

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 January 2024

DOCKET NUMBER: AR20230003551

APPLICANT REQUESTS:

- a. removal of the general officer memorandum of reprimand (GOMOR), 4 February 2020, from the restricted folder of his Army Human Resource Record (AMHRR);
- b. expungement of unspecified subsequent DA Forms 67-10-2 (Field Grade Plate (O4-O5; CW3-CW5) Officer Evaluation Report (OER)) from the performance folder of his AMHRR;
- c. consideration for promotion to lieutenant colonel (LTC)/O-5 by a special selection board (SSB) in his Year Group 2005 primary zone of consideration;
- d. restoration of back pay and allowances as a result of a successful SSB; and
- e. a personal appearance hearing before the Board.

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) with enclosures –
 - Enclosure 1 – U.S. National Support Element-Afghanistan Memorandum (GOMOR under Provisions of Army Regulation 600-37 (Unfavorable Information)), 4 February 2020, with filing determination, 2 March 2020
 - Enclosure 2 –
 - U.S. Army Human Resources Command (HRC) Memorandum (Initiation of Elimination), 17 June 2021
 - Memorandum (Acknowledgment of Receipt of Notification of Initiation of Elimination, (Applicant)), 1 July 2021
 - Enclosure 3 – Board of Inquiry (BOI) Findings and Recommendation Worksheet, 20 September 2021

- Enclosure 4 –
- U.S. Army Cadet Command (USACC) and Fort Knox Memorandum (Forwarding Memorandum – (Applicant), Elimination under Army Regulation 600-8-24 (Officer Transfers and Discharges), Paragraphs 4-2b and 4-2c), 3 December 2021
- Memorandum (Acknowledgment of Receipt of BOI Report), 8 November 2021
- DA Form 1574-2 (Report of Proceedings by Board of Officers), 3 December 2021
- Enclosure 5 – Draft DA Form 67-10-2 covering the period 1 December 2018 through 30 November 2019
- Enclosure 6 – Screenshot of HRC Evaluation Entry System – Active OER Evaluations, 13 February 2020
- Enclosure 7 – DA Form 67-10-2 covering the period 1 December 2019 through 15 July 2020
- Enclosure 8 – U.S. National Support Element-Afghanistan Memorandum (Relief for Cause), 4 February 2020
- Enclosure 9 – Memorandum (Rebuttal to GOMOR – (Applicant)), 12 February 2020, with supporting documents
- Enclosure 10 – U.S. National Support Element-Afghanistan Memorandum (Relief for Cause – (Applicant)), 2 March 2020
- Enclosure 11 – Documents Filed in his AMHRR (GOMOR Packet)
- Enclosure 12 – HRC Memorandum (Closing of Elimination Action), 16 December 2021
- Enclosure 13 – Memorandum ((Applicant) Letter to President of the Promotion Board), 24 September 2021
- Enclosure 14 – Email Correspondence to HRC, 3 February 2022
- Enclosure 15 –
- USACC Freedom of Information Act (FOIA) Request Form, 19 February 2022
- USACC FOIA Email, 23 February 2022
- Additional Supporting Documents –
 - DA Form 1559 (Inspector General Action Request), 3 March 2022
 - Memorandum for Department of the Army Suitability Evaluation Board (DASEB) (Request for Removal of GOMOR of (Applicant)), 14 March 2022
 - Chief, Management Support Office, Office of the Deputy Chief of Staff, G-1, Letter, 7 April 2022
 - DASEB Docket Number AR20220002927, 12 April 2022

- Chief, Accessions Branch, HRC Memorandum (Application for Waiver in Order to Enable U.S. Army Reserve Appointment as a Commissioned Officer), 7 June 2022
- Headquarters, U.S. Army Garrison, Fort Knox, Orders 185-0164, 4 July 2022
- DA Form 7652 (Disability Evaluation System Commander's Performance and Functional Statement), 16 June 2022
- Department of the Army Office of the Chief of Staff Memorandum ((Applicant) Army Board for Correction of Military Records (ABCMR) Letter of Support), 22 June 2022 (unsigned)
- U.S. Army Mission Command Center of Excellence, Fort Leavenworth, KS, Memorandum ((Applicant) ABCMR Letter of Support), 22 June 2022 (unsigned)
- Headquarters, 2d Stryker Brigade Combat Team, 4th Infantry Division, Fort Carson, CO, Memorandum ((Applicant) ABCMR Letter of Support), 22 June 2022 (unsigned)
- USACC and Fort Knox Memorandum ((Applicant) ABCMR Letter of Support), 8 September 2022
- Headquarters, 3d Brigade, USACC, Memorandum ((Applicant) ABCMR Letter of Support), 11 September 2022
- Headquarters, U.S. Army Garrison, Fort Knox, Orders 255-0152, 12 September 2022
- Headquarters, U.S. Army Garrison, Fort Knox, Orders 012-0155, 12 January 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 30 March 2023

FACTS:

1. The applicant states he is currently serving as the Professor of Military Science at Michigan Technological University. He is to be permanently medically retired after going through the Integrated Disability Evaluation System on 30 March 2023. For all of his career he has served honorably and with distinction as reflected by his Officer Record Brief and all of his OERs up until serving in the 3d Security Force Assistance Brigade (SFAB) in 2019 to 2020. He is appealing the injustice that happened to him, his spouse, and his career.

a. He is requesting permanent removal of the GOMOR from his AMHRR, expungement of the subsequent OERs from his AMHRR, reconsideration for promotion to LTC under his Year Group 2005 primary zone of consideration, and restoration of back pay and allowances. In March 2022, he applied to the DASEB for removal of the GOMOR after the GOMOR was found to be 100-percent unsubstantiated by an HRC BOI in September 2021. The DASEB's conclusion was that he failed to produce enough evidence to permanently remove the GOMOR but transferred the GOMOR to the

restricted folder of his AMHRR even though he didn't request transfer. He has letters of support from his rater and senior rater recommending removal of the GOMOR from his AMHRR. The USACC Commanding General, Major General (MG) [REDACTED], supports him with a September 2022 letter requesting removal of the GOMOR from his AMHRR.

b. The GOMOR reprimands him for religious discrimination and counterproductive leadership. On 17 June 2021, HRC initiated his elimination because of these allegations after his non-selection for promotion to LTC in his primary zone of consideration. He requested a BOI so he could prove his innocence. On 20 September 2021, the BOI was conducted at Fort Knox, KY. In addition to retaining him, the BOI found the allegations that he engaged in counterproductive leadership and religious discrimination were unsubstantiated. Over the last 2 years as the Michigan Technological University Professor of Military Science, he has held his head high and restored a previously unviable program to the top performing Science, Technology, Engineering, and Mathematics Reserve Officers' Training Corps (ROTC) Program in all of USACC.

c. He states the SFAB chain of command made a decision based on emotion and personal feelings toward him, but nowhere in his entire career has he had allegations like these previously. All of his previous performances prior to the SFAB indicates he was a top-performing infantry officer with potential and his performance after the SFAB also indicates that assessment.

d. The manner in which the Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) investigation was conducted was an absolute injustice to him and he was never provided a fair opportunity by his 3d SFAB chain of command to prove his innocence or for them to even consider asking the other parties involved any follow-up questions. Upon notification by his chain of command on 16 December 2020, he was not provided reasoning for that which he was being accused. For 2 weeks he was sequestered at another base and only partially understood what the investigation was about 2 weeks later after being interviewed by the Army Regulation 15-6 investigating officer (IO). His pleas for justice and to recognize the errors in what was alleged against him were not vindicated until the 21 September 2021 BOI a year-and-half after the investigation.

e. Being passed over for promotion twice because of the GOMOR being present in his records is an error and something the BOI should have the administrative power to correct or make recommendations to HRC on the Soldier's behalf. He will be medically retired on 30 March 2023, as being eliminated and separated from the Army due to being a two-time non-select for promotion was not a just action for him or his family; however, being medically retired allows him to have some control over his final narrative.

2. The applicant was appointed as a Reserve commissioned officer in the rank/grade of second lieutenant/O-1 and executed the oath of office on 12 May 2005. He was promoted to major/O-4 effective 1 November 2015.

3. He became the subject of an Army Regulation 15-6 investigation on 15 December 2019 as the Commander, Company C, 1st Battalion, 3d SFAB. An IO was appointed on 15 December 2019 to investigate the facts and circumstances regarding allegations of a counterproductive toxic leadership climate and Equal Opportunity (EO) violations within Company C, 1st Battalion, 3d SFAB. The IO was directed to address the following questions at a minimum:

a. What is the state of the command climate within Company C, 1st Battalion, 3d SFAB? Is the command climate a "healthy" one? Explain.

b. Does the command climate within Company C, 1st Battalion, 3d SFAB, reinforce a state of trust, mutual respect, and self-discipline? Explain.

c. Has the leadership of Company C, 1st Battalion, 3d SFAB, facilitated a climate in which all Soldiers are treated with fairness, justice, and equity? Explain.

d. Has the applicant or any other leader within Company C, 1st Battalion, 3d SFAB, created a divisive, hostile, or otherwise toxic environment within Company C, 1st Battalion, 3d SFAB? Specifically, does the leadership of Company C, 1st Battalion, 3d SFAB, treat subordinate leaders fairly? Explain.

e. Are there any concerns or observations of unit policy, procedures, and individual leadership or management techniques that may have a dysfunctional effect upon the unit climate and foster discriminatory behavior and/or a hostile environment? Explain.

f. Does any leader within Company C, 1st Battalion, 3d SFAB, have reason to believe any leader within the command has violated the Army EO policy?

4. On 23 December 2019, the IO completed the investigation and determined the following (see attachment with auxiliary documents/exhibits):

a. Summary. The preponderance of the evidence finds that a counterproductive, or toxic, command climate existed under the Commander, Company C, 1st Battalion, 3d SFAB. Additionally, based on first-hand knowledge and statements from leaders within Company C, the preponderance of the evidence finds that the applicant committed a violation using disparaging religious-based terms.

b. Findings. After carefully considering the evidence, the IO determined the following:

(1) The first item to address is the alleged religious-based EO complaint.

(a) According to Army Regulation 600-20 (Army Command Policy), paragraph 6-2, the U.S. Army mandates an environment free of offensive behavior. The use of any type of religious-based disparaging term would be a violation of this policy. A disparaging term is that which is "used to degrade or connote negative statements pertaining to...religion.... The use of these terms constitutes "unlawful discrimination" (see Army Regulation 600-20, paragraph 6-2(c)(2)).

(b) According to First Sergeant (1SG) ██████ sworn statement (see exhibit B), the applicant offended him by using disparaging terms about the Catholic faith – stating something to the effect that the Catholic church is only good for touching boys. This was during a one-on-one conversation and not supported by any other evidence than 1SG ██████ claim. During our interview, the applicant denied that he said anything to 1SG ██████ that could be considered disparaging. When solicited by 1SG ██████ to discuss religion, he said he didn't agree with the Catholic church's reluctance to properly deal with child molestation (see exhibit W).

(c) Captain ██████ statement (see exhibit O) supports the applicant's claim that he only spoke to the institutional failure and did not specifically say anything derogatory against the Catholic church. However, this was a different conversation than the one-on-one conversation referenced in 1SG ██████ statement claiming specific disparaging terms were used.

(d) Since Captain ██████ account of the situation is from a different conversation and the fact that there is no other evidence outside of a one-on-one conversation, he is forced to weigh the reliability of 1SG ██████ and the applicant's individual statements.

(e) The IO believes 1SG ██████ had no motive to fabricate in making this claim, and regardless of what exact words were said, he interpreted these statements as a direct attack and disparaging comment against his religion. On the other hand, the applicant's statement is self-serving and would admit guilt to violating the Army's EO policy were the applicant to corroborate 1SG ██████ account. After an in-depth conversation with the applicant, he believes the applicant holds some very personal beliefs and experiences with the Catholic church that likely led to a lapse in judgment, allowing the disparaging comment to occur.

(f) Considering the totality of other ongoing events, he concluded the 1SG ██████ recollection of the disparaging terms to be factual. As such, he found the applicant did, in fact, violate the U.S. Army's EO policy by a preponderance of the evidence.

(2) The second item to address is the potential counterproductive, or toxic, command climate within Company C, 1st Battalion, 3d SFAB. This section will focus on the counterproductive command climate, but additionally address concerns of fair treatment of subordinate leaders and Soldiers, creating a climate of trust, and creating a "healthy" command climate as directed in the appointment orders.

(a) Army Doctrine Publication 6-22 (Army Leadership and the Profession) defines counterproductive leadership as "the demonstration of leader behaviors that violate one or more of the Army's core leader competences or Army Values, preventing a climate conducive to mission accomplishment" (see Army Doctrine Publication 6-22, paragraph 8-46). Some of the leader behaviors within a counterproductive environment include abusive behaviors, self-serving behaviors, and erratic behaviors. His investigation identified several instances when the applicant displayed these counterproductive leader behaviors. These instances include demeaning team leaders in person and over WhatsApp chats (as presented in paragraphs 5a, 5b, 5g, and 5h above), humiliating individual Soldiers (as presented in exhibit G), and inspecting the United Service Organizations facility to make sure there were no Company C Soldiers present (as presented in paragraphs 5c and 5j above, further examples in exhibit G).

(b) This counterproductive environment did not always exist and there was a time before the Joint Readiness Training Center training and deployment that the Soldiers in Company C had extremely high morale, trust in leadership, and commitment to the unit (see exhibit P). After interviewing all parties involved, he was unable to identify a specific point in time that morale declined and trust in the applicant was lost. It appears that unit morale began to decline at the Joint Readiness Training Center and continued to decline through deployment. This is evident based on the multiple accounts of abusive behaviors, to include berating others for mistakes, creating conflict, insulting or belittling individuals, and threatening retaliation for perceived slights or disagreements (see paragraphs 5a-5j, and exhibit G). These behaviors are specifically listed as indicators for counterproductive leadership in Army Doctrine Publication 6-22, paragraph 8-22.

(c) During an interview with the applicant, the applicant expressed frustration in the design of the organization, specifically the workload of the company advisor team who is responsible for both advising and command and control of the company. The applicant also expressed some frustration regarding the advising mission set and the "phone to advise" concept. The applicant's frustration is understandable insofar as most Soldiers joined this unit to train, advise, assist, and accompany their partner force in combat. At this point, the company has mostly been constrained to a forward operating base and attempted to advise their partners through daily phone calls. Multiple Soldiers within Company C expressed these same frustrations.

(d) Ultimately, the command climate changed in Company C between mid-September and mid-December. Based on the evidence collected and interviews with the Soldiers of Company C, this decline in the command climate can be directly linked to the counterproductive behaviors exhibited by the applicant. As such, he found by a preponderance of the evidence that the applicant created a counterproductive command climate within Company C in contradiction with Army Regulation 600-100 (Army Profession and Leadership Policy), paragraphs 1-11d through 1-11e.

(3) The final items to address are concerns or observations of unit policy, procedures, and individual leadership or management techniques that may have a dysfunctional effect upon the unit climate and foster discriminatory behavior and/or a hostile environment within Company C, 1st Battalion, 3d SFAB.

(a) Based on interviews with the applicant and Soldiers within Company C, there are good examples of appropriate policies and procedures that existed within the company. One such example is the counseling program. The evidence indicates there was an active counseling program between the applicant and his first-line subordinates. This included initial counseling, providing command philosophy, and one-on-one feedback following senior rater counseling (see exhibit U).

(b) The company appears to have a healthy Family Readiness Group that conducted multiple get-togethers and attended local volunteering opportunities (see exhibit V).

(c) There is also evidence of the command team providing religious accommodations to a Soldier within Company C. This Soldier, who is Muslim, was afforded all opportunities to freely exercise her religious practices. The applicant and 1SG [REDACTED] made good command decisions to balance her needs with the needs of the unit and mission (see exhibit Q).

(d) Although the applicant adhered to regulatory unit policy from January until September 2019, his investigation found that from mid-September to mid-December 2019 the applicant's personal actions and leadership attributes created a unit climate that was discriminatory and/or hostile.

c. Recommendations. He strongly believes that it was never the applicant's intent to create a divisive environment within Company C, but at this point, his relationship with his company 1SG and with his team leaders is severely fractured, potentially unrepairable. Based on their current operational deployment, he recommends that the 3d SFAB Commander take appropriate action to reassign leaders within Company C, to include the command team, to safeguard the physical and emotional well-being of Company C, 1st Battalion, 3d SFAB.

(1) He recommends the applicant receive appropriate administrative action. He also recommends the applicant attend counseling with a behavioral specialist to address any sort of anger issues or past emotionally significant issues that he may have experienced. Finally, he recommends the applicant conduct retraining on the Army EO policies and procedures.

(2) Additionally, he recommends that the 1st Battalion Commander meet with the Soldiers from Company C to reiterate his open door policy and to discuss what is expected from leaders within the organization. This should also include a discussion on indicators of a healthy work environment and existing programs to address operational and personnel stress.

5. In a 14 January 2020 memorandum, the applicant submitted rebuttal matters to the Army Regulation 15-6 findings. He requested that the Commander, Train, Advise, and Assist Command-East (Brigadier General (BG) [REDACTED]) disapprove the adverse findings against him. He disagreed with the findings and objected to the way in which the IO conducted the investigation. He never intended to create a divisive environment and requested 60 days to mend and rebuild as the Company C Commander under probation (see attachment for further details with supporting documents).

6. The Train, Advise, and Assist Command-East, memorandum from the Commander (Approval of Findings and Recommendation of Army Regulation 15-6 Investigation – Allegations of Counterproductive or Toxic Leadership Climate and EO Violations within Company C, 1st Battalion, 3d SFAB, Observation Base Fenty), 19 January 2020, noted:

Based on careful review of the Investigating Officer's (IO) findings and recommendations, the legal review and other investigation materials, I approve the IO's findings contained in paragraph[s] 6a-6c.

I take no action on the IO's recommendation located at paragraph 7a. I am forwarding a copy of the completed investigation, along with my recommendations, to the Commanding General (MG [REDACTED]), United States National Support Element – Afghanistan for consideration IAW [in accordance with] USFOR-A [U.S. Forces Afghanistan] Military Justice Policy, paragraph 6 for action as deemed appropriate.

I approve the IO's recommendations in paragraph 7b, and direct that a copy of the IO's Findings and Recommendations be provided to the 1-3SFAB [1st Battalion, 3d SFAB] Battalion Commander (LTC [REDACTED]) for implementation.

7. The U.S. National Support Element-Afghanistan, Kabul, Afghanistan, memorandum from the Commander (Relief for Cause), 4 February 2020, stated he was considering whether the applicant should be relieved for cause. The relief was contemplated on the basis of the Army Regulation 15-6 investigation into the applicant's counterproductive leadership and violation of the Army EO policy.

8. The applicant was reprimanded in writing by the Commander, U.S. National Support Element-Afghanistan, Kabul, Afghanistan, on 4 February 2020, wherein he stated:

You are reprimanded for engaging in counterproductive leadership and religious discrimination. You repeatedly directed abusive and degrading language at Soldiers in your company, causing them to lose confidence in your ability to lead. Additionally, you made disparaging comments about Catholics in violation of the Army's equal opportunity policy. Your actions are not in keeping with the responsibilities of a leader, and bring discredit upon yourself, your unit, and the Army.

As a commissioned officer in the United States Army, it is your duty to uphold the Army Values and set an example for others to follow. You wholly failed. By failing to treat subordinates with dignity and respect, you have compromised your standing as an officer. Your conduct not only raises serious concerns about your maturity and judgement, but also causes me to question your fitness for continued service in the United States Army.

This is an administrative action and not punishment under the Uniform Code of Military Justice. I am considering filing this reprimand in your Army Military Human Resource Record. However, I will consider any matters submitted in writing in response to this reprimand, along with recommendations from your chain of command, before I make my decision. You will acknowledge receipt of this reprimand by completing the enclosed memorandum and returning it along with any other matters you would like me to consider within ten calendar days of receipt. If you fail to submit matters within the time allotted, I will file this reprimand without your input.

9. The applicant acknowledged receipt of the GOMOR and the intent to relieve him of command on 4 February 2020. His memorandum for the Commander, U.S. National Support Element-Afghanistan, Kabul, Afghanistan (Rebuttal to GOMOR), 12 February 2020, with auxiliary documents, requested filing the GOMOR at the local level and not in his Official Military Personnel File (see attachment for further details).

a. He takes full responsibility as the Commander, Company C, 1st Battalion, 3d SFAB, for the counterproductive leadership that was not in accordance with Army Regulation 600-100. His leadership over the last couple of months was faulted, sub-

standard, and he fully recognized that his actions were not in keeping with the responsibilities of his position and rank towards those he served. He humbly acknowledges the lapses and ask that these are viewed as one-off character failures because at no other time in his career has his leadership approach been called into question.

b. He adamantly contends he did not make any disparaging comments about Catholicism. All his conversations on religion were always solicited by 1SG [REDACTED] and in a closed setting between the 1SG and himself. He apologizes if his viewpoint on the Catholic institution of handling child molestation was upsetting to 1SG [REDACTED] but his comments were never intended to be offensive or disparaging.

c. He agreed with his chain of command that it is not the best for Company C, 1st Battalion, 3d SFAB, that he return as the commander, but he requests an administrative rehabilitative assignment within the 3d SFAB without formally being relieved for cause.

10. The U.S. National Support Element-Afghanistan, Kabul, Afghanistan memorandum from the Commander (Relief for Cause – (Applicant)), 2 March 2020, states he reviewed all materials regarding the initiated relief-for-cause action and delegated disposition authority to the Commander, Train, Advise, Assist Command-East (BG [REDACTED]).

11. After carefully considering the matters submitted in rebuttal, the Commander, U.S. National Support Element-Afghanistan, Kabul, Afghanistan, directed filing the GOMOR in the applicant's AMHRR on 2 March 2020.

12. The applicant's DA Form 67-10-2 covering the period 1 December 2019 through 15 July 2020 addressed his duty performance as the Company Commander, Headquarters and Headquarters Company, 3d SFAB, Fort Hood. His rater is shown as Colonel (COL) [REDACTED] Brigade Deputy Commanding Officer, and his senior rater is shown as BG [REDACTED] Brigade Commander. The rater and senior rater digitally signed the OER on 2 July 2020 and 3 July 2020, respectively. The applicant digitally signed the OER on 15 July 2020. The OER shows in:

a. Part I (Administrative), block i (Reason for Submission), the entry "Change of Rater";

b. Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block d1 (Character), the rater commented: "[Applicant] adheres to the Army Values, Warrior Ethos, Army Professional Ethic, and fully supports all SHARP [Sexual Harassment/Assault Response and Prevention], EO, and EEO [Equal Employment Opportunity] policies and programs";

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

d. 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 OER covering the period 1 December 2019 through 15 July 2020 is filed in the performance folder.

14. Headquarters, III Corps and Fort Hood, Orders L149-077, 28 May 2020, assigned him to the [REDACTED] with a reporting date of 15 July 2020.

15. The applicant's DA Form 67-10-2 covering the period 16 July 2020 through 24 June 2021 addressed his duty performance as the Professor of Military Science at [REDACTED]. His rater is shown as COL [REDACTED] Brigade Commander, and his senior rater is shown as BG [REDACTED] Commanding General, USACC, Fort Knox. The rater and senior rater each digitally signed the OER on 16 June 2021. The applicant digitally signed the OER on 17 June 2021. The OER shows in:

a. Part I (Administrative), block i (Reason for Submission), the entry "Change of Rater";

b. Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block d1 (Character), the rater commented: "[Applicant] was an active participant with [REDACTED] IDEA HUB and Title IX working group. Facilitated and hosted a keynote speaking engagement for the entire university on diversity and equality with a former alum and FBI [Federal Bureau of Investigation] special agent. [Applicant] promotes a climate of dignity and respect while enforcing the Army SHARP, EO, and EEO policies and Programs";

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

d. 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."

16. A review of his AMHRR shows the OER covering the period 16 July 2020 through 24 June 2021 is filed in the performance folder.

17. On 17 June 2021, he was notified by the Commanding General, HRC, of initiation of elimination action. He was required to show cause for retention on active duty under

the provisions of Army Regulation 600-8-24, paragraphs 4-2b and 4-2c, because of misconduct, moral or professional dereliction, and derogatory information. The commanding general's actions were based on the following specific reasons for elimination:

a. substantiated derogatory activity resulting in a GOMOR, 4 February 2020. He was reprimanded for engaging in counterproductive leadership and religious discrimination; and

b. conduct unbecoming an officer as indicated by the above-referenced item.

18. He acknowledged receipt of the notification of initiation of elimination on 28 June 2021.

19. On 20 September 2021, a BOI convened and recommended his retention for further military service. The BOI found the allegation of engaging in counterproductive leadership and religious discrimination was not supported by a preponderance of the evidence and the finding does not warrant elimination. The BOI found the allegation of engaging in conduct unbecoming an officer was supported by a preponderance of the evidence; however, the finding does not warrant elimination. The BOI noted the additional findings which led to their discussion were that his chain of command chose not to reflect the items in counseling or his OER, or initiate a relief-for-cause OER.

20. He acknowledged receipt of the BOI findings recommending his retention for further military service on 8 November 2021.

21. The USACC and Fort Knox memorandum from the Commanding General (Forwarding Memorandum – (Applicant), Elimination under the Army Regulation 600-8-24, paragraphs 4-2b and 4-2c), 3 December 2021, approved the findings of the BOI and forwarded the packet to HRC for final action.

22. On 16 December 2021, HRC concurred with the BOI's findings and the command's approval and closed the elimination action, thereby retaining him on active duty.

23. The applicant's DA Form 67-10-2 covering the period 25 June 2021 through 24 June 2022 addressed his duty performance as the Professor of Military Science at [REDACTED]. His rater is shown as COL [REDACTED] Brigade Commander, and his senior rater is shown as MG [REDACTED] Commanding General, USACC, Fort Knox. The rater and senior rater digitally signed the OER on 15 June 2022 and 15 July 2022, respectively. The applicant digitally signed the OER on 20 July 2022. The OER shows in:

a. Part I (Administrative), block i (Reason for Submission), the entry "Annual";

b. Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block d1 (Character), the rater commented: "[Applicant] fosters a positive team-building culture in an organization where members feel included and know they can speak out when needed. He truly cares for the people in his program and fully supports Army SHARP, MEO [Military Equal Opportunity], and EEO. [Applicant] has developed strong productive relationships with his local university partners and other influencers, a testament to his strong interpersonal skills";

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

d. 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."

24. A review of his AMHRR shows the OER covering the period 25 June 2021 through 24 June 2022 is filed in the performance folder.

25. On 19 February 2022 he submitted a USACC FOIA form requesting a legal review by the USACC Staff Judge Advocate referencing his BOI for use regarding his DASEB appeal. In a 23 February 2022 email, the USACC notified him that they received his request.

26. The DA Form 1559, 3 March 2022, shows he filed an IG action requesting that the HRC IG place a hold on the release of the Fiscal Year 2022 LTC promotion board results. He filed his complaint due to the premature disclosure of the results to him before the official notification by his chain of command and its results to the Army in whole.

27. On 14 March 2022, he petitioned the DASEB for removal of the GOMOR, 4 February 2020, from the permanent folder of his AMHRR. On 12 April 2022 in Docket Number AR20220002927, the DASEB, by unanimous vote, determined the overall merits of his case did not warrant removal of the GOMOR. The DASEB did, by unanimous vote, determine the evidence presented was sufficient to warrant partial relief by transferring the GOMOR with auxiliary documents to the restricted folder of his AMHRR. The DASEB further noted this action was not retroactive and therefore did not constitute grounds for promotion reconsideration, if eligible and previously non-selected.

28. A review of his records revealed the GOMOR, 4 February 2020, with auxiliary documents is filed in the restricted folder of his AMHRR.

29. The HRC Officer Personnel Management Directorate memorandum from the Director (Notification of Mandatory Removal Date Due to Non-Selection for Promotion), 22 March 2022, notified him of his non-selection for promotion to LTC and informed him

that he must be removed from the Army no later than the first day of the seventh month from the approval of the promotion board's report in accordance with statutory guidance. The promotion board's report was approved in March 2022; therefore, he must be separated no later than 1 October 2022, with entitlement to separation pay, if eligible. He was given the following options and instructed to acknowledge receipt of the notification and indicate his election:

- request appointment in the U.S. Army Reserve and submit a Non-Select Reserve Waiver
- not transfer to the U.S. Army Reserve
- resign his commission to enlist in the Active Army
- separate earlier than his mandatory removal date

30. In a redacted HRC memorandum (Appointment as IO), 29 March 2022, an IO was appointed to conduct an Army Regulation 15-6 investigation into the facts and circumstances of the premature release of the Fiscal Year 2022 LTC promotion board results.

31. The Office of the Deputy Chief of Staff, G-1, letter from the Chief, Management Support Office, 7 April 2022, responded to his USACC FOIA request for a copy of the legal review. The Management Support Office Chief opined that in accordance with FOIA Exemption 5 (Title 5, U.S. Code, section 552(b)(5)), this information constitutes privileged attorney work-product, which protects opinions, recommendations, legal advice, and information that are pre-decisional in nature, the release of which could harm deliberative process; therefore, his request was denied.

32. On 23 April 2022, the IO completed the investigation and determined the following (see attachment with auxiliary documents):

a. Background and Summary of Findings. In part, notes: "As demonstrated below, I find by a preponderance of the evidence that [redacted] did violate Army Regulation 600-8-29 [Officer Promotions], paragraph 3-2a by prematurely disclosing FY22 [Fiscal Year 2022] LTC PSB [Promotion Selection Board] results to [Applicant] of his non-selection on 3 February 2022, prior to the approval public release date of 10 March 2022."

b. Findings. In part, notes: "It is more than reasonable to conclude that the premature disclosure to the complainant was not done with any malicious intent, but was an honest mistake made in haste while attempting to assist an officer that was going to be put in a bad situation."

33. In his memorandum for the Chief, Reserve Appointment and Accession Branch (Request for Two Time Non-Select Active Duty Waiver for Reserve Commission), 2 May 2022, he requested a non-select Reserve commission.
34. The HRC memorandum from the Chief, Accessions Branch (Application for Waiver in Order to Enable U.S. Army Reserve Appointment as a Commissioned Officer), 7 June 2022, notified him that his request was not approved.
35. The DA Form 7652, 16 June 2022, shows his commander noted that his medical conditions prevent him from performing all physical and tactical requirements expected of an infantryman and his duty as the Michigan Technological University Professor of Military Science to train ROTC cadets.
36. Three unsigned memoranda of support, each dated 22 June 2022, support removal of the GOMOR from his AMHRR, one of which is from the approving authority, MG [REDACTED] who reprimanded the applicant and directed filing the GOMOR in the permanent folder of the applicant's AMHRR. After reviewing the BOI findings, MG [REDACTED] now supports removal of the GOMOR from his AMHRR (see attachments for further details).
37. Headquarters, U.S. Army Garrison Command, Fort Knox, Orders 185-0164, 4 July 2022, reassigned him to the U.S. Army transition point for processing with a reporting date of 30 September 2022 and a discharge date of 1 October 2022.
38. He provided two memoranda of support: an 8 September 2022 memorandum from MG [REDACTED] Commander, USACC, and an 11 September 2022 memorandum from COL [REDACTED] Commander, 3d ROTC Brigade, USACC, each supporting and endorsing permanent removal of the GOMOR from his AMHRR (see attachments for further details).
39. Headquarters, U.S. Army Garrison Command, Fort Knox Orders 255-0152, 12 September 2022, amended Orders 185-0164, 4 July 2022, by changing the reporting date to 1 February 2023 and the discharge date to 1 February 2023 unless changed or rescinded.
40. The DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows a PEB was convened at Joint Base San Antonio, TX, on 8 November 2022, to consider his medical conditions of post-traumatic stress disorder and cervical degenerative disc disease and spondylosis status post-anterior fusion. The PEB found him physically unfit and recommended an 80-percent disability rating and placement on the Permanent Disability Retired List. He concurred with the findings, waived a formal hearing of his case, did not elect reconsideration of his Department of Veterans Affairs ratings, and

signed the form on 12 December 2022. The findings were approved on behalf of the Secretary of the Army on 19 December 2022.

41. Headquarters, U.S. Army Garrison, Fort Knox, Orders 012-0155, 12 January 2023, released him from assignment and duty because of physical disability and placed him on the Retired List by reason of permanent physical disability effective 30 March 2023.

42. His DA Form 67-10-2 covering the period 25 June 2022 through 15 January 2023 addressed his duty performance as the Professor of Military Science at [REDACTED]. His rater is shown as COL [REDACTED] Brigade Commander, and his senior rater is shown as MG [REDACTED] Commanding General, USACC, Fort Knox. The rater and senior rater digitally signed the OER on 30 January 2013 and 13 February 2023, respectively. The applicant digitally signed the OER on 14 February 2023. The OER shows in:

a. Part I (Administrative), block i (Reason for Submission), the entry "Retirement";

b. Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block d1 (Character), the rater commented: "[Applicant] continued to foster a people-centric positive team-building culture in an organization which he led through superb example. He cares for those under his charge and undoubtedly supports Army SHARP, MEO, and EEO Programs. [Applicant] has developed the strongest relationships with his local university partners of any program in our Brigade";

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

d. 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."

43. A review of his AMHRR shows the OER covering the period 25 June 2022 through 15 January 2023 is filed in the performance folder.

44. Department of the Army Orders 0004881531, 30 May 2023, placed him on the Permanent Disability Retired List in the rank of major effective 31 March 2023.

45. His DD Form 214 shows he retired by reason of combat-related disability in the rank of major under the authority of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) effective 30 March 2023. He completed 17 years and 8 months 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 relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board found the evidence shows the GOMOR, 4 February 2020, overstates the findings of the AR 15-6 Investigating Officer and is, therefore, unjust. The Board determined the GOMOR and all allied documents, to include documentation of the directive to show cause for retention and BOI proceedings, should be removed from the applicant's AMHRR.

3. Although the Board found nothing negative in the OERs the applicant received subsequent to receiving a GOMOR, he was clear in requesting that all subsequent OERs be expunged from his record. Notably, he did not receive a relief for cause OER after receiving the GOMOR, the OER covering the period during which he received the GOMOR did not mention the GOMOR, and he received only laudatory comments from his raters and senior raters. The Board determined that, because the absence of these OERs may harm him when his records are reviewed by an SSB, the OERs should not be expunged.

4. The Board further determined that, based on the removal of the GOMOR and all allied documents from his AMHRR, he should be considered by an SSB for promotion to LTC/O-5 under the criteria for any years in which he was in or above the primary zone of consideration based on his date of rank for MAJ/O-4. If selected, he should be retroactively promoted and receive any additional pay and allowances he would then be due.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

a. Removing from his AMHRR the GOMOR, 4 February 2020, and all allied documents, to include documentation related to the directive to show cause for retention and BOI proceedings.

b. Referring his records to an SSB to be considered for promotion to LTC/O-5 under the criteria for any years in which he was in or above the primary zone of consideration based on his date of rank for MAJ/O-4.

c. If selected for promotion by an SSB, retroactively promoting him to LTC/O-5 and paying him any additional pay and allowances he would then be due.

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

4/1/2024

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 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.

a. 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.

b. The ABCMR members will direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record.

c. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) establishes procedures for conducting preliminary inquiries, administrative investigations, and boards of officers when such procedures are not established by other regulations or directives. Paragraph 5-2 states IOs may use whatever method they deem most efficient and effective for acquiring information. Although witnesses may be called to present formal testimony, information may also be obtained by personal interview, correspondence, telephone inquiry, or other informal means.

3. Title 10, U.S. Code, section 628 (Special Selection Boards), paragraph (b)(1), states if the Secretary of the Military Department concerned determines, in the case of a person who was considered for selection for promotion by a promotion board but was not selected, that there was material unfairness with respect to that person, the Secretary may convene an SSB under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion. In order to determine that there was material unfairness, the Secretary must determine:

a. the action of the promotion board that considered the person was contrary to law in a matter material to the decision of the board or involved material error of fact or material administrative error; or

b. the board did not have before it material information for its consideration.

4. Army Regulation 600-8-29 (Officer Promotions), prescribes policies and procedures governing promotion of Army commissioned and warrant officers on the Active Duty List. Paragraph 7-2 states an SSB may be convened under Title 10, U.S. Code, section 628, to consider or reconsider commissioned or warrant officers for promotion when Headquarters, Department of the Army, discovers one or more of the following:

- an officer was not considered in or above the promotion zone by a regularly scheduled board because of administrative error (SSB required)
- the board that considered the officer in or above the promotion zone acted contrary to law or made a material error (SSB discretionary)
- the board that considered the officer in or above the promotion zone did not have before it some material information (SSB discretionary)

5. 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 (OMPF), finance-related documents, and non-service related documents deemed necessary to store by the Army.

a. 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.

b. Appendix B (Documents Required for Filing in the AMHRR and/or Interactive Personnel Electronic Records Management System) states the DA Form 67-10-2 is filed in the performance folder of the Soldier's OMPF and memorandums of reprimand, censure, and admonition are filed in accordance with Army Regulation 600-37.

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

c. Paragraph 7-2 (Policies and Standards) provides that once an official document has been properly filed in the AMHRR, 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 AMHRR. Soldiers must have received at least one evaluation (other than academic) since imposition. If an appeal is denied, a copy of the appeal will be placed in the restricted portion of the AMHRR.

d. Only letters of reprimand, admonition, or censure may be the subject of an appeal for transfer to the restricted folder of the AMHRR. Such documents may be appealed on the basis of proof that their intended purpose has been served and that their transfer would be in the best interest of the Army. The burden of proof rests with the recipient to provide substantial evidence that these conditions have been met.

7. 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 1-11 provides that when it is brought to the attention of a commander that a report rendered by a subordinate or a subordinate command may be illegal, unjust, or otherwise in violation of this regulation, that commander will conduct an inquiry into the matter. The Commander's Inquiry will be confined to matters related to the clarity of the evaluation report, the facts contained in the report, the compliance of the evaluation with policy and procedures established by Headquarters, Department of the Army, and the conduct of the rated Soldier and members of the rating chain. The official does not have the authority to direct that an evaluation report be changed; command influence may not be used to alter the honest evaluation of a rated Soldier by a rating official.

b. Paragraph 4-7 provides that 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.

c. Paragraphs 4-11a and 4-11b state 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 applicant. Accordingly, to justify deletion or amendment of a report, the applicant 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.

d. 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.

//NOTHING FOLLOWS//