

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2024

DOCKET NUMBER: AR20230004621

APPLICANT REQUESTS: removal of the general officer memorandum of reprimand (GOMOR), 22 February 2022, from his Army Military Human Resource Record (AMHRR).

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- five Memorandums of Support, 3 March 2022 to 8 March 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 29 April 2022
- two Department of Veterans Affairs (VA) Rating Decisions, 29 August 2022 and 27 December 2002

FACTS:

1. The applicant states:

a. The GOMOR administrative action was an injustice as he and his defense attorney, Major S\_\_\_\_ C\_\_\_\_, provided clear and convincing evidence in his rebuttal that he was completely innocent of all allegations. He believes that his commander at the time, Colonel (COL) S\_\_\_\_ W\_\_\_\_, Task Force Veritas, from the South Carolina National Guard, just wanted to get rid of him. COL W\_\_\_\_ was the most inexperienced COL he had ever worked for and he was constantly making poor decisions and bad judgment calls when dealing with Soldier discipline issues, coronavirus disease restrictions, and air defense-related decisions. He did, at times, disagree with his commander's poor decisions to protect his unit. His commander had no concept of mission command or staying in his lane as the task force commander. COL W\_\_\_\_ should have allowed battery and battalion commanders to do their jobs and let any legal process play out without jumping to conclusions prematurely, and avoided constant restrictions and unnecessary additional risk reduction policies, including cancelling planned unit events.

b. The applicant's unit, 1st Battalion, 188th Air Defense Artillery Regiment, North Dakota Army National Guard (NDARNG), was deployed to the National Capital Region in support of the Integrated Air Defense System Mission 2021-2022. His commander could have recommended withdrawal and destruction of the GOMOR as requested to Major General A\_\_\_\_ P\_\_\_\_, but he only went halfway by recommending removal of key portions from the GOMOR. He believes his commander recommended removal of key parts because of the strong rebuttal and very weak allegations. The other allegations included in the GOMOR were not supported by witness statements or evidence and were completely rebutted in the witness statements provided. The evidence provided in the original rebuttal included a polygraph report, which he paid for and passed with truthful statements. He believes the motive for her to bring the allegation nearly 60 days later was to get out of the deployment and return home because of a potential suicide-by-cop incident that occurred involving her husband.

c. The Soldier who brought the allegations against him wanted to get out of the deployment by any means necessary. She (the Soldier) had come to him and the command sergeant major (CSM) in an open door setting, discussing the matter with her in an attempt to help the Soldier, and he told her they were willing to work with her on hardships and leave requests.

d. He provided five letters of support from former supervisors and officers who know him well. Each supporting statement was written by an officer or supervisor who had previously rated and/or worked with him. They all reviewed both the GOMOR, agent's report, and rebuttal with evidence prior to writing their support letters.

e. Additionally, this allegation occurred on 11 September 2021 and he is an Afghanistan veteran. He was very upset about the Afghanistan withdrawal at the time. That night after attending an on-base concert, he was talking to many of the remaining veterans of his unit who had deployed with him to Afghanistan. He is currently 70% service-connected disabled for post-traumatic stress disorder (PTSD), and he was diagnosed with PTSD by the VA.

f. Before this allegation, he had a nearly flawless 24-year military career with the NDARNG with two combat deployments to Afghanistan as a platoon leader and commander and two deployments to the National Capital Region as an officer and battalion commander in support of the Integrated Air Defense System Mission. He was going on his fourth year as a battalion commander in the unit/branch he has always loved, 1st Battalion, 188th Air Defense Artillery Regiment.

g. This GOMOR is an injustice because these allegations simply did not occur. He was honorably discharged and retired from the NDARNG on 31 July 2022 and transferred to the Retired Reserve. The GOMOR was an injustice, he has retired, and

he respectfully requests removal of the GOMOR and any unfavorable documents associated with it from his AMHRR.

2. U.S. Army Installation Management Command, Headquarters, U.S. Army Garrison, Fort Bliss, Orders BL-174-0069, 23 June 2021, deployed him in support of Operation Noble Eagle National Capitol Region – Integrated Air Defense System on or about 26 June 2021.

3. The Department of the Army Law Enforcement Report – Serious Incident Report (Category 3)/Final, 10 January 2022, names him as the subject for the offenses of Abusive Sexual Contact (Adult) on 1 September 2021 and 30 September 2021 at Joint Base Andrews, MD.

a. The Report of Summary states:

(1) This office was notified by Ms. F\_\_\_ L. B\_\_\_\_, Sexual Assault Response Coordinator, Joint Base Myer-Henderson Hall, VA, that Staff Sergeant (SSG) A\_\_\_ M\_\_\_ reported the applicant touched her breasts and buttocks without her consent while at a party on post.

(2) SSG A\_\_\_ M\_\_\_ was interviewed and stated the applicant touched her breast while in the house located at (redacted address).

(3) Multiple witness interviews were conducted and revealed the applicant was present at the party and highly intoxicated. Witnesses additionally stated they observed the applicant touching and dancing with individuals present at the party.

(4) The applicant was interviewed and provided a written statement wherein he denied having been intoxicated while at the party, and further denied touching SSG A\_\_\_ M\_\_\_'s breast.

b. On 5 January 2022, the Chief of Military Justice, Military District of Washington, Fort McNair, DC, opined s probable cause existed to believe the applicant committed the offense of Abusive Sexual Contact.

4. On 7 February 2022, he underwent a polygraph examination.

a. The focus of the examination was a specific-issue examination as to whether he had ever touched SSG A\_\_\_ M\_\_\_'s breasts.

b. He denied he ever had any physical contact with SSG A\_\_\_ M\_\_\_ and stated she was just another person under his command and he has no clue why she would make the allegations she has made against him.

c. Numerical scoring and grading consistent with nationally standardized procedures evaluated the examination. The procedures resulted in the findings of no deception indicated.

d. It was the examiner's professional opinion that the applicant's answers to the relevant questions should be considered truthful.

5. On 22 February 2022, he was issued a GOMOR for (redacted) fraternization, false official statement, and conduct unbecoming an officer. The commanding general stated a CID investigation revealed that he attended a party at an enlisted Soldier's on-post residence on or about 11 September 2021. Throughout the night, numerous Soldiers observed him consuming alcohol, having trouble walking, and slurring his speech. He was described as visibly intoxicated and making a fool of himself. More concerning is that multiple Soldiers who fell under his command observed him dancing and attempting to "grind" on junior female Soldiers. He was also observed putting his arms around them. When questioned by CID, he denied being intoxicated. However, every single witness refuted this.

6. He acknowledged receipt of the GOMOR and elected to submit written matters within 7 calendar days.

7. On 9 March 2022, his counsel provided a statement in response to the GOMOR wherein counsel stated:

a. The applicant never touched SSG A\_\_ M\_\_'s breast. He never attempted to "grind" on junior female Soldiers and he was not intoxicated to the point of "making a fool" of himself. He never made a false official statement, fraternized, or committed any conduct unbecoming of an officer.

b. Counsel gathered sworn statements from service members who attended the social gathering/party that occurred on 11 September 2021 after the post-wide concert. The U.S. Army Criminal Investigation Command (CID) special agent's summary of witness testimonies had several contradictions and issues, so they interviewed the witnesses to gather the truth. Eleven witnesses said the exact opposite of the allegations set forth in the GOMOR against the applicant. All of the witnesses paint a different picture and interpretation of the incidents in contrast to the allegations in the GOMOR.

c. The most serious allegation set forth in the GOMOR is that the applicant touched/grabbed the breast of SSG A\_\_ M\_\_ on 11 September 2021 during the social gathering, yet not a single person or witness who CID interviewed from the party corroborated this allegation. In fact, every single person denied seeing or witnessing this alleged act. More interestingly, several witnesses casted doubt that this alleged

incident ever occurred, as they questioned the credibility of SSG A\_\_ M\_\_ and her allegation.

(1) Every single witness who CID and the defense team interviewed denied seeing this alleged act. Not a single person from the party saw this act occur, nor did they hear SSG A\_\_ M\_\_ ever mention such an act. We even interviewed two extra witnesses from the party, Specialist G\_\_ and SSG J\_\_ M\_\_. Although the CID report summarized their testimony as having "no pertinent information," they actually had exculpatory evidence. They were at the party and they also denied seeing the alleged act of the applicant committing any sort of abusive sexual contact. There is absolutely zero corroborating evidence to support SSG A\_\_ M\_\_'s claim.

(2) Not only is there zero corroborating evidence to support SSG A\_\_ M\_\_'s allegations, several witnesses cast doubt to the credibility of this allegation. SSG J\_\_ M\_\_ even states that SSG A\_\_ M\_\_ had made other false sexual assault allegations/claims in the past and had zero issues lying about such a serious claim. All three witnesses also question the timing of the allegation, as they heard SSG A\_\_ M\_\_ repeatedly state that she "would do anything to go back home" (i.e., leaving the deployment early), after her initial requests to leave were denied by the command. Conveniently, she made two sexual assault allegations after making those comments and was allowed to leave the deployment and go home early. SSG A\_\_ M\_\_ also made this claim several months after "it occurred." She had several conversations with the applicant and even sought his help through his open door policy to try and leave the deployment and go back home, even after the alleged "abusive sexual contact." She had zero issues approaching the applicant on a one-on-one basis after the alleged incident. Her actions simply do not make sense and her allegations seem completely disingenuous.

(3) The applicant took a polygraph examination and proved he never touched SSG A\_\_ M\_\_. If there were any residual doubt over the incident, the evidence should sway any objective factfinder. The applicant took a polygraph examination to disprove SSG A\_\_ M\_\_'s claims and he passed. The applicant wanted to completely exonerate himself of the false allegation and underwent a polygraph examination to prove his innocence. The evidence cannot be denied. The applicant never committed abusive sexual contact against SSG A\_\_ M\_\_.

d. The GOMOR makes several other allegations solely based on a CID special agent's summary of witness testimonies. The supporting documents for the GOMOR did not include a single sworn statement and only relied on a summary of testimonies, typed by a CID special agent. It was difficult to discern the truth of the allegations, as the report was riddled with inconsistencies and mischaracterization. For example, the CID special agent summarized that on 29 November 2021, CSM G\_\_ "did not believe [Applicant] had been intoxicated or out of control." Yet, the same report contradicts itself

and makes another summary that on 8 December 2021, CSM G\_\_ said "[Applicant] was 'intoxicated' and 'too drunk to drive.'"

e The applicant has already suffered enough from the false allegation of Abusive Sexual Contact, even being fingerprinted and titled for something he simply did not do. The investigation has already negatively affected his military and civilian careers, and has taken an emotional toll on him for the past 5 months. The allegations in the GOMOR should be removed, as several witnesses directly refute those allegations. At the very least, the allegation of Abusive Sexual Contact should be given a "No Probable Cause" opinion so as to not affect his civilian career as a Customs and Border Patrol agent.

f. Included in the rebuttal were sworn statements by witnesses, stating allegations did not occur, supporting him, and detailing the previous questionable conduct of the alleged victim. Also, the statements, along with the applicant's sworn statement, detail reasons for the alleged victim to lie about what occurred, including a statement from her then-husband.

8. On 28 March 2022, the imposing officer directed filing the GOMOR in the applicant's AMHRR. The Army Regulation (AR) 15-6 (Procedures for Administrative Investigations and Boards of Officers) report of investigation is filed in the restricted folder of his AMHRR.

9. On 29 April 2022, he was honorably released from active duty by reason of completion of required service. He completed 10 months and 27 days of active service during this period.

10. On 31 July 2022, he resigned his commission as a member of the NDARNG in the rank/grade of lieutenant colonel/O-5. His National Guard Bureau Form 22 (National Guard Report of Separation and Record Service) shows he completed 24 years, 7 months, and 2 days of total service.

11. NDARNG Army Element Joint Force Headquarters Orders 0001963174, 3 August 2022, transferred him to the Retired Reserve effective 1 August 2022.

12. He provided:

a. five memorandums of support from Solders and supervisors he previously worked with, wherein they state he earned an impeachable reputation. He has never been known to abuse alcohol or be overly intoxicated and exhibit anything less than a professional behavior. He has never demonstrated behavioral traits of a sex offender. He has served in positions of significant trust and authority and has never been known to abuse his position. He is a Soldier of great character, who lives and exemplifies the

Army values, is committed to his Soldiers, and upholds the reputation of the Army, the State of North Dakota, his unit, and its Soldiers with the greatest regard; and

b. two VA rating decisions, 29 August 2022 and 27 December 2022, showing he was granted service connection for the following conditions:

- PTSD with anxious stress
- bilateral pes planus (foot pain, flatfeet)
- bilateral primary open and glaucoma
- right knee strain
- tinnitus
- right wrist sprain
- right hand tendinopathy
- bilateral metatarsalgia
- bilateral plantar fasciitis

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows, following a COD investigation, the applicant was issued a GOMOR for (redacted) fraternization, false official statement, and conduct unbecoming an officer on 22 February 2022, that was directed to be permanently filed in his record. Upon review of the totality of this incident, the Board did determine the applicant was drinking; however, the Board found insufficient evidence that he committed the said sexual misconduct. The Board reached the conclusion based on the fact that the applicant was in a social function, he was drinking, the accuser was in trouble, trying to go home; and the applicant passed a lie detector test, and if the issue was in fact proven, it is unclear why the chain of command did not take it to a court-martial. The Board determined the GOMOR should be removed.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing the general officer memorandum of reprimand (GOMOR), 22 February 2022, from his Army Military Human Resource Record (AMHRR).

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

REFERENCES:

1. Army Regulation 600-37 (Unfavorable Information), 10 April 2018, sets forth policies and procedures to authorize placement of unfavorable information about Army members in individual official personnel files; ensured that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and ensured that the best interests of both the Army and the Soldier are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.



a. Chapter 3 (Unfavorable Information in Official Personnel Files) states 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. Paragraph 3-5 (Filing of Nonpunitive Administrative Memoranda of Reprimand, Admonition, or Censure) states nonpunitive administrative letters of reprimand, admonition, or censure in official personnel files, such as 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) states 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.

2. Army Regulation 600-8-104 (Army Military Human Resource Records Management), 7 May 2014, prescribes policies governing the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to, the Official Military Personnel File, finance-related documents, and non-service related documents deemed necessary to store by the Army.

a. Paragraph 3-6 states that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the Army Board for Correction of Military Records or other authorized agency.

b. Appendix B shows letters/memorandums of reprimand, censure, and admonition are filed in the performance folder unless directed otherwise by the Department of the Army Suitability Evaluation Board.

//NOTHING FOLLOWS//