

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 December 2023

DOCKET NUMBER: AR20230002650

APPLICANT REQUESTS: removal of the general officer memorandum of reprimand (GOMOR), 17 September 2016, from his Army Military Human Resource Record (AMHRR).

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552).

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 the GOMOR has served its intended purpose because he is no longer in the service.
3. On 28 March 2016, the applicant was counseled for fraternization with another service member's (Specialist (SPC) Sc___'s) spouse. He was issued a Military Protective Order (MPO) the same day, noting he (who was also married) was caught at another service member's home alone with the other service member's wife and was ordered to remain at least 500 feet away from Mrs. Sc___.
4. The applicant was serving in the Regular Army in the rank/grade of staff sergeant/E-6 when Captain M___ B. D___ was appointed as the investigating officer (IO) to conduct an administrative investigation into the alleged misconduct of the applicant engaging in an inappropriate relationship. The IO was instructed, at a minimum, to address the following:
 - what was/is the general character of the relationship between the applicant and Ms. C___ E. Sc___ (i.e., was it platonic, romantic, sexual, etc.) – if there was a sexual component to the relationship, identify when the sexual intercourse occurred

- establish the time period during which this relationship existed
- was Ms. Sc___ and/or the applicant married at any time during the relationship
- did the relationship between Ms. Sc___ and the applicant negatively impact morale or good order and discipline – if so, how
- include any other matters relevant to the investigation which are discovered during the course of the investigation

5. The Headquarters, 7th Army Joint Multinational Training Command, memorandum with exhibits from the IO (Army Regulation 15-6 (Procedures for Investigating Officers and Boards of Officers) Findings and Recommendations – Allegations in Regard to: (Applicant)), 26 May 2016, noted the following findings:

a. The investigation into allegations that the applicant engaged in an inappropriate relationship found evidence to support the allegations of an inappropriate relationship and that good order and discipline were impacted in both the 2d Cavalry Regiment and the 7th U.S. Army Noncommissioned Officer Academy (NCOA). However, there was no conclusive evidence that sexual intercourse occurred.

b. Facts:

(1) Mrs. Sc___ and SPC Sc___ have been married since 2013 and are currently still married, though legally separated (exhibits 4 and 15). Mrs. S___ finalized the Early Return of Dependents process and departed Germany for Florida on 25 May 2016 (exhibits 15 and 17).

(2) The applicant has been married to R___ V___ since approximately 2001 and is currently still married (exhibit 8).

(3) The applicant was alone with Mrs. Sc___ on two separate occasions (exhibits 4, 8, and 15). SPC Sc___ witnessed the applicant pulling up his pants in the back seat of his spouse's vehicle on 6 March 2016 (exhibit 4). Both his spouse and the applicant deny that he was inside her vehicle during the 6 March 2016 incident.

(4) The applicant and Mrs. Sc___ have interacted via Short Message/Messaging Service (SMS) and WhatsApp messaging over the course of several months from early 2015 through March 2016 (exhibits 8 and 15). Both the applicant and Mrs. Sc___ claim to have no current records of any of the SMS/WhatsApp messages. SPC Sc___ also had no evidence of the messages (exhibits 4, 8, and 15).

(5) The NCOA Commandant, Command Sergeant Major (CSM) Sm___, issued an MPO on 28 March 2016 (exhibits 5, 6, and 11). The commandant also issued a DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)) against the applicant on 2 May 2016 (not available for review) (exhibits 5, 6, 12, and 13).

c. Findings:

(1) The relationship began as a professional relationship between a Service Credit Union customer and a Service Credit Union employee. Over the course of 2015 through the beginning of 2016, the relationship became friendly, which included messaging and conversations in the workplace, as well as work/personally related phone calls. In March 2016, the two saw each other twice socially outside of the professional setting. The nature of the relationship from 5 March 2016 through 28 March 2016 turned into a more personal one as the applicant advised Mrs. Sc___ through relationship issues and her early return of dependents processes (exhibits 8 and 15). It is probable that some physical relationship occurred between the applicant and Mrs. Sc___ on those two separate occasions in March when they were alone. It is probable that an unprofessional relationship existed via SMS/WhatsApp messages between them as well. The applicant's actions, such as hiding in the basement of the house during the second incident, cast serious doubt on his integrity and the nature of his relationship with Mrs. Sc___. Additionally, the applicant has not informed his wife of the incidents as of the date of this report (exhibits 8 and 15). He finds SPC Sc___'s version of the 6 March 2016 incident more credible, as he has little motive to fabricate a story alleging that he has an adulterous wife.

(2) This relationship began in the fall of 2015 and terminated on or about 28 March 2016 when the MPO was issued to the applicant by the NCOA. It is not believed that the applicant violated the MPO (exhibits 8, 9, and 15).

(3) Both were married during the entire span of the relationship (exhibits 8 and 15).

(4) Both the 2d Cavalry Regiment and the 7th U.S. Army NCOA were negatively impacted by this relationship.

d. Based on the findings, the IO noted the applicant engaged in a personal relationship short of sexual intercourse, while married, with another service member's wife. He placed himself repeatedly in inadvisable, suspicious situations that have had repercussions in both his and his unit's reputation. Based on the applicant's actions, he should be permanently removed from his instructor position at the NCOA.

6. The memorandum for Chief of Staff, Headquarters, 7th Army Joint Multinational Training Command (Legal Review of Army Regulation 15-6 Investigation Regarding: (Applicant), Concerning Adultery and Inappropriate Relationship), 16 June 2016, found no legal objections to the IO's investigation. The legal advisor noted he reviewed the investigation and determined it was legally sufficient and complied with legal requirements. The findings were supported by a greater weight of the evidence than supported by a contrary conclusion. The recommendations were consistent with the

findings and acceptable, feasible, and suitable. There were no legal objections to the Army Regulation 15-6 investigation.

7. On 20 July 2016, the applicant's commander initiated a DA Form 268 against the applicant for adverse action; the form does not provide any other remarks.

8. The NCOA Commandant submitted a memorandum for Commander, 7th Army Training Command (Request to Issue a General Officer Memorandum of Reprimand, (Applicant), 7th Army Training Command NCOA), 1 August 2016, for the following reasons:

CPT [Captain] M____ D____ (IO) was appointed to investigate the allegations that [Applicant] was participating in an adulterous relationship with Mrs. C____ Sc____, SPC R____ Sc____'s spouse. The findings concluded there was not enough evidence to prove adultery. However, there is enough evidence to demonstrate that at a minimum an inappropriate relationship was taking place. On two separate occasions, SPC Sc____ found [Applicant] alone with his wife. On 6 March 2016 he found [Applicant] and Mrs. Sc____ in the backseat of Mrs. Sc____'s car, where [Applicant] was just finishing zipping up his pants. On 21 March 2016, SPC Sc____ found [Applicant] hiding in the basement while Mrs. Sc____ and [Applicant] had been at her house eating dinner alone. Despite denial by both [Applicant] and Mrs. Sc____ that anything sexual happened, the fact remains that on two separate incidents SPC Sc____ found [Applicant] alone with his wife in compromising and inappropriate positions.

As a noncommissioned officer, he had a special duty to exemplify the highest standards of conduct and to follow, as well as enforce, Army Standards and policies. His actions demonstrate a disturbing lack of professionalism, maturity, and sound judgement. His substandard conduct leads me to question his suitability to lead Soldiers as an instructor at the NCOA.

9. The Commanding General, Headquarters, 7th Army Training Command, reprimanded applicant in writing on 17 August 2016 wherein he stated:

You are reprimanded for compromising your position as a noncommissioned officer in the 7th Army Training Command's Noncommissioned Officer Academy. Your conduct was prejudicial to good order and discipline when you created the perception that an inappropriate relationship may have occurred between yourself and the spouse of a junior Soldier. On two separate occasions, SPC Sc____ found you alone with his wife. On 6 March 2016, SPC Sc____ found you with his wife in the backseat of her car, zipping up your pants. On 21 March 2016, SPC Sc____ found you hiding in the basement of his home after you and SPC Sc____'s wife had finished eating dinner alone.

As a noncommissioned officer, you have a special duty to exemplify the highest standards of conduct and to follow, as well as enforce, Army Standards and policies. Your actions demonstrate a disturbing lack of professionalism, maturity, and sound judgment. Your substandard conduct leads me to question your suitability to lead Soldiers or serve in any capacity in the U.S. Army.

This reprimand is imposed as an administrative measure under the provisions of AR [Army Regulation] 600-37 and not as punishment under Article 15, UCMJ [Uniform Code of Military Justice]. I am considering filing this reprimand in your Official Military Personnel File (OMPF), but will make a final determination only after considering any matters you provide as well as the recommendations of your chain of command. Additionally, a suspension of favorable personnel actions will be initiated against you by your commanding officer in accordance with AR [Army Regulation] 600-8-2 [Suspension of Favorable Personnel Actions (Flag)].

You will acknowledge this memorandum by signing the attached endorsement, and returning it to me within 10 calendar days, together with any statements or rebuttal on your behalf.

10. On 30 August 2016, counsel submitted a rebuttal on behalf of the applicant, requesting to file the GOMOR in the applicant's local unit file for the following reasons:

a. The applicant served honorably for 16 years as an indirect fire infantryman, deployed to Iraq three times, was wounded twice during deployments, and received the Purple Heart. His career showed a Soldier who continually sought additional responsibility and ways to contribute to the Army, as evidenced by his various leadership positions, his tenure as an instructor at the NCOA, and his training as an Army Combatives Program Master Trainer.

b. The applicant acknowledged he made a mistake, apologized to his family for the pain he caused, and is deeply saddened and embarrassed that his conduct was such that it received a stern rebuke from his commanding general. He has been removed from his position as an NCOA instructor and is on the long road to repairing his relationship with his wife. He recognized that all of this is a result of his mistake and he stands ready to accept the commanding general's decision as to the disposition of the GOMOR. However, he asks that the commanding general balance the applicant's otherwise blemish-free 16 years of honorable service against this mistake and see it for what it is – and aberration in an otherwise honorable career.

c. In conclusion, the applicant respectfully requests to allow the reprimand to serve as the reminder that his actions fell short of expectations and to file it in his local file.

This will still serve as a rebuke for his actions, but allow him to continue to soldier on and finish his career honorably.

11. On 7 September 2016 after carefully considering the circumstances of the misconduct, the recommendations made by the applicant's chain of command, and all matters submitted by the applicant in defense, extenuation, or mitigation, the commanding general directed permanently placing the reprimand in the applicant's OMPF. He further directed that all enclosures will be forwarded with the reprimand for filing as appropriate. Additionally, the suspension of favorable personnel actions initiated against the applicant by his chain of command in accordance with Army Regulation 600-8-2 for this administrative reprimand would be lifted.

12. He was honorably discharged in the rank/grade of staff sergeant/E-6 on 29 April 2018. He completed 17 years, 10 months, and 2 days of net active service during this period.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, applicable regulatory guidance. The Board agreed that as an NCO, the applicant had a special duty to uphold the highest standard of conduct, follow and enforce those standards. The Board noted that the investigation was determined to be legally sufficient and complied with legal requirements. Findings were supported by the evidence and in accordance with regulatory guidance.

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 Board determined 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 by removing the general officer memorandum of reprimand (GOMOR), 17 September 2016, from his Army Military Human Resource Record (AMHRR).

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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, 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. AR20230002650

3. 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) 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 7-3c (Filing Authority to Redress Actions) states an officer who directed filing an administrative memorandum of reprimand, admonition, or censure in the AMHRR 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 a copy of the new evidence or

information to the Department of the Army Suitability Evaluation Board to justify the request.

4. 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.

a. Paragraph 3-6 (Authority for Filing or Removing Documents in the AMHRR Folders) 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.

b. Appendix B (Documents Required for Filing in the AMHRR and/or Interactive Personnel Electronic Records Management System) shows memorandums of reprimand, censure, and admonition are filed in accordance with Army Regulation 600-37.

//NOTHING FOLLOWS//