

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2024

DOCKET NUMBER: AR20230003096

APPLICANT REQUESTS:

- a. removal of the general officer memorandum of reprimand (GOMOR), 3 June 2010, from his Army Military Human Resource Record (AMHRR); and
- b. reconsideration of his previous request for reimbursement of his reenlistment bonus.

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)
- Army Discharge Review Board (ADRB) Docket Number AR2021000274 Extract
- ADRB Letter
- Army Review Boards Agency Letter, 24 January 2023

FACTS:

1. The applicant states he requests removal of the GOMOR from his military records and reimbursement of the reenlistment bonus portion collected from his pay by the Defense Finance and Accounting Service (DFAS). Those actions were unjust because his illnesses (post-traumatic stress disorder (PTSD) and obsessive-compulsive disorder) occurred before the actions were taken.

a. He was diagnosed with PTSD and obsessive-compulsive disorder symptoms before receiving the GOMOR. Army regulations oppose bonus recoupment when a Soldier develops an illness while serving. He became ill while serving in Afghanistan and was later hospitalized in [REDACTED] and [REDACTED]. His illnesses prevented him from continuing to serve.

b. The ADRB upgraded his discharge from general under honorable conditions to fully honorable in February 2023. When he initiated his application process in 2014, he thought a discharge upgrade would automatically resolve the GOMOR and bonus issues. He just learned that he must apply for correction of these issues separately.

2. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20140018352 on 17 September 2015.

3. Following prior enlisted service in the U.S. Marine Corps, he enlisted in the U.S. Army Reserve (USAR) for a period of 1 year on 29 September 2003. He subsequently enlisted in the Regular Army for a period of 3 years and 8 weeks on 21 April 2005 and reenlisted for a period of 2 years on 3 August 2006. His DD Forms 4 (Enlistment/Reenlistment Document – Armed Forces of the United States) do not document any enlistment or reenlistment bonuses.

4. Headquarters, III Corps and Fort Hood, Orders 109-106, 18 April 2008, discharged him effective 2 August 2008. On 30 July 2008, these orders were changed to show he was reassigned to a USAR unit.

5. His service records do not contain a USAR enlistment contract for the period on or after 2 August 2008. However, his Reserve/Guard Bonus Recoupment Worksheet shows an affiliation date of 2 August 2008 and that he contracted for 72 months (6 years) with entitlement to a \$20,000 bonus.

6. His service records show he deployed to Afghanistan on 13 December 2009 as a member of his USAR unit.

7. The Commanding General, Headquarters, 1st Sustainment Command (Theater), Camp Arifjan, Kuwait, reprimanded him in writing on 8 June 2010, wherein he stated:

You are hereby reprimanded for disobeying a direct order given to you by a superior noncommissioned officer. You refused to be the noncommissioned officer in charge of a detail. You have been confrontational and disrespectful with your fellow noncommissioned officers. This kind of behavior affects unit morale and discipline and will not be tolerated.

As a noncommissioned officer you are expected to know and follow the rules and regulations. Your conduct demonstrates a lack of responsibility and is prejudicial to the good order and discipline in the unit. This constitutes a serious departure from the standards of the Army and high standards expected of a noncommissioned officer in this command. You have violated a position of trust and confidence. I am disappointed by your actions and have doubt about your future ability to uphold the duties inherent of a noncommissioned officer in accordance with the finest standards and traditions of the United States Army.

This is an administrative action in accordance with AR [Army Regulation] 600-37 [Unfavorable Information], and not punishment under the Uniform Code of Military Justice. I have not made a determination as to whether I intend to file this memorandum of reprimand in your Local File (MPRJ [Military Personnel Records Jacket]) or your Official Military Personnel File (OMPF).

Because this reprimand contains derogatory information, which reflects adversely upon your judgment, character, integrity, trustworthiness, and reliability, I am referring it to you for comment. You will acknowledge receipt of this reprimand by signing and dating the enclosed acknowledgment. Prior to making any determination, I will consider any matters you choose to submit on your own behalf, through your chain of command, to me, within seven (7) calendar days after you receive this reprimand.

8. His memorandum for the Commanding General, Headquarters, 1st Sustainment Command (Theater), Camp Arifjan, Kuwait (Memorandum of Rebuttal, (Applicant)), 19 June 2010, states:

Pursuant to AR [Army Regulation] 600-37, para. [paragraph] 3-6, I have read and understand the unfavorable information presented against me and submit the following matters in my behalf.

First, I truly apologize for putting myself and my previously unblemished reputation and excellent career in a position where this reprimand even had to be administered. I am fully aware that I may have done lasting damage to my reputation in this Command and to my Army career. Despite this, I respectfully request that this General Officer Memorandum of Reprimand be filed locally and not in my OMPF. The reason for my request is that I know I still have a great deal to offer our nation through my service in the United States Army.

Without trying to be argumentative or defensive, and fully understanding the seriousness of this reprimand, I submit the following matters in extenuation, mitigation, and rebuttal. Given the potential negative repercussions on my career that this filing decision will have, I respectfully request that you consider the following:

a. Personality conflicts between me and my leadership have existed well before this deployment. Typical of many reserve units, many of the members of my unit have known one another for many, many years and have formed very close friendships. My perception has always been there was a tight group of Soldiers in the unit and everyone else was an outsider. Despite my efforts, I have always been an outsider. Unfortunately, this has contributed to personal issues between myself and SSG [Staff Sergeant] [REDACTED] my former platoon sergeant,

and myself and SSG [REDACTED] my former squad leader. Often I have felt singled out and taken advantage of by these two individuals. I have also been subjected to deeply offensive comments of a racial nature, to include "why don't you get back on the boat" by SSG [REDACTED] on 19 March 2010, the day that he and I had a verbal altercation. I understand that as a non-commissioned officer it is my duty to work with my fellow Soldiers and even if I don't personally like someone I must show them loyalty and respect. I understand that I have often failed to do this and for that I am truly sorry. I believe, however, that the charges have been greatly embellished by SSG [REDACTED] and SSG [REDACTED]

b. Since the incidents in February and March, I have taken it upon myself to speak to a counselor at combat stress. I have learned coping and anger management techniques and believe this has helped me greatly. I have also been given a rehabilitative transfer to the 158th Combat Sustainment Support Battalion. It is my intention to Soldier on and do great things for the 158th [Combat Sustainment Support Battalion].

In my more than 14 years of active and reserve years of service I have always been committed to accomplishing the mission and taking care of my Soldiers. This is my third deployment, my first being to Lebanon as a Marine in 1983 during the Beirut bombing, my second to Taji, Iraq for fifteen months. I earned an ARCOM [Army Commendation Medal] and a Combat Action Badge during my deployment to Iraq. I believe I am a solid NCO [noncommissioned officer] who has much to contribute to the Army. I respectfully request that you file this Letter of Reprimand in my local file. Thank you for your consideration Sir.

9. On 14 August 2010 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 filing the GOMOR and the applicant's rebuttal in his AMHRR.

10. His DA Form 2173 (Statement of Medical Examination and Duty Status), 6 October 2010, shows, he was seen at the theater clinic for feelings of frustration, anger towards his work situation, unhappiness, restlessness, and anxiety on or about 4 April 2010 while deployed to Afghanistan. He was diagnosed with an adjustment disorder and seen a few more times for the same condition in theater. He was medically evacuated to Landstuhl, Germany, in September 2010 and then to the continental United States for evaluation and treatment.

11. Headquarters, Fort Bliss, Orders 348-0028, 14 December 2010, released him from active duty, not by reason of physical disability, effective 22 January 2011.

12. The DFAS letter to the applicant, 21 August 2012, states his separation due to unsatisfactory performance triggered the repayment of an unearned portion of his Guard/Reserve bonus in the amount of \$5,277.78 and collection of his Servicemember's Group Life Insurance. Collection of the unearned portion of a Guard/Reserve bonus in the amount of \$5,277.78 is based on a \$20,000 bonus for a 72-month commitment. He was paid \$15,000 and served 35 months. The collection is based on the 37-month unserved portion of the bonus commitment based on the bonus termination date of 15 July 2011.

13. Headquarters, 63d Regional Support Command, Orders 13-016-00046, 16 January 2013, discharged him from the USAR effective 23 January 2013 with characterization of his service as under honorable conditions. The specific facts and circumstances surrounding his discharge from the USAR are not available for review.

14. On 17 September 2015 in Docket Number AR20140018352, the ABCMR denied his request for reimbursement of his reenlistment bonus and removal of his DFAS debt. The Board noted he was diagnosed with an adjustment disorder while serving in Afghanistan; however, his records did not show and he failed to provide evidence indicating he was suffering from any medically unfitting condition that would have required his separation through medical channels. He was separated due to unsatisfactory participation prior to fulfilling the complete term of his reenlistment commitment. As a result, there was no basis for rendering the recoupment of the unearned portion of his bonus as invalid.

15. On 26 April 2021 in Docket Number AR20210002744, the ADRB determined his service characterization was inequitable based on the circumstances surrounding the discharge (i.e., PTSD diagnosis). Accordingly, the ADRB granted relief in the form of an upgrade of his service characterization to honorable.

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 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 applicants petition and military records, the Board determined that the applicant did not demonstrate by a preponderance of evidence that procedural error occurred prejudicial to the applicant and by a preponderance of evidence that the contents of the general officer memorandum of reprimand issued on 3 June 2010 are substantially incorrect and supports removal. Therefore, the Board denied relief.

2. The Board also found the applicant's collection of the unearned portion of his bonus for an unfulfilled commitment based on unsatisfactory performance was not in error and determined relief was 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.

10/28/2024

X

CHAIRPERSON

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

REFERENCES:

1. 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 Official Military Personnel File (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 7-3c (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.

2. 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 Official Military Personnel File, 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.

3. Department of Defense Financial Management Regulation 7000.14-R, Volume 7A, chapter 2 (Repayment of Unearned Portion of Bonuses and Other Benefits), establishes policy pertaining to the repayment of unearned portions of bonuses and other benefits.

a. A member who enters into a written agreement with specified service conditions for receipt of a bonus, special or incentive pay, educational benefits, stipend, or similar payment (hereinafter referred to as "pay or benefit") is entitled to the full amount of the pay or benefit if the member fulfills the required conditions. Failure to fulfill the conditions specified in the written agreement will result in termination of the agreement and the member will be required to repay the unearned portion of the pay or benefit. Such repayment will be pursued unless the member's failure to fulfill the specified conditions is due to circumstances determined reasonably beyond the member's control. Conditions under which repayment will not be sought are set forth in section 3.0 (Repayment and Non-Repayment Conditions).

b. Paragraph 3.3 (Conditions under which Repayment Will Not Be Sought) provides that as a general rule, repayment action may not be pursued in situations in which the member's inability to fulfill specified service conditions related to a pay or benefit is due to circumstances determined reasonably beyond the member's control. Payment of any unpaid portion of pay or benefit will be subject to the rules in Table 2-1, which in appropriate circumstances provide discretion to the Secretary of the Military Department concerned to pay unearned portions based on case-by-case determinations.

c. Paragraph 3.3.2 provides that repayment will not be sought and any remaining unpaid portion of a pay or benefit due to a member under a written agreement will be paid at the time of separation or retirement for a disability incurred in the line of duty in a combat zone designated by the President of the United States or the Secretary of Defense, or in a combat-related operation designated by the Secretary of Defense, and/or for a combat-related disability.

//NOTHING FOLLOWS//