

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 October 2024

DOCKET NUMBER: AR20230004175

APPLICANT REQUESTS: removal of the general officer memorandum of reprimand (GOMOR) from his Army Military Human Resource Record (AMHRR), or in the alternative, provide a recommendation to the Department of the Army Suitability Evaluation Board that the General Officer Memorandum of Record (GOMOR) should be removed.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter, undated
- Orders Number 272-006, 28 September 2016
- Special Orders Number 327, 24 September 2018
- Letter of Reprimand, 29 March 2022
- Memorandum, subject: Acknowledgment of Receipt of GOMOR, 30 March 2022
- Memorandum, subject: Filing Decision for GOMOR, 3 June 2022
- Maine Army National Guard, Action: Permanent Change of Assignment, 2 April 2023
- NGB Form 23A (Army National Guard (ARNG) Current Annual Statement), 8 April 2023
- Withdrawal of Federal Recognition (WOFR) Findings and Recommendations Worksheet, undated
- Maine Army National Guard, 15 May 2023

FACTS:

1. The applicant states:

a. He would like the GOMOR dated 22 March 2022 removed from his AMHRR, or in the alternative, provide a recommendation to the Department of the Army Suitability Evaluation Board that the GOMOR, given the recent board findings and the weight of the evidence, including new evidence, should be withdrawn from his AMHRR.

b. He was issued the GOMOR based on a finding of violations of the Army's Equal Opportunity (EO) standards. The command-directed investigation findings were dated

10 February 2022. The now debunked allegations related to inappropriate comments of a sexual nature. Brigadier General (BG) P\_\_\_\_\_ ordered the GOMOR permanently filed in his AMHRR on 2 June 2022.

c. Since that filing decision, on 27-28 September 2022, a board of officers heard evidence to determine whether he had committed misconduct, and whether he should retain his commission. The board [of officer] received the government's evidence from two separate investigations including the one forming the basis of the GOMOR, heard from nine witnesses, received additional document evidence, and after reviewing all they unanimously signed a findings worksheet exonerating him. Among the multiple findings in his favor the board found that he did not commit an act of moral or professional dereliction and recommended that his Federal Recognition be retained.

d. The four-person board of officers found that the government, despite having a very low burden of proof, failed to make its case that the alleged misconduct occurred, His security clearance has been restored and he is actively drilling, but he has been confined to sitting in an office doing nothing. The letter of reprimand remains in his AHMRR and if not removed, will significantly damage his previously untarnished career.

e. He has never been accused of sexual harassment and then out of the blue, three friends all made allegations against him all at once based on false allegations spanning several years. The motive was there for false allegations, but no one bothered to look. There was an ongoing dislike due to his awkward personality and based on multiple rifts that occurred in Poland between him and Sergeant (SGT) C\_\_\_\_\_, the ringleader of the three women, and Private (PV2) O-. Until the board in September, the accusers, despite obvious and huge inconsistencies in their multiple statements were never scrutinized in any meaningful way.

f. The job of an investigating officer (IO) is to resolve inconsistencies in the evidence. In this case, the inconsistencies were found in the accuser's own statements and later made worse through their board testimony. The controlling regulation defines adverse information. To be credible, the adverse information must be "resolved."

g. In Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers), section II, states adverse information is any substantiated adverse finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be credible, the information must be resolved and supported by a preponderance of the evidence.

h. He has consistently and categorically denied the allegations against him. The accuser's stories, subjected to cross examination and close scrutiny by a board of officers, fell apart. For example:

(1) PV2 O\_\_\_\_\_ testified she told Specialist (SPC) M\_\_\_\_\_ prior to the EO complaints that the applicant allegedly harassed her. SPC M\_\_\_\_\_ testified that PVT2 O\_\_\_\_\_ never told her that.

(2) PV2 O\_\_\_\_\_ and SGT C\_\_\_\_\_ testified that he never saw them drunk or confronted them in Poland prior to their Article 15. He testified that he was making a Sexual Harassment Assault Response and Prevention (SHARP) safety check because he saw them on post inebriated and with unknown males, presumably service members.

(3) His roommate Captain (CPT) V\_\_\_\_\_ testified the night (applicant) saw them drunk; he came back to the room and told him. The next day, an investigation was opened, resulting in an Article 15 and loss of rank of both PV2 O\_\_\_\_\_ and SGT C\_\_\_\_\_; which established a motive for the false allegations.

(4) SPC M\_\_\_\_\_ has the most obvious false statements. Her statements changed multiple times on the official sworn statements. The three statements she gave to the EO, and the IO, she changed the timing of the events from one day, to two days, and she changed the locations of the alleged comments multiple times. She mentioned being offered a ride on his motorcycle. Each time she told her story, it got longer and more convoluted. The board was provided a picture of his motorcycle. It has one seat and cannot accommodate passengers.

(5) SGT C\_\_\_\_\_ admitted to filing an EO complaint against a Soldier because she upset about the way the Soldier's wife treated her. She admitted acting as witness in another complaint by a Soldier complaining of something strikingly similar to what she accused him of.

i. Following the government's case, five witnesses appeared on behalf of the applicant and gave testimony under oath.

j. Army Regulation 15-6, paragraph 1-8, states the primary function of any preliminary inquiry, administrative investigation, or board of officers is to ascertain facts, document and preserve evidence, and then report the facts and evidence to the approval authority. It is the duty of the IO or board to thoroughly and impartially ascertain and consider the evidence on all sides of each issue, to comply with the instructions of the appointing authority, to make findings that are warranted by the evidence, and, where appropriate, to make recommendations to the approval authority that are consistent with the findings.

k. Army Regulation 15-6, paragraph 3-10, states the regulation further provides that where there are discrepancies, the IO or board [of officers] should provide reasons for its decision. When the evidence in the record may reasonably support alternative

findings, the IO or board [of officers] should state why the finding they made is more credible and probable than the other reasonable conclusion(s).

l. The board [of officers] in September did its job where the investigating officers did not. It made specific findings on the insufficiency of the government's evidence. It noted the inconsistencies and lack of corroboration in the government's evidence. The standard of proof, substantial evidence, in a Warrant Officer Board for the misconduct alleged is not a high one.

m. Pursuant to Army Regulation 135-175 (Separation of Officers), paragraph 2-26a(2), "substantial evidence" is defined as "such evidence as a reasonable mind can accept as adequate to support the conclusions" based on that low burden, the board determined that the government failed to make its case. The board had a much higher burden of proof of "convincing evidence" to determine whether he should retain his commission. "Convincing proof" is defined as proof that is "sufficient to establish the proposition in question, beyond hesitation, ambiguity, or reasonable doubt, in an unprejudiced mind." (*Black's Law Dictionary, 5th Ed., 1979*) based on that very high burden of proof, the board found that he made his case to retain his commission.

3. The applicant's request that the ABCMR provide a recommendation to the Department of the Army Suitability Evaluation Board that his GOMOR be removed is not within the Board purview. The Board does not make recommendations to another Agency; but only to remove or correct official documents to their service records. Therefore, this issue will not be discussed further in these proceedings.

4. The applicant provides:

a. The applicant was appointed in the ARNG, in the grade of Warrant Officer 1, effective 24 September 2016.

b. Special Orders Number 327, issued by the Department of the Army and the Air Force National Guard Bureau (NGB), 14 December 2018, shows the applicant's assignment to Headquarters and Headquarters Company, 286th Combat Support Sustainment Battalion.

c. A Letter of Reprimand issued by Joint Force Headquarters, Maine Army National Guard (MEARNG), 29 March 2022, which shows the following:

(1) Findings of an investigation, 10 February 2022 found that the applicant violated the Army's EO standards as laid out in Army Regulation 600-20 (Army Command Policy). Specifically, the IO found that the applicant created a hostile work environment for junior enlisted Soldiers. The evidence suggests he did this by subjecting them to offensive, unwelcome, and unsolicited comments including a request

to see a female Soldier's breasts, as well as commentary on a female Soldier's appearance and suggestion that her uniform would look better on the floor than on the Soldier.

(2) He was reprimanded. The GOMOR states his behavior is abhorrent, inconsistent with Army values, and unacceptable from an Army Warrant Officer. The Soldiers are their number one asset. Treating Soldiers in a manner that objectifies them and creates a hostile work environment violates basic human decency, Army Regulation, and will not be tolerated in the MEARNG. As a leader he was charged with fostering an environment that promotes good order and discipline of your unit, a central tenant of the U.S. Army. Based upon the credible information provided to this command, he has failed in his duty to uphold these standards of personal conduct, having a detrimental impact on the unit.

(3) They enclosed a copy of the record upon which the reprimand is based. He had the right, under Army Regulation 600-37 (Unfavorable Information), paragraph 3-2, to provide written comments concerning this matter. Pursuant to Army Regulation 600-37, paragraph 3-7, he will acknowledge the memorandum and submit his comments, if any, no later than 30 days after receipt. His reply and the recommendations of his chain of command will be considered in determining where to file the reprimand. He will be notified in writing of the final decision.

d. The applicant's memorandum, subject: Acknowledgement of Receipt of GOMOR and Allied Documents), 30 March 2022, the applicant acknowledged:

- He read and understands the reprimand
- He has the opportunity to respond by submitting matters in extenuation, mitigation or rebuttal and entitled to seek legal advice
- He elects to submit written matters within 30 days of receipt of this memorandum

e. In the memorandum, subject: Filing Decision for GOMOR, 3 June 2022, the General Officer recommended placement of the GOMOR in the permanent section of his OMPF.

f. A document titled MEARNG, 2 April 2023, shows a permanent change of assignment for the applicant, with the effective date of 28 March 2023.

g. A NGB Form 23A (ARNG Current Annual Statement) for the period 8 April 2010 through 8 April 2023, reflects he has 13 credible service for retired pay.

h. A Withdrawal of Federal Recognition, undated, shows in section 2, Finding on the Respondents Evidence, shows the Board found that the applicant did produce convincing evidence that his Federal Recognition should not be withdrawn.

5. Review of the applicant's records show:

a. He was appointed as an officer in the Army of the U.S. in the grade of W-1.

b. A DA Forms 67-10-1 (Officer Evaluation Report (OER)) show for the following periods:

(1) 19 August 2017 to 18 August 2018, part VI – his senior rater states, the applicant has demonstrated the potential necessary for the next rank, promote when eligible. Send to Warrant Officer Education System with peers; highly qualified.

(2) 19 August 2018 to 18 August 2019, part VI – his senior rater states, the applicant demonstrated the potential to exceed in positions beyond his current level. He has shown that he can work with limited supervision and accomplish tasks given. Send to PME and promote with peers.

(3) 19 August 2019 to 18 August 2020, part VI – his senior rater states, the applicant is a highly qualified technical expert who will best serve the Army in a Cyber defense capability. Applicant has unlimited potential as a warrant officer in the cyber defense warfighter function.

(4) 19 August 2020 to 18 August 2021, part VI – his senior rater states, the applicant demonstrated technical proficiency for future assignments, and has the potential to achieve great success in the Army.

(5) The applicant's record is void of an OER for the period in which he received a GOMOR.

c. An Advisory Opinion, issued by MEARNG, 13 September 2023 shows the following:

(1) References: Army Regulation 15-6, Procedures for Administrative Investigations and Boards of Officers, 1 April 2016; NGR 635-101, Personnel Separations, Efficiency and Physical Fitness Boards, 15 August 1977, and Army Regulation 15-185, ABCMR, 31 March 2006.

(2) "This memorandum is prepared in response to a request from the National Guard Bureau (NGB) for an advisory opinion from the MEARNG regarding an alleged error in the military records of the applicant. The applicant has failed to proffer any

evidence to overcome the presumption of regularity applied to the results of a[n] [Army Regulation] 15-6 investigation which found that he committed violations of Army SHARP and EO policy, therefore his appeal should be denied.

(3) Factual Background:

a. On or about 9 August 2021, three separate female junior enlisted soldiers filed NGB Form 333 (Discrimination Complaint in the Army and Air National Guard) with the Maine EO Office alleging that the applicant subjected them to instances of sexual harassment. Among the allegations were that he subjected one Soldier to an unwanted touching on her leg, and that he made offensive sexual comments to two others, including asking to see one Soldier's breasts on multiple occasions.

b. An administrative investigation was initiated in accordance with (IAW) [Army Regulation] 15-6, and an IO was appointed on 24 August 2021 to investigate the alleged facts and circumstances with the complaints. A Report of Investigation (ROI) was submitted on 8 December 2021 by the IO but was set aside by the Appointing Authority due to insufficiency of detail in the investigation and ROI.

c. A new IO was appointed by Colonel (COL) Y\_\_\_\_ III on 11 January 2022. After reviewing the previous IO's evidence, re-conducting interviews with the complainants and witnesses in the first investigation, as well as gathering additional evidence and testimony, the second IO submitted his ROI on 10 February 2022.

(1) The IO found after a careful review of the evidence, taking into account various inconsistencies in the record and making independent determinations of the credibility of the witnesses, that applicant had violated Army EO and SHARP policies.

(2) On 11 March 2022, COL Y\_\_\_\_ III adopted the findings of the IO. On 6 March 2022, BG P\_\_\_\_, Land Component Commander (LCC), directed that in light of the substantiated findings, applicant receive a GOMOR and a referred OER with comments regarding his violation of SHARP and EO policy.

(3) On 26 May 2022, the commander of First Army, Lieutenant General (LG) A\_\_\_\_, sent notice of a Withdrawal of Federal Recognition Board to the applicant, informing him of the convening of the board and his rights.

(4) A board of officers convened on 27 September 2022 at Camp Chamberlain to decide whether the applicant should have his federal recognition withdrawn IAW NGR 635-101 (Efficiency and Physical Fitness Boards) for acts of moral or professional dereliction. Statements from both investigations as well as live testimony from the complainants was presented, in addition to other evidence proffered by the applicant. After a two-day hearing concluding on 28 September 2022, the board made findings

that the government did not prove the allegations by substantial evidence, and that the applicant's federal recognition should not be withdrawn.

(5) On 28 November 2022, the Adjutant General, Major General (MG) F\_\_\_\_, approved the boards findings and forwarded the record of the board to the commander of First Army.

(6) On 2 December 2022, the applicant requested in a memorandum through counsel that BG P\_\_\_\_ reconsider his filing decision for the applicant's GOMOR. Via an e-mail dated 10 January 2023, the applicant submitted a request through the Office of the State Judge Advocate to BG P\_\_\_\_ to reconsider the findings of the [Army Regulation] 15-6 Investigation.

(7) After reviewing Defense Counsel and applicant's petitions for review, as well as the [Army Regulation] 15-6 Investigation and the Withdrawal of Federal Recognition (WOFR) board's findings, BG P\_\_\_\_ denied both requests on 30 March 2022.

(8) On 2 April 2023, [applicant] filed this appeal with the ABCMR. In his petition, he identifies the error or injustice that needs to be corrected as COL Y-'s adoption of the findings and recommendations of the [Army Regulation] 15-6 investigation. In explaining his reasoning behind why that action was in error or unjust, [applicant's] sole basis was the findings of the WOFR board recommending his retention.

(9) In his petition to the ABCMR, the sole justification for the alleged error or injustice is that the WOFR board came to a contrary conclusion than the IO in his [Army Regulation] 15-6 investigation. There is no administrative irregularity or injustice where the findings of a [Army Regulation] 15-6 investigation and a subsequent board of inquiry or board of officers comes to a different conclusion. In Gonzales v. United States Dep't of the Army, 160 Fed. Cl. 172 (2022), the United States Court of Federal Claims considered the case of a U.S. Army Major who was the subject of an administrative investigation conducted pursuant to [Army Regulation] 15-6 and was found to have committed misconduct by the investigating officer. Gonzales, 160 Fed. Cl. at 173. Due to the findings of the 15-6 investigation, MAJ G- received a negative OER and an Army Board of Inquiry (BOI) was convened to determine whether to separate MAJ G- as a result of the substantiated misconduct. Ultimately, the BOI "disagreed with the results of the [Army Regulation] 15-6 investigation's findings and decided to retain him in service." Years later, the Army relied upon the negative OER in adopting a lower retirement grade. Major G- appealed the negative OER to the Officer Special Review Board and to the ABCMR arguing, as the applicant does here, that the BOI had 'absolved' him of misconduct. Both the Officer Special Review Board (OSRB) and ABCMR denied MAJ G-s' requests.

(10) The Court upheld the ABCMR's denial of MAJ G-' appeal, finding that:



‘[Army Regulation] 15-6 investigations under review by OSRB and the BOI proceedings occupy non-overlapping boundaries: [Army Regulation] 15-6 Investigations are designated as administrative fact-finding procedure[s]. at 178. Conversely, BOI’s mandate goes beyond mere fact finding; it is instead to oversee an adverse administrative action...BOI’s exact mandate is to give the officer a fair and impartial hearing in order to determine if the officer will be retained. (See Army Regulation 600-8-24 (Officer Transfers and Discharges), paragraph 4-6(a)) It is only as a function of making a separation determination that the BOI must also establish and record the facts of alleged misconduct’ Gonzales, 160 Fed. Cl. at 178. (Internal quotations removed).

Ultimately the Court concluded the ABCMR was correct to find the BOI findings and recommendations were limited to making the retention or separation decision and did not have a direct bearing on the [Army Regulation] 15-6 determination. Simply put, the BOI’s findings cannot ‘by regulation’ absolve officers of alleged misconduct. (See Also Downey v. US Department of the Army, 110 F. Supp. 3d 676 (E.D. Va. 2015)<sup>1</sup> (Attachment 15).

(11) As in Gonzales, the applicant points to no procedural error, omission, or new evidence not previously available to the IO that calls into question the administrative regularity of the 15-6 Investigation. Instead, he relies solely on the WOFR board’s finding that he ought to be retained. Much like the BOI in the Gonzales matter, the role of the Withdrawal of Federal Regulation (WOFR) board is solely to decide whether to retain or separate an officer by withdrawing their federal recognition. (See NGR 635-101 (Efficiency and Physical Fitness Boards) paragraph 21(b) (“Recommendations will be limited to retention or WOFR”)) (See Army Regulation 600-8-24, paragraph 4-6(a)) Similar to a BOI, a WOFR board’s authority does not extend to the separate and independent fact finding role of an IO in an Army Regulation 15-6 investigation, and its findings only concern their own separate role in weighing on retention or withdrawal of federal recognition. Without any evidence pointing to an error in procedure or any other irregularity in the IO’s investigation, even where the IO and the WOFR board came to different conclusions as to the weight and credibility of the evidence, the applicant cannot overcome the presumption of regularity by a preponderance of the evidence. Simply put, the Army Regulation 15-6 investigation and the WOFR board are two separate actions with two separate purposes, and the decisions of one does not negate the other.”

6. The applicant was honorably released from active duty on 8 March 2020 due to the completion of his required active service, per Army Regulation 600-8-24 (Officers Transfers and Discharges), paragraph 2-7, separation code MBK and reentry code NA. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his total net service as 10 months and 26 days, with 1 year, 4 months and 10 days of total prior active service and 7 years, 7 months, and 25 days of total prior inactive service.

7. A review of the applicant's AMHRR shows the GOMOR, 29 March 2022, was uploaded to his performance folder on 8 June 2022.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, 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 and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and National Guard Bureau- Special Actions Branch and Joint Forces Headquarters Maine National Guard – Staff Judge Advocate (SJA) advisory opinions and the Board determined concurred with the SJA advising official finding the applicant violated Army EO and SHARP policies after the command conducted a second investigation. The Board carefully considered and agreed with the board of officers finding the applicant should not have his federal recognition withdrawn based on the government not proving substantial evidence in regard to the allegations.

2. Furthermore, the Board noted, although the board of officers determined withdrawal of his federal recognition was not warranted based on the evidence provided being not enough to prove guilt. The Board determined removal of a GOMOR is generally not warranted unless it is factually incorrect. The Board determined that the applicant has not demonstrated by a preponderance of evidence that any procedural error occurred that was prejudicial to the applicant, or that the applicant and demonstrated by a preponderance of evidence that the contents of the GOMOR are substantially incorrect to support removal. Based on the investigating officers findings and the SJA opine, the Board denied relief.

3. The purpose of maintaining the Army Military Human Resource Record (AMHRR) is to protect the interests of both the U.S. Army and the Soldier. In this regard, the AMHRR serves to maintain an unbroken, historical record of a Soldier's service, conduct, duty performance, and evaluations, and any corrections to other parts of the AMHRR. Once placed in the AMHRR, the document becomes a permanent part of that file and will not be removed from or moved to another part of the AMHRR unless directed by an appropriate authority. There does not appear to be any evidence the contested GOMOR was unjust or untrue or inappropriately filed in the applicant's AMHRR.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.



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. 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.
2. Army Regulation 15-6 (Procedures for Investigating Officers 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. Army Regulation 600-20 (Army Command Policy) prescribes the policies and responsibilities of command, which include the Army Ready and Resilient Campaign Plan, military discipline and conduct, the Army Military Equal Opportunity Program, the Army Harassment Prevention and Response Program, and the Army Sexual Harassment/Assault Response and Prevention Program.

a. Paragraph 4-4 (Soldier Conduct) states ensuring the proper conduct of Soldiers is a function of command. Commanders and leaders in the Army, whether on or off duty or in a leave status, will ensure all Soldiers present a neat, military appearance and take appropriate action consistent with Army regulations in any case where a Soldier's conduct violates good order and military discipline.

b. Paragraph 4-14 (Relationships Between Soldiers of Different Grades) states the provisions of this paragraph apply to both relationships between Soldiers in the Regular Army and U.S. Army Reserve. Soldiers of different grades must be cognizant that their interactions do not create an actual or clearly predictable perception of undue familiarity between an officer and an enlisted Soldier, or between an NCO and a junior enlisted Soldier. Examples of familiarity between Soldiers that may become "undue" can include repeated visits to bars, nightclubs, eating establishments, or homes between an officer and an enlisted Soldier or an NCO and a junior enlisted Soldier. All relationships between Soldiers of different grades are prohibited if they:

(1) compromise, or appear to compromise, the integrity of supervisory authority or the chain of command;

(2) cause actual or perceived partiality or unfairness;

(3) involve, or appear to involve, the improper use of grade or rank or position for personal gain;

(4) are, or are perceived to be, exploitative or coercive in nature; or

(5) create an actual or clearly predictable adverse impact on discipline, authority, morale, or the ability of the command to accomplish its mission.

c. Paragraph 4-14c states certain types of personal relationships between officers and enlisted Soldiers or NCOs and junior enlisted Soldiers are prohibited. Prohibited

relationships include dating, shared living accommodations other than those directed by operational requirements, and intimate or sexual relationships between officers and enlisted personnel or NCOs and junior enlisted Soldiers.

d. Paragraph 4-14f states commander should seek to prevent inappropriate or unprofessional relationships through proper training and personal leadership. Commanders have a wide range of responses available should inappropriate relationships occur. These responses may include counseling, reprimand, order to cease, reassignment, or adverse action. Potential adverse action may include official reprimand, adverse evaluation report(s), nonjudicial punishment, separation, bar to continued service, promotion denial, demotions, and courts-martial. Commanders must carefully consider all of the facts and circumstances in reaching a disposition that is warranted, appropriate, and fair.

4. 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.

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.

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. 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.

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the Reserve Components.

a. Chapter 3 prescribes basic eligibility for prior service applicants for enlistment and includes a list of Armed Forces Reentry (RE) Codes, including RA RE Codes.

- Re Code of "1" (RE-1) applies to persons qualified for enlistment if all other criteria are met
- RE-3 applies to persons ineligible for reentry unless a waiver is granted
- RE-4 applies to persons who have a nonwaiverable disqualification and are ineligible for enlistment

b. Chapter 4 states recruiting personnel have the responsibility for initially determining whether an individual meets current enlistment criteria and are responsible for processing waivers.

7. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code MBK is to be used for RA Soldiers discharged for completion of required active service under the provisions of Army Regulation 600-8-24, chapter 10.

8. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code MBK does not have a corresponding RE Code."

//NOTHING FOLLOWS//