supported by a preponderance of evidence." The BOI recommended the applicant's retention.

l. On 27 November 2017, the Deputy Assistant Secretary of the Army (DASA) (Review Boards (RB)) found sufficient evidence to grant the applicant's request to transfer the GOMOR, with all allied documents, to the applicant's restricted folder.

m. On 14 December 2017, the applicant applied to the ABCMR, requesting the following corrections to her referred OER:

- Redact the statement: "As documented by a substantiated informal AR 15-6 investigation, [the Applicant] struggles with her intrapersonal skills and with that has difficulties maintaining a positive command climate"
- Change the overall rater's rating to no lower than "Proficient"
- Revise the senior rater's rating to no lower than "Highly Qualified"
- In the alternative, remove the referred OER from the applicant's service record

n. On 22 February 2018, HRC closed the applicant's elimination action.

o. On 6 March 2018, the Board voted to deny the applicant's requests pertaining to her referred OER. The Board stated it had not found sufficient basis to grant the applicant's requested relief.

p. On 6 April 2019, the applicant requested reconsideration of her requests to remove the referred OER from her service record.

(1) The applicant argued, "In my initial petition to the ABCMR, I provided the aforementioned findings and recommendations memorandum from the investigating officer as previously requested and was then informed that they are not an investigative body. I did not understand why the board requested the findings and recommendations from the investigation without the rest of it in order to put everything into context. Furthermore, I do not feel that my case was presented in the most objective manner possible due to the following facts:"

- Unlike with the appeal of her GOMOR, the ABCMR did not send her case to the DASA (RB); no one explained why her referred OER application received different treatment

- The ROP analyst wrote several paragraphs referring to the GOMOR, despite the GOMOR's placement in her restricted folder; the GOMOR was unrelated to her referred OER
- The applicant objected to the ROP analyst's treatment of evidence showing the IO for her AR 15-6 investigation later came under civilian charges for misconduct; she argued, "The analyst should present a case or summarized report that is free of subjective opinions, misstatements and conjecture"
- In December 2015, her rater and senior rater received her support form; "As leaders, we are charged with providing our subordinates every opportunity for improvement and due process. If the subordinate is not made aware of any perceived deficiencies...it purposely puts them at a disadvantage"
- Her rater and senior rater informed the applicant's Fort Drum chain of command that she would be receiving a referred OER; on her redeployment, her brigade commander thought the applicant had been relieved of her command; the command told her elimination action was being initiated
- At the time her command told her of her pending elimination action, she had no derogatory information in her file, and she was unaware of LTC K___'s intent to ensure she was never promoted and possibly lose her career

(2) On 13 July 2020, the Board reviewed the applicant's evidence and service record and recommended not to grant the requested relief.

(a) "A majority of the Board found insufficient new evidence to amend the previous decision to deny relief. The majority agreed that "imperfect" processing of the OER in question, as described by the applicant, did not meet the standard of establishing clearly and convincingly that the presumption of regularity should not be applied to this OER or that action was warranted to correct a material error, inaccuracy, or injustice."

(b) "The majority noted the statement in the OER the applicant takes issue with was supported by the findings of an investigation, and the majority found insufficient evidence to support a conclusion that the investigation or its findings were flawed. Based on a preponderance of the evidence, a majority of the Board determined the OER in question is not in error or unjust."

(c) "The member in the minority found partial relief to be appropriate in this case. The minority member found applicant's arguments compelling and noted the dissonance in the comments on her OER. With the exception of the comment regarding her intrapersonal skills, the OER is entirely laudatory. The minority member concluded that

the findings of the investigation may well have misrepresented her true performance. As such, the minority member found a preponderance of the evidence supports the applicant's request(s)...."

q. On 23 August 2022, the DASA (RB) stated, via memorandum, that the AGDRB had reviewed the applicant's voluntary retirement request and, if the retirement was approved, the DASA directed the applicant's placement on the Retired List in the rank/grade of MAJ/O-4.

r. On 31 October 2022, the Army honorably retired the applicant. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 20 years, 2 months, and 23 days of active duty service, with 2 years, 6 months, and 27 days of prior active service. The report additionally reflects the following:

(1) Items 4a (Grade, Rate, or Rank) and 4b (Pay Grade): MAJ/O-4.

(2) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- Meritorious Service Medal (2nd Award)
- Army Commendation Medal (10th Award)
- Army Achievement Medal (3rd Award)
- Meritorious Unit Commendation
- Valorous Unit Award
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Afghanistan Campaign Medal with one bronze service star
- NCO Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon with Numeral "6"
- North Atlantic Treaty Organization Medal
- Army Staff Identification Badge

5. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board majority found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a

comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and military records, the Board majority determined that the referred DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW4) Officer Evaluation Report (OER)) for rating period 20150701 through 20151027 contained comments relating to a command climate survey and such comments were inappropriately allowed to be formalized in her OER and therefore, the Board majority concluded the portion of her referred OER that included those comments should be amended to remove such comments. The Board minority determined the process was protected and fair and the comments contained in the OER were related to the Article 15-6 Investigation not specific to the command climate survey and voted to deny relief of removal of the OER or amendment of the comments of the OER.

2. Upon review of the applicant's petition and military records, the Board majority determined that relief was not warranted as it relates to the applicant's request for promotion to lieutenant colonel (LTC)/O-5, retroactive to 2018. The Board majority found no error or injustice in the applicant's retirement processing and grade determined upon retirement and concluded relief was not appropriate. The Board minority found evidence sufficient to remove the OER and the general officer memorandum of reprimand and found that would qualify her for consideration by a Special Selection Board (SSB).

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 that the evidence presented was 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 removing from her referred DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW4) Officer Evaluation Report (OER)) for rating period 20150701 through 20151027 the comment "As documented by a substantial informal AR 15-6 investigation, [Applicant] struggles with her intrapersonal skills and with that has difficulties maintaining a positive command climate."

2. The Board further determined that 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 removal of her referred DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW4) Officer Evaluation Report (OER)) for rating period 20150701 through 20151027 and promotion to lieutenant colonel (LTC)/O-5, retroactive to 2018.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10 (Armed Forces), U.S. Code, section 1556 (Ex Parte Communications Prohibited) requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicant's (and/or their counsel) prior to adjudication.

2. AR 623-3 (Evaluation Reporting System (ERS)), in effect at the time, prescribed policies and procedures for officer and NCO evaluations.

a. Paragraph 1-8 (Standards of Service). The regulation stated that the ERS encompassed the means and methods needed for developing people and leaders. It identified Soldiers who were the best qualified for promotion and assignment to positions of greater responsibility, as well as ascertaining those Soldiers who would remain on active duty, be retained in grade, or be eliminated from military service.

b. Paragraph 1-9 (Performance and Potential Evaluations). Army evaluation reports were to be independent assessments of how well the rated Soldier met duty requirements and adhered to the professional standards of the Army's Officer Corps or NCO Corps within the period covered by the report.

(1) Performance was to be evaluated by observing actions, demonstrated behavior, and results from the point of view of the Army Leadership Requirements Model, and responsibilities identified on evaluation reports and counseling support forms.

(2) Potential evaluations were to be performance-based assessments of rated officers' or NCOs' ability to perform in positions of greater responsibility and/or higher grades compared to others of the same grade.

c. Paragraph 3-2 (Evaluation Report Requirements).

(1) To render an objective evaluation, rating officials were to use all opportunities to observe and gather information on the rated Soldier's individual performance.

(2) Rating officials were to prepare evaluation reports that were forthright, accurate, and as complete as possible within the space limitations of the form. This responsibility was vital to the long-range success of the Army's mission.

(a) With due regard for the rated Soldier's current rank or grade, experience, and military schooling, evaluations were to cover failures as well as achievements. Evaluations normally were not to be based on a few isolated minor incidents.

(b) Rating officials had a responsibility to balance their obligations to the rated Soldier with their obligations to the Army. Rating officials will make honest and fair evaluations of Soldiers under their supervision. On the one hand, this evaluation was to give full credit to the rated Soldier for their achievements and potential. On the other hand, rating officials were obligated to the Army to be honest and discriminating in their evaluations so Army leaders, HQDA selection boards, and career managers could make intelligent decisions.

d. Paragraph 3-7 (Rater). For the DA Form 67-10 series reports:

(1) Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes (Rater)) were to be an assessment of a rated officer's professionalism, performance, and adherence to the attributes and core leader competencies of the Army Leadership Requirements Model.

(a) Performance evaluations were assessments of how well the rated officer met duty requirements and adhered to the professional standards of the Officer Corps. Performance was evaluated by considering the results achieved, how they were achieved, and how well the officer complied with professional standards.

(b) Raters were to comment on how well the rated officer promoted a climate of dignity and respect and adhered to the requirements of the SHARP Program; the assessment was to identify any significant actions or contributions the rated officer made toward:

- Promoting the personal and professional development of subordinates
- Ensuring the fair, respectful treatment of unit personnel
- Establishing a workplace and overall command climate that fosters dignity and respect for all members of the unit
- Raters were to comment on any substantiated finding, in an Army or Department of Defense (DOD) investigation or inquiry, that the rated officer committed, failed to report, failed to respond to a report, or retaliated against someone making a complaint of sexual harassment or assault

(2) For LTCs and below, part IV assessed the rated officer's performance, in terms of the majority of officers in the population. If the performance assessment was consistent with the majority of officers in that grade, the rater was to place an "X" in the "PROFICIENT" box. If the rated officer's performance exceeded that of the majority of officers in the rater's population, the rater was to place an "X" in the "EXCELS" box.

e. Paragraph 3-9 (Senior Rater). In part VI (Senior Rater), block a (Potential Compared with Officers Senior Rated in Same Grade), the senior rater assessed the rated officer's potential compared to all officers of the same rank. This assessment was to be based on officers the senior rater had previously senior rated and those who were in their current senior rater population.

(1) If the potential assessment was consistent with the majority of officers in that grade, the senior rater was to place an "X" in the "HIGHLY QUALIFIED" box. If the rated officer's potential exceeded that of the majority of officers in the senior rater's population, the senior rater was to place an "X" in the "MOST QUALIFIED" box. The intent was for the senior rater to use this box to identify the upper-third of officers for each rank.

(2) If the rated officer's potential was adequate, but beneath the majority of officers in the senior rater's population for that grade and the senior rater believed the rated officer should be retained for further development, the senior rater was to place an "X" in the "QUALIFIED" box. If the rated officer's potential was below the majority of officers in the senior rater's population for that grade and the senior rater did not believe the rated officer should be retained on active duty, the senior rater was to place an "X" in the "UNQUALIFIED" box.

(3) Senior raters were to comment on any substantiated finding, in an Army or Department of Defense (DOD) investigation or inquiry, that the rated officer committed, failed to report, failed to respond to a report, or retaliated against someone making a complaint of sexual harassment or assault.

f. Paragraph 3-19 (Unproven Derogatory Information). Any mention of unproven derogatory information in an evaluation report could become an appealable matter if later the derogatory information was determined to be unfounded.

(1) References were to be made only to actions or investigations that had been processed to completion, adjudicated, and had final action taken before the submission of an evaluation report to Headquarters, Department of the Army (HQDA).

(2) Rating officials were to ensure that the evaluations documented any substantiated findings, in an Army or DoD investigation or inquiry, showing a rated Soldier had committed an act of sexual harassment or sexual assault; failed to report a

sexual harassment or sexual assault; failed to respond to a report of sexual harassment or sexual assault; or retaliated against a person making such a report.

g. Paragraph 3-26 (Referred DA Form 67-10 Series). OERs with the following entries were considered referred or adverse evaluation reports. Such OERs were to be referred to the rated officer by the senior rater for acknowledgment and an opportunity to comment before being submitted to HQDA:

- A "FAIL" for the APFT or "NO" entry for height and weight indicating noncompliance with weight standards
- Rater Performance Evaluation of "Capable", where the required explanation has derogatory information
- A senior rater potential evaluation of "Qualified" where the required explanation has derogatory information

h. Paragraph 3-28 Referral Process for DA Forms 67-10 Series, DA Forms 1059, and DA Form 1059-1).

(1) The senior rater was responsible for referring the OER to the rated officer. If referral was required, the senior rater was to ensure an "X" was placed in the appropriate box on the completed OER. The senior rater referred a copy of the completed OER to the rated Soldier for acknowledgment and comment. Documentation of the rated Soldier's receipt or acknowledgment and/or annotation of actions taken to obtain acknowledgment were critical. The rated Soldier had the opportunity to sign the OER and had to decide whether or not he or she would submit comments, placing an "X" in the "YES" or "NO" box on the evaluation report.

(2) Upon receipt of the rated officer's acknowledgment, the senior rater was to enclose the acknowledgement, any written comments provided by the rated officer, and the referral memorandum with the original OER for forwarding to HQDA.

i. Chapter 4 (Evaluation Report Redress Program), Section III (Evaluation Appeals).

(1) Paragraph 4-7 (Policies). An evaluation report accepted for inclusion in the rated Soldier's OMPF was presumed to be administratively correct, prepared by the proper rating officials, and representing the considered opinion and objective judgment of the rating officials at the time of preparation. An appeal was to be supported by substantiated evidence; appeals that alleged the evaluation report were incorrect, inaccurate, or unjust without usable supporting evidence were not considered. The determination regarding adequacy of evidence was made by HQDA.

(2) Paragraph 4-11 (Burden of Proof and Type of Evidence). The Burden of proof rested with the appellant; as such, to justify deletion or amendment of an

evaluation report, the appellant had to produce evidence that clearly and convincingly established that the presumption of regularity should not be applied to the evaluation report and/or action was warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence had to be of a strong and compelling nature, not merely proof of the possibility of an administrative or factual error. If the adjudication authority was convinced that the appellant was correct in some or all assertions, the clear and convincing standard had been met with regard to his or her assertions.

(3) Paragraph 4-12 (Army Special Review Board (AKA OSRB)).

(a) The ASRB operated within the guidelines established in this regulation. The board, which was comprised of senior officers and NCOs, evaluated and acted on evaluation report appeals. The president and assistant president for each board, under the direct authority and supervision of the Army's Director of Military Personnel Management, were delegated the authority to take final action on evaluation report appeals on behalf of HQDA.

(b) Board proceedings were administrative and non-adversary; the provisions of AR 15-6 did not apply. Although not bound by the rules of evidence for trials by court-martial or other court proceedings, the board did keep within the reasonable bounds of evidence that were competent, material, and relevant. Neither the appellant nor his or her agent were authorized to appear before the board.

(4) Paragraph 4-13 (Appeals Based on Substantive Inaccuracy). Once the decision had been made to appeal an evaluation report, the appellant was to state succinctly what was being appealed and the basis for the appeal. For example, the appellant was to state whether the entire evaluation report was contested or only a specific part, and the basis for the belief that the rating official was not objective or had an erroneous perception of the Soldier's performance. The evidence had to support the allegation. The appellant needed to remember that the case would be reviewed by impartial board members who were to be influenced only by the available evidence. Their decision would be based on their best judgment of the evidence provided.

3. AR 600-8-104 (Army Military Human Resource Records Management), in effect at the time, prescribed policies and procedures for the management of Army Military Human Resources Records.

a. Paragraph 3-6 (Authority for filing or removing documents in the Army Military Human Resource Record folders) stated once a document was properly filed in the Army Military Human Resource Record, the document could not be removed unless directed by the ABCMR or other authorized agency.

b. Appendix B (Documents Required for Filing in the Army Military Human Resource Record and/or iPERMS (Interactive Personnel Electronic Records Management System) contains the list of all documents approved for filing and shows the DA Form 67-10-2 is to be placed in the Soldier's performance folder.

4. AR 600-8-29 (Officer Promotions), currently in effect, includes guidance on special selection boards (SSB) in chapter 6 (SSB).

a. SSBs may be convened under Title 10, USC, section 628 (SSB) to consider or reconsider commissioned or warrant officers for pro-motion when HQDA determines that one or more of the following circumstances exist: administrative error or material unfairness.

b. An SSB will consider the record of the officer as it should have been considered by the original board. The record will be compared with a sampling of those officers of the same competitive category, who were recommended and not recommended for promotion by the original selection board.

c. Officers selected for promotion by an SSB will, as soon as practicable, be appointed to that grade. When appointed to the next higher grade as the result of the recommendation of an SSB, the officer will have the same date of grade, the same effective date for the pay and allowances of that grade, and the same position on the ADL as the officer would have had if he or she had been recommended for promotion to that grade by the board which should have considered, or which did initially consider, him or her.

//NOTHING FOLLOWS//