

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 July 2024

DOCKET NUMBER: AR20230003984

APPLICANT REQUESTS:

- reconsideration of her previous request for:
 - removal of the DA Form 2166-9-3-R (Noncommissioned Officer Evaluation Report (NCOER)) with a thru date of 16 April 2019
 - correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in item 4a (Grade, Rate or Rank) command sergeant major (CSM)
- amendment of the Department of Defense Inspector General (DODIG) investigation to show substantiated
- reversal of U.S. Army Human Resources Command (HRC) decision to involuntarily remove her from the CSM program
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DODIG Whistleblower Reprisal Investigation, 14 January 2020
- DA Form 2166-9-3-R, with a thru date of 16 April 2019
- Letter from U.S. Army Reserve Command (USARC) to Applicant, 15 October 2020
- Letter from DODIG to Applicant, 14 January 2020
- DD Form 214, for the period ending 31 October 2021
- Two Inspector General Action Requests (IGAR), 9 September 2019 and 24 November 2020
- Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers), 2 January 2019
- Memorandum, subject: Applicant Response to Master Sergeant (MSG) AC Email dated 20 December 2018, 6 March 2019
- Whistleblower Reprisal Complaint Form

- Memorandum, subject: Continuation of Timeline of Events for Suspension and Ongoing Reprisal Actions Against Applicant, 10 June 2019
- Three DA Forms 4856 (Developmental Counseling Form), 21 February 2019, 14 March 2019, and 16 April 2019
- Two DA Forms 268 (Report to Suspend Favorable Personnel Actions (Flag), 15 March 2019 and 24 April 2019
- Two Memoranda, subject: Involuntary Removal from the Command Sergeants Major Program (Active Guard Reserve (AGR)), 24 April 2018 and 24 April 2019
- AHRC Orders R-04-9003008 (Reassignment), 29 April 2019
- Memorandum, subject: Applicant Protected Communications Summary, 1 July 2019
- Memorandum, subject: Applicant Human Resources Protected Communications Summary, 8 July 2019
- Memorandum, subject: Applicant Sensitive Item Inventory Protected Communications Summary, 10 July 2019
- Memorandum, subject: Commander's Inquiry Request for NCOER for Applicant, 8 May 2019
- Memorandum, subject: Commander's Inquiry into the Relief for Cause NCOER of Applicant, 11 July 2019
- DA Form 2823 (Sworn Statement) (Applicant), 28 June 2019
- E-mail Communication with IG
- DOD Directive 7050.06 (Military Whistleblower Protection), 17 April 2015
- Memorandum, subject: Request for Assistance Reference and Enclosure List, 7 May 2020
- Excerpt from Commander's Inquiry, re: Highlighted Paragraphs (d) and (e)
- Memorandum, subject: Command Climate Situational Awareness, 30 March 2019
- DOD Organizational Climate Survey (DEOCS) Report, 6 February 2019
- Excerpt of Army Regulation 1-201 (Army Inspection Policy), re: Highlighted Paragraph (4)
- Memorandum, subject: Command Requested Additional ICI Information, 21 December 2018
- Response to the Command Requested Additional ICI Information
- Memorandum, subject: NCO Academy (NCOA) – Camp Parks Preliminary Inquiry Findings and Recommendations, 12 February 2019
- Two Excerpts from DODIG Whistleblower Reprisal Investigation
- E-mail Communication with Investigating Officer (IO)
- Memorandum, subject: Timeline of Events for Suspension of Applicant, 9 April 2019
- Memorandum, subject: Applicant Discussion Comments for Developmental Counseling on 25 February 2019

- Memorandum, subject: Parks NCOA Meetings on 12 February 2019 – Future Focus and Recommendations
- Memorandum, subject: Enclosure 21 to Response to Preliminary Investigation Findings, 9 April 2019
- Letter from DODIG to Applicant, re: Transcript of Telephonic Interview, 18 December 2020
- Letter from DODIG to Applicant, re: Freedom of Information Act (FOIA) Request, 21 May 2020
- Letter from Applicant, re: Request under FOIA, 3 March 2020
- Letter from USARC to Applicant, re: FOIA Request, 25 June 2020
- Commander's Critical Information Requirements (CCIR) Incident Report
- Letter from 80th Training Command to Applicant, re: Referral of Inquiry, 27 August 2019
- Letter from USARC to Applicant, 15 October 2020

FACTS:

1. 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 AR20220006034 on 7 March 2023.

2. The applicant states the DODIG did not substantiate her complaint of reprisal. The investigation was flawed and unjust and the DOD failed to properly investigate her allegations. As a result, several subsequent adverse actions occurred. The failure of the DODIG to fulfill their responsibility biased its investigation outcome which adversely impacted her career. At the heart of the reprisal investigation are the protected communications, violations of laws, regulations, and abuses of authority. Because no level of IG or command investigated the allegations in the protected communications, the DODIG investigation was biased toward the command's version of events.

a. A properly conducted investigation into the underlying allegations would have shown that multiple witnesses made false official statements and falsified official documents including the commander who reprised against her. The investigation would have shown that the organization had a long history of bullying Soldiers and denying them due process and breaking the law and her attempts to correct these injustices led to her removal from her position.

b. The protected communication influenced the unjust and erroneous DODIG whistleblower investigation outcome. She made repeated attempts to request the DODIG and all levels of IG fulfill their responsibility and conduct a separate investigation of the underlying allegations.

c. The applicant included a disc with her online application to the ABCMR; however, the disc contains audio files that are unavailable for the Board to review. The remaining submission has been summarized in these proceedings.

3. The applicant enlisted in the U.S. Army Reserve on 21 May 1992. She entered the AGR program and active duty on 1 December 2002.

4. On 1 October 2013, she was promoted to the rank/grade of sergeant major (SGM)/E-9.

5. On 14 November 2013, the U.S. Army Human Resources Command, by memorandum, notified the applicant of her eligibility for retired pay at age 60 (20-Year Letter).

6. On 16 July 2018, the applicant assumed the position as commandant of the noncommissioned officer academy within the 83rd U.S. Army Reserve Readiness Training Center.

7. On 31 October 2018, an initial command climate survey was completed for the applicant's command. The report identified issues concerning the organization's senior leadership. Specifically, the report contained more than 20 negative comments pertaining to the applicant in short answer questions and written comment sections. The survey included one positive comment reference the applicant.

8. On 10 December 2018, the applicant sent a mass e-mail to her organization. The correspondence, highlighted by the applicant, reads:

First, thank you for all your hard work to prepare for the ICI. It's finally here and I know we are going to do great! I've reviewed a lot of plans, policies, and SOPs that look great and will keep us running as an efficient and effective organization. If we didn't get things done before the inspection, no worries. The goal of the ICI is to get an actual account of how things are on the ground currently. This inspection will give us an accurate baseline to build from, monitor, and track progress until the next inspection.

9. Between 11 and 13 December 2018, a team of inspectors conducted an initial command inspection (ICI) of the applicant's organization. The organization rated a 94%.

10. On 20 December 2018, the applicant sent a mass e-mail to her organization. The correspondence, highlighted by the applicant, reads:

Good afternoon. Attached is the executive summary and trip report for our ICI. 93.55% is an excellent overall score and reflects greatly on all your hard work to prepare for the inspection.

Just a reminder the goal of the ICI was to get an actual account of how things are on the ground currently. This inspection gave us an accurate baseline to build from, monitor, and track progress until the next inspection.

Thanks again for all your hard work! Let's put this academy priority into the record books and turn our focus to enjoying the holidays with family and friends.

11. On 20 December 2018, by memorandum, the applicant recorded in writing the summary of a verbal counseling session she conducted with MSG AC, Basic Leader Course Manager, NCOA. The discussion included five incidents that concerned her greatly and reflected poorly on MSG AC's judgement, discipline, professionalism, and military bearing.

12. Also on 20 December 2018, by e-mail, MSG AC requested assistance from the commander regarding the applicant's consistent misconstrued perception of him. He responded thoroughly to the applicant's verbal counseling memorandum referenced in paragraph 10 above.

13. On 21 December 2018, the plans and training officer for the applicant's organization, by memorandum, consolidated feedback from the inspectors on the command specific information requests. The memorandum states, in pertinent part:

- unless the action is something that the CSM wants, the action just stagnates
- processes are followed when aligned with CSM's vision of the process; processes may be amended on short notice at the discretion of the CSM
- Soldiers do not feel like their CSM takes their recommendations to heart
- the inspection team felt Soldiers were guarded with their responses and conversation
- academy staff were concerned that there would be negative repercussions for any negative findings from the inspection
- one inspector felt that staff was "terrified" of their commandant; the staff have lost hope
- it appears the commandant is trying to rule alone and has not achieved buy-in, decisions are made solo
- likely they would fail leadership standard during accreditation

14. The applicant submitted a response to the feedback from the inspectors as it related to her response to the DODIG investigation. The response states, in part,

- the investigating officer (IO) should not have received information from the ICI
- the IO's use of the ICI information memorandum to substantiate his findings is a violation of Army Regulation (AR) 1-201 (Army Inspection Policy)
- the IO referenced the command climate survey dated 31 October 2018 to substantiate his findings; the commander and applicant discussed the command climate survey was compromised due to multiple Soldiers responding multiple times
- the Army NCO Guide lists several examples of military courtesy including the following: "When a NCO of superior rank enters the room, the first Soldier to recognize the NCO calls the room to 'At ease.'"
- Leaders have implemented relaxed standards throughout many Army units; in fact, many Soldiers believe the relaxed standard of only calling "at ease" once a day was the correct observance of the military courtesy
- cadre were following the Army standard when they called "at ease" when a NCO of superior rank entered a room; during her 25-year career, she has observed the courtesy of calling at ease when an NCO of superior rank enters a room, unless directed by that NCO not observe the military courtesy
- MSG H- was discourteous as she defended her position which did not comply with AR 600-8-10 (Leaves and Passes) or the ICI checklist that she used to evaluate the unit; MSG H- became belligerent as she continued; the applicant asked subordinates to leave the room

15. On 2 January 2019, by memorandum, the commander of 83rd U.S. Army Reserve Readiness Training Center appointed an IO to conduct an informal (preliminary) commander's inquiry into the facts and circumstances pertaining to possible leadership failures and noncompliance with regulatory guidance and local policies concerning reassignment of military personnel at the NCOA. The specific instructions included:

- a. Ascertain whether significant leadership failures exist at NCOA. Specifically address whether any Soldiers have been treated without the proper dignity, respect, and fairness by the commandant or leadership team at the NCOA. Advise if, in the IO's professional opinion, a toxic environment exists.
- b. Ascertain whether the commandant has treated MSG AC unfairly, specifically concerning the matters addressed in the attached memorandum for record, dated 20 December 2018.
- c. Address the circumstances surrounding the damage to a 15-passenger government van. Specifically address whether any misconduct was committed leading up to the accident. Also address whether lack of proper training contributed to or caused the incident.

16. On 6 February 2019, the results of the command climate survey were published. The NCOA leadership was rated at 33%, organization processes were rated at 27%, and inclusion of work at 44%. Of the 21 respondents that took the survey, 71% were not comfortable discussing issues with their commander, 33% did not believe they were treated with dignity and respect in the command, 52% did not believe that rules, regulations, and policies are enforced, and 62% believed that the overall morale had not improved from one year ago. The report contained over 50 negative comments referencing the applicant in the short-answer questions and written comments sections of the report. The survey included five positive or neutral comments pertaining to individuals serving in leadership positions but did not include any favorable comments about the applicant.

17. On 12 February 2019, by memorandum, the IO provided his findings and recommendations to the commander regarding his appointment to conduct an informal (preliminary) commander's inquiry.

a. The IO's findings show:

(1) After interviewing Soldiers and civilians of the organization, to include the garrison CSM, it was his belief, based on a preponderance of the evidence, that the applicant has a destructive leadership style that can compromise the organization's effectiveness.

(2) He did not assess that the applicant treated MSG AC unfairly. However, he believes that the applicant interprets AR 350-1 (Army Training and Leader Development) and the course management plan loosely. Further, the applicant does not take the advice of MSG AC and undermines his authority to make sound decisions and recommendations based off the course management plan.

(3) He did not find any misconduct committed surrounding the damage to the 15-passenger government van. He did not find that a lack of proper training contributed to the accident.

b. The IO's recommendations show:

(1) The applicant be placed on a probationary period of no more than 90 days to improve her organization's climate. If marked improvement cannot be met within 90 days, recommend relieving the applicant from her leadership position. It is his judgement that the NCOA will continue to have negative climate and morale complaints, decreased retention of NCOs, and a compromise of the organization's effectiveness if a significant change in improved leadership is not achieved.

(2) The applicant entrust her subordinate leaders and gain a better understanding of the course management plan to make more competent decisions.

(3) Sergeant First Class (SFC) BA followed all rules and regulations of the NCOA as of the day of the accident. He did not recommend any further action taken in regard to this accident.

c. The IO's issues and analysis summary shows he believed the applicant demonstrates elements of toxic leadership. Her counterproductive leadership style was observed unanimously across Soldiers assigned to the organization and external inspections conducted in the past 6 months.

18. On 6 March 2019, the applicant submitted a memorandum for record in response to MSG AC's email to the commander on 20 December 2018. She indicated she had a discussion with the commander reference the events leading up to the verbal counseling that she conducted with MSG AC.

19. On 8 March 2019, the commander approved the IO's findings and recommendations, with the exception of modifying the probationary period improvement marker from the CSM to the commander.

20. On 14 March 2019, the commander formally counseled the applicant informing her she was temporarily suspended from her assigned duties as the commandant of the organization and the necessary flag action imposed.

a. The purpose of the counseling was not to serve as punishment, but to notify the applicant of her temporary relief from duties. The key points of discussion include:

- contemplation of relieving the applicant as the commandant for cause
- the reason for the proposed relief is that an AR 15-6 preliminary inquiry found that she had a destructive leadership style that could compromise the organization's effectiveness
- she was temporarily suspended from her assigned duties until further notice
- in the interim, she would work in another capacity, effective 18 March 2019
- potentially, she may be removed from the CSM program
- the purpose of a flag is to prevent and/or preclude execution of favorable actions and movement of a Soldier when it is in the best interests of the Army

b. The applicant agreed with the counseling and authenticated the form with her signature on 14 March 2019.

21. On 15 March 2019, a flag was initiated on the applicant. The commander selected “Other” for the non-transferrable flag description and added “Suspended from assigned duties” to the reason line. The commander authenticated this form with her signature.

22. On 30 March 2019, by memorandum, the motor sergeant, SFC BA notified the command that there were multiple individuals within the NCOA that filled out the command climate survey multiple time with the intent of making issues seem larger than they actually were. He knew the command team at the NCOA had its fair share of problems, however after hearing some of the things that came out of the fall 2018 command climate survey, he believed the command needed to be made aware.

23. On 16 April 2019, the commander formally counseled the applicant notifying her that she was relieved of her duties as commandant, effective 16 April 2019. Additionally, the applicant would be flagged, and the counseling informed her of possible consequences.

a. The key points of discussion include:

- relief for cause as commandant of the organization
- the reason for relief is that an AR 15-6 preliminary inquiry found that she had a destructive leadership style that has compromised the organization’s effectiveness
- she was permanently suspended from her assigned duties; she would receive a relief for cause NCOER
- the tentative plan was to reassign her which would ultimately be determined by the U.S. Army Human Resources Command (HRC); in the interim, she would continue her duty in another capacity
- she would coordinate with SGM W— for a time to clear her office so that she may do it with dignity
- she may take the rest of the day off if she needed
- she would be removed from the CSM program
- the purpose of a flag is to prevent and/or preclude execution of favorable actions and movement of a Soldier when it is in the best interests of the Army

b. The applicant agreed with the counseling and authenticated the form with her signature on 16 April 2019. She added the handwritten remark: “I will provide a statement.”

24. The applicant’s record contains an NCOER for the period covering 26 March 2018 through 16 April 2019. The NCOER shows in:

a. Part I (administrative Data); block i (Reason for Submission): 05 | Relief for Cause

- b. Part II – Authentication); block a1 (Name of Rater): P--, K--, J.
- c. block a4 (Date): 6 May 2019
- d. block a5 (Duty Assignment): Commander
- e. block b1 (Name of Senior Rater): W--, A--, T.
- f. block b4 (Date): 22 August 2019
- g. block b5 (Duty Assignment): Commanding General
- h. Part III (Duty Description); a (Principal Duty Title): Commandant
- i. Part IV – Performance Evaluation, Professionalism, Attributes, and Competencies:

(1) c. (Character): [Applicant] failed to ensure a climate of treating others with dignity and respect as evident in climate surveys. TRADOC perceived during their accreditation of the NCOA that the climate was toxic. Most of the cadre and staff feel unappreciated and are not treated with dignity and respect. She fully supported EO and SHARP.

(2) d. (Comments): “I direct relief for cause. I lost confidence in [Applicant’s] ability to serve as Commandant. She failed to empower subordinate leaders, listen to their feedback and take action on their recommendations or accept constructive feedback from higher. She demonstrated several elements of toxic leadership particularly insensitive driven achiever and toxic self-centered abuser as referenced in AR 15-6 investigation. She failed to analyze and improve on her leadership style, empower subordinate leaders, improve communication, build trust and resist her intrinsic urge to seize control.”

(3) Rater Overall Performance: f (Comments): “I am directing this relief for cause as [Applicant]

25. On 24 April 2019, a flag was removed on the applicant. The commander selected case closed unfavorably and authenticated the form with her signature.

26. On 24 April 2019, by memorandum, HRC removed the applicant from the CSM program due to the result of a 15-6 investigation and subsequent General Officer Memorandum of Record supporting the relief for cause determination made by her commander and the relief for cause evaluation.

a. In accordance with AR 614-200 (Enlisted Assignments and Utilization Management), [paragraph] 7-17, she had been permanently removed from future eligibility for selection to CSM under the centralized selection list (CSL) process.

b. The lateral appointment from CSM to SGM is effective 16 April 2019.

27. On 24 April 2018 [2019], by memorandum, HRC approved the request for involuntarily removal from the CSM program. The applicant would be laterally appointed from CSM to SGM and reclassified from 00Z to 38B effective 16 April 2019. The applicant would not retain CSM reappointment rights.

28. On 29 April 2019, by orders published from HRC, the applicant was released from her assignment as commandant and reassigned, effective 6 May 2019.

29. On 6 May 2019, the IG for the 100th Training Division, by email, notified the applicant her DODIG hotline report dated 9 April 2019 had been referred to the 100th Training Division IG office. Major (MAJ) SL was assigned as the action officer for her case. He was conducting the preliminary analysis of the documents she provided to the DODIG.

30. On 8 May 2019, the applicant requested a commander's inquiry into her NCOER for the period covering 26 March 2018 to 16 April 2019. Specifically, the NCOER contains inaccurate and untrue statements that are a result of illegal and unjust actions by the rater. The report is bias and lacks objectivity and fairness. Specifically, she was requesting the commander's inquiry for the following reasons:

- the commander (rater) violated the Military Whistleblower Protection Act when she suspended the applicant and relieved her from her duties after she sent a protected communication about a subordinate's actions that violated Army Regulations; this unjust evaluation is a continuation of the reprisal against her
- the rater comments are untrue, unjust, and lack objectivity; in both command climate surveys' free text comment sections, the word dignity is only mentioned once and not in reference to the applicant; no other climate survey results about treating Soldiers with dignity and respect are linked to her
- raters may only reference actions or investigations that have been processed to completion, adjudicated, and had final action taken before submitting an evaluation report to HQDA; the intent of which is to prevent unverified derogatory information from being included in evaluation reports
- the rater's comment that begins with "most of the cadre" is an unjust and bias comment that is not based on facts; the October 2018 command climate survey had only 24 respondents; only 21 respondents answered the rater's survey; the survey was compromised due to multiple Soldiers answering multiple times

- the results of the AR 15-6 preliminary inquiry are bias and unjust; she did not up her right to seek legal assistance and because she exercised her right, the rater closed her investigation and substantiated unjust findings based on a one-sided investigation; after she was suspended, she was allowed to submit a response
- the rater's comment regarding external inspections unanimously agreeing on the finding is an inaccurate statement; she is not aware of any inspections except the ICI; if additional external inspections had been conducted, she requests a copy
- the senior rater based his assessment of the applicant's potential on the rater's recommendation; he stated he did not talk to anyone at her organization to corroborate her evaluation nor has he talked to the applicant, apart from the office calls the applicant requested

31. On 1 July 2019, by memorandum from the applicant to DAIG, summarized the protected communications she believed were discussed with her commander.

a. On 17 June 2019, Mr. DB and Mr. ML conducted a telephonic interview with the applicant to discuss the commander's reprisal actions. During the discussion, Mr. DB asked the applicant to describe the protected communications.

b. During the interview, she acknowledged she submitted a written protected communication with her request for DODIG assistance and did not mention verbal protected communications in the request. Mr. DB and the applicant talked about the multiple conversations between the commander and applicant and various violations of Army Regulations and abuse of authority occurring at the organization.

c. During the interview, the applicant requested time to review her references so she could accurately describe her verbal protected communications with the commander. She did not include the verbal protected communications in her DOD hotline request because at the time of her requests (1) she did not realize that verbal communications were protected under the whistleblower act and (2) the commander reprised against her after she documented the violations of Army Regulations and abuse of authority in writing and sent it to the commander.

d. Below is a summary of the verbal protected communications the applicant provided the commander. The summary is the best of her recollection, as the conversations happened 4-6 months ago. Although the applicant believed more topics could have been covered during the conversations, only information for protected communications that she was certain they discussed based on a review of her references.

(1) 11-12 December 2018; ICI visit; the commander and her inspection team conducted a site visit from 11-13 December 2019. During the visit, the commander and applicant discussed the human resources team was violating Army leave policy by

overcharging Soldiers for leave. The Army Regulation states that Soldiers will be charged leave for day of return unless the Soldier returns on a regularly scheduled nonduty day. The human resources section was charging Soldiers a day of leave, even when they returned on a nonduty day (e.g. Sunday).

(2) 27 January 2019; telephonic counseling session; during the counseling session with the commander and CSM ER, they discussed several violations of Army Regulations.

- MSG AC violating a student's due process rights and his abuse of authority toward the same student, which she outlined in the 6 March 2019 protected communication memorandum
- sensitive item inventories often conducted by counting the number of items instead of using the serial number inventory method prescribed in Army Regulation
- requirement of students local to the area to stay in the barracks, although the Army standard permitted local area students to return to their home every night; the Army moved to a non-resident academic environment over 5 years ago, although the NCOA failed to adopt the practice
- leave policy violations; reviewed the policy together and CSM ER acknowledged the NCOA was not in compliance with Army Regulation

32. On 8 July 2019, by memorandum from the applicant to DAIG, summarized the human resources protected communications she believed were discussed with her commander during the ICI from 11-13 December 2018.

a. During the ICI, the applicant and commander discussed that the NCOA was not complying with the leave guidance by regulation. The applicant brought it up with the commander in her office. They discussed it as an example of how some staff members were having a hard time acknowledging that the NCOA had processes in place that were violating Army Regulations. The applicant used this example to illustrate how changing the culture to comply with regulations was adversely impacting the climate because some staff were resistant to change.

b. The commander acknowledged that she was not aware of the regulatory guidance about not charging leave if the last day of leave was a nonduty day. They reviewed the guidance and the inspection. The applicant printed the references and gave the commander a hard copy so they could review it together. The commander expressed her skepticism and directed the applicant review the information with the senior human resources specialist, MSG LH, who was inspecting the human resources section and was present at the NCOA during the inspection.

c. The applicant visited MSG LH in the human resources office when MSG LH set up a temporary workspace. They reviewed the regulation and checklist. MSG LH was not receptive to discussing the discrepancy between the leave process and the regulation. MSG LH dismissed the regulatory guidance and the inspection checklist that they reviewed together.

d. After the applicant's discussion with MSG LH, she briefed the commander that MSG LH became belligerent during the discussion. The commander directed the applicant to advise the staff not to correct the violation until after her staff could review the information with the proponent of the regulation and confirm that the process was incorrect. As of her suspension on 14 March 2019, the violation had not been corrected.

33. On 10 July 2019, by memorandum from the applicant to DAIG, summarized the sensitive item inventory protected communications she believed were discussed with her commander during a telephonic meeting on 27 January 2019, CSM ER participated in the meeting.

a. On 27 January 2019, the commander conducted a telephonic development counseling session with the applicant. During the meeting, they discussed the NCOA violating regulatory guidance by incorrectly conducting weapons inventory by physical counts instead of by serial number monthly. The regulation does permit USAR activities to conduct quarterly serial number counts. However, the NCOA is an active duty organization. The applicant changed the process to comply with the active duty standard. She brought up the violation of the regulation during the discussion with the commander to illustrate that as the applicant made changes to align with regulations, some Soldiers became disgruntled because they did not accept change easily.

b. During the discussion, the commander and CSM ER agreed the weapons inventory should be conducted monthly by serial number.

34. On 11 July 2019, the investigating officer, Major General (MG) DA completed the commander's inquiry into the relief for cause NCOER of the applicant.

a. On 10 June 2019, he was appointed as the IO per the request of the applicant of the subject relief for cause NCOER. He was appointed to review the clarity of the evaluation report, the facts contained in the evaluation report, the compliance of the evaluation with policy and procedures established by HQDA, the conduct of the rated Soldier and members of the rating chain, and to determine whether the NCOER was done as a retaliation. He confined his inquiry to these matters relating to the NCOER, the facts contained in the report, and the conduct of the rated Soldier and rating officials.

b. The inquiry determined the subject relief for cause NCOER was not initiated in retaliation for making a protected communication. While he determined that there was a protected communication, it was continued feedback on the applicant's leadership and failure to take accountability for the climate of her command that were the cause of the NCOER. The NCOER did not contain any material errors, irregularities, and inaccuracies. The rating official's comments were not unfair and were objective in that they were supported by numerous data points including counseling, the ICI, two command climate surveys, TRADOC official feedback, an AR 15-6, and other sources including statements, emails, phone calls, and observation.

c. The criteria relative to the alleged retaliation is whether the commander (rater) intended to retaliate against the applicant by wrongfully initiating the subject NCOER for the applicant's sending of the alleged protected communication; an email with attached memorandum for record responding to toxic leadership allegations from [MSG AC]. The memorandum that the applicant provided to the commander, dated 6 March 2019 was sent via email on 6 March 2019 (this is a 30-page memorandum with 20 enclosures).

(1) Protected Communication: This memorandum meets the criteria for a protected communication in that it alleges violations of regulations and Uniform Code of Military Justice (UCMJ), it was a lawful communication, and it was made to a member of the chain of command (Commander/Rater). This memorandum was the applicant's response to [MSG AC's] email dated 20 December 2018. It described [members of the staff] were not supporting the applicant's efforts. It described several incidents, including bullying and abuse of authority which were alleged violations of AR 350-1 and AR 600-20 (Army Command Policy), insubordinate conduct and disrespect in department, failure to obey an order/failure to follow the standard operating procedure in alleged violation of local procedures, and committing the commandant to action as well as overreaching his authorities as course manager.

(2) Unfavorable Personnel Action: The relief for cause NCOER was an unfavorable personnel action.

(3) The NCOER was not a wrongful action. The commander did not retaliate. The NCOER was a lawful and appropriate exercise of command authority. The NCOER was a lawful personnel administrative action. The reason stated by the commander was that the applicant continued to lead in a toxic manner. The applicant had been on a performance improvement plan since 6-9 February 2019. The applicant resisted accountability for the command climate of her command. The commander mentioned in her sworn statement that the 6 March 2019 email from the applicant represented lack of ownership and further blaming of everyone else.

(4) Given the number of data points regarding the applicant's leadership and ineffectiveness in improving the command climate it is reasonable to conclude that this

was the direct cause of the relief for cause NCOER and not the applicant's email with allegations regarding regulatory infractions.

d. Findings.

(1) Unsubstantiated. The subject relief for cause NCOER was not initiated in retaliation for making a protected communication. The cause of the relief for cause NCOER was continued negative feedback on the applicant's ineffective leadership, the applicant's resistance to taking accountability for the command climate of her command, and her ineffectiveness in fixing her command's climate.

(2) Unsubstantiated. The NCOER character comments were fair and factually supported. The command climate comments related to treating others with dignity and respect were supported by the statement by the TRADOC out-brief slides and statement by [REDACTED]. The statement regarding most cadre and staff feel unappreciated and are not treated with dignity and respect was supported by the TRADOC feedback and command climate surveys.

(3) Unsubstantiated. The NCOER Part IV comments regarding performance, attributes, and competencies were fair and factually supported. The rater had multiple data points identifying elements of toxic leadership by the rated Soldier. These comments were supported by the AR 15-6, two command climate surveys, and statements from several Soldiers. The rated Soldier as on a performance improvement plan and failed to improve the NCOA command climate to an acceptable level.

(4) Unsubstantiated. The NCOER Part IV rater comments on overall performance were fair and factually supported. The rater's comment of several external inspections unanimously agree on this finding with regard to the applicant having a destructive leadership style was supported by several external assessments including the ICI additional information, two command climate surveys, and the TRADOC accreditation inspection. While all of these, such as the command surveys, were not technically inspections, it is substantially accurate.

(5) Unsubstantiated. The NCOER Part V senior rater comments on overall potential were fair and factually supported. The senior rater described 16 data points that he relied on for this assessment. He did not solely rely on the feedback of the rater. His assessment was consistent with that of [REDACTED].

e. Recommendation: no action be taken reference the subject NCOER.

35. On 22 August 2019, the applicant, through email, requested an update on her open case from the 100th Training Division IG.

36. On 23 August 2019, the applicant, through email, received an update from LTC JD that she would be receiving final notification next week.

37. On 27 August 2019, LTC JD, through official letter correspondence from the office of the IG responded to the applicant concerning her relief as commandant of the NCOA.

a. They conducted a thorough inquiry into her complaint and referred it to the 80th commanding general. After receiving the resulting command product, they reviewed the document and determined the command addressed the allegation.

b. In view of the above information, the 80th Training Command IG will close her case and take no further action.

38. On 9 September 2019, the applicant, through an IG action request form requested the IG to confirm that a formal investigation was completed into the underlying allegations contained in the protected communications memoranda. The request pertains to an active DODIG reprisal investigation.

a. She received notification from the local IG office that her case was closed. She asked the local IG office who conducted the investigation and was informed the DODIG was managing this aspect of the investigation.

b. A concern she had is the formal investigation into the allegations listed in the protected communications has not occurred. At the conclusion of the DODIG investigation, she would request a copy of the documents acquired during the investigation. The investigation documents are necessary to submit a proper appeal for her evaluation.

39. On 17 September 2019, the applicant submitted an IG action request dated 9 September 2019 via email to Lieutenant Colonel (LTC) JD.

40. On 14 January 2020, DODIG concluded the whistleblower reprisal investigation initiated on behalf of the applicant.

a. The elements of reprisal are protected communication, knowledge of the protected communication on the part of the responsible management official; a personnel action taken, threatened, or withheld; and a causal connection between the protected communication and the personnel action. If the evidence does not establish that the personnel action would have been taken, threatened, or withheld even absent the protected communication, then the complaint is substantiated. Conversely, if the evidence establishes that it would have been taken, threatened, or withheld absent the protected communication, then the complaint is not substantiated.

b. The investigation determined that the applicant made six communications under Title 10, U.S. Code 1034, all of which were protected.

- 11 December 2018: communication to the commander the NCOA human resources office was violating the leave and pass regulation by charging Soldiers a day of leave when they returned on a nonduty day
- 27 January 2019: the applicant reported to the commander and CSM ER that the NCOA course manager bullied and abused his authority and violated a student's due process; applicant had a reasonable belief that there was a violation of the regulation
- 6 March 2019: the applicant emailed the commander a memorandum detailing instances of bullying, abuse of authority, and insubordination on the part of the NCOA course manager; the applicant had a reasonable belief that there were violations of the regulation
- 25 March 2019: the applicant reported to her senior rater that she believed the commander's suspension and notice of possible relief from her duties as commandant were in reprisal for her protected communications
- 9 April 2019: the applicant filed a complaint with the DOD hotline alleging that the commander suspended her from her assigned duties and gave notice that she was contemplating relieving her as the commandant
- 1 May 2019: the applicant reported to her senior rater that the commander violated three Army regulations in issuing her relief for cause NCOER

c. The investigation determined the applicant was the subject of four unfavorable personnel actions.

- 14 March 2019: suspension from assigned duties as commandant
- 16 April 2019: relief for cause
- 24 April 2019: removal from the CSM program
- 6 May 2019: relief for cause NCOER

d. The investigation determined the commander was aware of three of the applicant's protected communications.

- 11 December 2018: wrongfully charging Soldiers leave
- 27 January 2019: course manager violated a student's due process
- 6 March 2019: the commander received the memorandum from the applicant and immediately forwarded it to her supervisor and legal

e. The investigation determined the commander would have taken the personnel actions against the applicant absent her protected communications.

f. The evidence showed that the applicant made six protected communications to members in her chain of command and an IG and that the commander had knowledge of three of those protected communications prior to taking the actions against the applicant. However, the evidence showed that the commander had no motive to reprise against the applicant nor did she express any animus toward her for making protected communications.

(1) While the timing of the commander's decision to suspend and later relieve the applicant for cause (one day after receiving a memorandum from the applicant outlining potential violations) raised an inference of reprisal, the evidence indicated that she suspended the applicant that day after learning about an NCO that was having suicidal ideations.

(2) The evidence clearly showed that the commander stated reasons for suspending and later removing the applicant from her position as NCOA commandant were supported by well-documented instances of the applicant's performance and leadership shortfalls. That documentation consisted of overwhelming and consistent observations and consensus from individuals of senior rank and positions inside and outside of the organization, including two command climate surveys, the NCOA ICI, TRADOC accreditation evaluation, feedback from senior NCOA personnel and the commander, and an AR 15-6 investigation that found the applicant had a destructive leadership style.

(3) The evidence also showed that many of the concerns regarding the applicant's leadership style were identified well before she made her first protected communication on 11 December 2018. In October 2018, the survey results were released of the NCOA that the applicant had initiated following her assumption as the commandant on 16 July 2018. The report identified significant issues regarding the NCOA senior leadership.

(4) The commander first gave the applicant the benefit of the doubt by placing her on a performance improvement plan, but after the applicant failed to improve the climate of the NCOA, the commander made the decision to remove the applicant for the health and welfare of the organization.

(5) Weighed together, the preponderance of the evidence analyzed above established that the commander would have suspended and relieved the applicant absent her protected communications.

g. The investigation concluded, by a preponderance of the evidence, that the commander did not suspend and relieve the applicant as the NCOA commandant in reprisal for her protected communications.

h. The investigation made no recommendations in this matter.

41. Also on 14 January 2020, DODIG notified the applicant, by letter correspondence, that the investigation was completed into her complaint of reprisal under Title 10, U.S. Code, section 1034 (Protected Communications; Prohibition of Retaliatory Personnel Actions) implemented by DOD Directive 7050.06 (Military Whistleblower Protection). They did not substantiate her complaint. They enclosed a copy of the investigation, redacted to exclude information exempt from release under FOIA.

42. On 3 March 2020, the applicant requested a copy of all reports that were published from the U.S. Army Reserve Command that contained the subject of suicidal ideations for all Soldiers assigned or attached to the NCOA during her tenure as the commandant.

43. On 7 May 2020, by memorandum, the applicant requested assistance with an ongoing investigation and submitted a reference and enclosure list.

44. On 21 May 2020, the DODIG responded to the applicant Freedom of Information Act (FOIA) request for copies of all witness transcripts and interviews and copies of all supporting documents submitted by witnesses for her whistleblower reprisal investigation received on 28 January 2020.

a. The documents identified were retrieved from a system of records governed by the Privacy Act of 1974. In this instance, the records were retrieved from the Defense Case Activity Tracking System.

b. The administrative investigations directorate and the hotline component conducted a search and located documents, totaling 316 pages, which are responsive to her request.

45. On 25 June 2020, the U.S. Army Reserve Command responded to the applicant's request for all reports that were published that contained the subject of suicidal ideations for all Soldiers assigned or attached to the NCOA during her tenure as commandant.

a. The enclosed records contain personally identifiable information pertaining to third parties, and information that qualifies under an applicable privilege. The removal of this information constitutes a partial denial. This partial denial may be appealed to the Secretary of the Army.

b. The response contained a CCIR for a suicide attempt or suicidal ideation on 1 January 2019 for a member assigned to the NCOA. The individual posted on facebook on 1 January 2019 a message that was perceived by his friends as

concerning. The facebook post was reported via telephone to [REDACTED]. The report shows the applicant was the commander reporting the incident.

46. On 15 October 2020, the U.S. Army Reserve Command by letter correspondence notified the applicant her requested assistance in determining if DODIG or DAIG initiated an investigation into allegations she presented to her chain of command and IG. The IG conducted a review and found that no investigation had been initiated.

47. On 18 December 2020, the DODIG responded to the applicant's Freedom of Information Act (FOIA) request for the DODIG transcript of telephonic interview concerning her case received on 22 October 2020.

a. The administrative investigations directorate and the hotline component conducted a search and found documents responsive to her request. They determined that the records responsive to her request are exempt from the access provisions. For this reason, they processed her request under FOIA.

b. Upon review, they determined 156 pages are appropriate for release in part pursuant to FOIA exemptions, which contain information, the release of which would constitute a clearly unwarranted invasion of personal privacy, which protects personal information in law enforcement records.

c. They would send the responsive documents to her via email.

48. On 31 October 2021, the applicant was honorably retired for sufficient service for retirement. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- item 4a (Grade, Rate or Rank): SGM
- item 12i (Effective Date of Pay Grade): 1 October 2013

49. On 7 March 2023, the ABCMR denied the applicant's request to correct her DD Form 214 to show the rank of CSM vice SGM and to remove her relief for cause NCOER, dated 16 April 2019. The Board determined the applicant was appointed to CSM and served as a CSM between September 2015 and April 2019; however, at the time of her retirement on 31 October 2021, she held the rank of SGM. Additionally, the Board determined the evidence shows an AR 15-6 investigation substantiated the applicant's destructive leadership style and she was subsequently relieved from her position. The Board found insufficient evidence to support a conclusion that the contested report contained administrative or substantive errors or that it was not prepared in compliance with applicable regulations and policies.

50. The applicant provides the following in support of her request for consideration by the Board:

a. DOD Directive 7050.06 (Military Whistleblower Protection), dated 17 April 2015, which states, as highlighted in pertinent part by the applicant, the DODIG conducts or requests a DOD component IG to conduct a separate investigation of the underlying allegations contained in the protected communication when an investigation has not been initiated and maintains reports on the results of the DODIG investigation.

b. Excerpt from AR 1-201, which states, as highlighted in pertinent part by the applicant, the ICI will not, however, evaluate the commander's performance since assuming command. Only the inspected commander and that commander's rater will receive the specific results of the initial inspection. These results will serve as the basis for a goal-setting session between the incoming commander and his or her rater that will establish realistic goals to improve unit readiness.

51. By regulation, to justify deletion or amendment of a report (NCOER), the applicant 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 was warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence must be of strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. The burden of proof rests with the applicant.

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 DA Form DA Form 2166-9-3-R (Noncommissioned Officer Evaluation Report) for the rated period 26 March 2018 to 16 April 2019 are substantially incorrect and support removal. Therefore, the Board denied relief.

2. Upon review of the applicant's petition and available military records concerning the applicant's request to amend her DD Form 214 to show command sergeant major (CSM) vice sergeant major (SGM), the Board determined her record is absent evidence that shows she was serving in a CSM position at the time of her retirement on 11 October 2021. The evidence of record shows the applicant served in a CSM position from 16 July 2018 through her removal from CSM duty and the CSM program on

16 April 2019. The Board noted the DD Form 214 accurately reflects her rank of SGM at the time of her retirement and denied relief.

3. Upon review of the applicant's petition and military records concerning the applicant's request to amend the findings of the Department of Defense Inspector General (DODIG) Investigation, the Board determined the applicant did not provide new evidence that was not considered during the course of the initial investigation or that was reasonably available to the investigator for consideration, identify a mistake of law, or mistake of fact that would show the investigation results were incorrect and supported amendment. The Board concluded the burden of proof rests with the applicant and based on a preponderance of the evidence found relief was not warranted.

4. Upon review of the applicant's petition and military records concerning the applicant's request for reversal of U.S. Army Human Resources Command's decision to involuntarily remove her from the CSM program, the Board determined the applicant failed to be effective or maintain the expected high standards of a CSM as determined by her chain of command and was removed subsequent to receiving a General Officer Memorandum of Reprimand and relief for cause NCOER. The Board concluded no error or injustice occurred in the applicant's removal from the program and denied relief.

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

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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 amendment of the ABCMR decision rendered in Docket Number AR20220006034 on 7 March 2023.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 623-3 (Evaluation Reporting System) prescribes the policy and tasks for the Army's Evaluation Reporting System, including officer, noncommissioned officer, and academic evaluation reports focused on the assessment of performance and potential.

a. Chapter 4 (Evaluation Report Redress Program) states the Evaluation Report Redress Program consists of several elements at various levels of command. The program is both preventive and corrective, in that it is based upon principles structured to prevent, and provide a remedy for, alleged injustices or regulatory violations, as well as to correct them once they have occurred.

b. Paragraph 4-7 (Policies) states:

(1) An evaluation report submitted and accepted for inclusion in the rated Soldier's Army Military Human Resource Record (AMHRR) is presumed to:

- be administratively correct
- have been prepared by the proper rating officials
- represent the considered opinion and objective judgment of the rating officials at the time of preparation

(2) The rated Soldier or other interested parties who know the circumstances of a rating may appeal any evaluation report they believe is incorrect, inaccurate, or in violation of the intent of the regulation.

(3) An appeal will be supported by substantiated evidence. An appeal that alleges an evaluation report is incorrect, inaccurate, or unjust without usable supporting evidence will not be considered. The determination regarding adequacy of evidence will be made by U.S. Army Human Resources Command, Evaluation Appeals Branch.

(4) Alleged bias, prejudice, inaccurate or unjust ratings, or any matter other than administrative error are substantive in nature and will be adjudicated by the Army Special Review Board.

c. Paragraph 4-11 (Burden of Proof and Type of Evidence) states to justify deletion or amendment of an evaluation 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 or that action was 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 applicant.

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

a. Paragraph 3-20 (Relief for Cause Noncommissioned Officer Evaluation Report (NCOER) Instructions) states:

(1) If a rated NCO is officially relieved, the following specific instructions apply to completing a relief for cause NCOER:

- the rating official directing the relief will clearly explain the reason for relief and indicate they directed the relief
- when the rater directs the relief, this information will be entered in the following location (1) for raters of NCOs on DA Form 2166-9-3, entry will be in part IV, block f

(2) Regardless of who directs the relief, the rater will enter the comment, "The rated NCO has been notified of the reason for the relief" within the reference location annotated above.

b. Paragraph 3-21 (Mandatory Review of NCO Relief for Cause Reports) states an additional review of relief for cause NCOERs is required when an NCO is officially relieved of duties and a relief for cause NCOER is subsequently prepared. If the rater directed the relief, the senior rater will perform the review. Reviewers of relief for cause NCOERs will:

- ensure that the narrative portions of the NCOER contain factual information that fully explain and justify the reason for the relief
- verify that any derogatory information has been accurately reflected
- ensure that the NCOER has been prepared as prescribed in AR 623-3 and this pamphlet

4. Army Regulation 635-8 (Separation Processing and Documents) prescribes policy and procedural guidance relating to transition management, to include the preparation and issuance of the DD Form 214 (Certificate of Release or Discharge from Active

Duty). The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty and provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The rules for completing the DD Form 214 state for item 4 (Grade, Rate, or Rank), verify that active duty grade or rank and pay grade are accurate at time of separation.

5. Army Regulation 614-200 (Enlisted Assignments and Utilization Management) provides guidance on the selection of enlisted Soldiers for assignment, utilization, reclassification, detail, transfer, and training.

a. Paragraph 7-5 (Lateral Appointments (Command Sergeant Major or Sergeant Major) states wearing of CSM rank requires formal selection by an appropriate HQDA selection board; without exception. Soldiers will wear CSM or SGM rank commensurate with the duties to which they are assigned and serving. Soldiers serving in an authorized CSM position will wear the CSM rank and Soldiers serving in an authorized SGM position will wear SGM rank.

(1) Lateral appointments between CSM and SGM will be announced in the Soldier's assignment instructions published by HRC. However, when assignment instructions are not required, the lateral appointment will be announced by informal memorandum by HRC.

(2) Lateral appointment to CSM is the effective date the Soldier assumes CSM duties, date of rank remains unchanged.

(3) Lateral appointment to SGM is the day after the Soldier completed the preceding CSM assignment (typically, the projected change of responsibility date), date of rank remains unchanged.

b. Paragraph 7-37 (Involuntary Removal from Command Sergeant Major Program (For Cause)) states a CSM who fails to be effective or maintain the expected high standards of a CSM is subject to removal from the CSM program. The immediate commander will prepare an appropriate recommendation for removal from the CSM program.

(1) When a commander determines that a CSM is ineffective, appropriate counseling will be provided to the CSM.

(2) If the recommendation for removal is based on a single incident or act of misconduct, counseling is not required if the commander determines it is not appropriate under the circumstances.

(3) The recommendation with supporting documentation will be in memorandum format and will be sent by certified, restricted deliver mail or presented in person to the CSM. The CSM will be given 30 days from the receipt of the recommendation to submit a written rebuttal. If the CSM elects not to submit a rebuttal, he or she will so indicate by written endorsement. Failure of the CSM to respond constitutes a waiver of that right.

(4) If, after a review of any rebuttal submitted by the CSM, the immediate commander determines that the Soldier should still be removed from the CSM program, the entire file will be forwarded through command channels to the authorities to make a recommendation to the Commanding General of U.S. Army Human Resources Command for Active Guard Reserve (AGR) Soldiers or the Commanding General of U.S. Army Reserve Command for troop program unit (TPU) Soldiers.

(5) The CSM will be informed, in writing, of the final determination through command channels. A copy of the decision will also be provided to HRC.

(6) A CSM who is formally relieved of his or her duties on a DA Form 2166-8 (NCOER) will be immediately reassigned from the CSM position.

(7) The management authority will remove the Soldier from the CSM position, laterally appoint the Soldier to SGM, and reassign the Soldier to a special category code in USAR personnel systems or a GSM position, if available.

6. Army Regulation 20-1 (Inspector General Activities and Procedures) prescribes the policy and procedures concerning the mission and duties of the Inspector General (IG).

a. Paragraph 1-14b(2) (Military Whistleblower) states persons subject to this regulation will not take (or threaten to take) an unfavorable personnel action or withhold (or threaten to withhold) a favorable personnel action with respect to a member of the armed forces for making or preparing a (lawful) protected communication. The term "lawful communication" encompasses information that the Soldier reasonably believes provides evidence of a violation of law or regulation.

b. Paragraph 3-12 (Requests for Reconsideration of Inspector General Findings, Opinions, Judgment, or Conclusions) states a request for reconsideration of the findings of an IG investigative inquiry or investigation may be submitted upon the discovery of new evidence, identification of a mistake of law, or identification of a mistake of fact. New evidence is that information not considered during the course of the initial investigation and that was not reasonably available to the investigator for consideration. All requests to add or delete a subject, alter a function code, and/or alter an allegation determination in an IG record, regardless of the source, will be forwarded or directed to DAIG/s assistance division for referral to the appropriate divisions within DAIG. The division chiefs of DAIG's assistance, investigations, or records screening divisions may

disapprove requests for reconsideration not accompanied by new evidence or lacking in any argument support the reconsideration.

7. Army Regulation (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

8. DOD Directive 7050.06 (Military Whistleblower Protection) implements the provisions of the Military Whistleblower Protection Act as codified in Title 10, U.S. Code, section 1034.

a. The directive established policy that:

(1) Members of the Military Services (referred to in this directive as "service members") are free to make protected communications.

(2) No person will restrict a service member from making lawful communications to a member of Congress or an IG.

(3) Service members will be free from reprisal for making or preparing to make or being perceived as making or preparing to make a protected communication.

(4) No person may take or threaten to take an unfavorable personnel action or withhold or threaten to withhold a favorable personnel action in reprisal against any Service member for making or preparing to make, or being perceived as making or preparing to make a protected communication.

b. Protected communications are defined as:

(1) any lawful communication to a Member of Congress or an IG; and

(2) a communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, including:

- a law or regulation prohibiting sexual harassment or unlawful discrimination
- gross mismanagement
- gross waste of funds or other resources
- an abuse of authority
- a substantial and specific danger to public health or safety

c. Reprisal is defined as "taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication."

d. A "personnel action" is any action taken that affects, or has the potential to affect, the military member's current position or career. Personnel actions include promotions; disciplinary or other corrective actions; transfers or reassignments; performance evaluations; and any other significant changes in duties or responsibilities inconsistent with the military member's grade.

9. According to the DOD Whistleblower Program Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints, there are four elements that must be established to make a finding of reprisal:

a. Element 1 – Protected Communication. Did a complainant make or prepare to make a protected communication, or was complainant perceived as having made or prepared to make a protected communication?

b. Element 2 – Personnel Action. Was an unfavorable personnel action taken or threatened against the complainant, or was a favorable personnel action withheld or threatened to be withheld from complainant?

c. Element 3 – Knowledge. Did the responsible management official(s) have knowledge of complainant's protected communication(s) or perceive complainant as making or preparing protected communication(s)?

d. Element 4 – Causation. Would the same personnel action(s) have been taken, withheld, or threatened absent the protected communication(s)?

//NOTHING FOLLOWS//