

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 November 2024

DOCKET NUMBER: AR20230006548

APPLICANT REQUESTS:

- Removal of a general officer memorandum of reprimand (GOMOR) from her official military personnel file (OMPF), along with all associated documentation including those related to her Department of the Army Suitability Evaluation Board (DASEB)
- Review of three DA Forms 67-10-2 (Field Grade Plate (O4 – O5; CW3 (Chief Warrant Officer Three) – CW5) Officer Evaluation Report (OER)

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

- Two DD Forms 149 (Application for Correction of Military Record) (one submitted online and the other in hard copy)
- GOMOR and supporting documents
- U.S Army Criminal Investigation Command (CID) Law Enforcement Report (LER)
- Three DA Forms 67-10-2
- DASEB documents
- Fiscal Year 2023 (FY23) Lieutenant Colonel (LTC) Army Competitive Category (ACC) Promotion Selection Board (PSB) Document List
- Two memoranda
- Board of Inquiry (BOI) Findings and Recommendations
- U.S. Space Command Inspector General Letter
- Major General (MG) [REDACTED] [REDACTED] Letter of Support
- Additional Documents:
  - Tab A –LTC [REDACTED] [REDACTED] letter to U.S. Representative
  - Tab B – Department of the Army Inspector General (DAIG) letter
  - Tab C – U.S. Army Installation Management Command letter
  - Tab D – DAIG letter
  - Tab E – DAIG letter
  - Tab F – Department of Defense Inspector General (DODIG) email
  - Tab G – DODIG email
  - Tab H – U.S. Senator email

- Tab I – U.S. Army Human Resources Command (HRC) memorandum

FACTS:

1. The applicant states, contrary to the assertions made in the GOMOR, she did not engage in fraternization, nor did she commit conduct that was unbecoming of an officer.

a. The applicant is asking the Board to remove all allied GOMOR documents from both the performance and restricted folders of her OMPF; additionally, she requests that the Board delete all DASEB documents from her restricted folder. This is because an HRC promotions representative told her that DASEB results are not viewed as being an "adverse action," and as such, would be available for PSB review. The applicant contends the presence of those documents would make her appear to be guilty of the GOMOR's false accusations.

b. The applicant also requests the Board conduct a thorough and full review of the three OERs she provides. She maintains those OERs are not representative of her actual performance, and she argues, "My character and name across Fort Hood leaders was tarnished because of those false allegations. A clean slate and fair chance to be consider(ed) for promotion to LTC and continue to build a career in the Army towards retirement so I can continue to provide for my family." The applicant adds that, "no leader wanted to waste their 'top block' rating on me because they stated I (would) never get promoted with a GOMOR in my records."

c. The applicant offers additional context and arguments in two self-authored statements:

(1) First memorandum – Relevant Facts. In February 2018, she was the officer-in-charge of a brigade's S-6 (Signal/Local Area Network (LAN) Support) office) at Fort Hood, TX (now renamed Fort Cavazos). She received instructions to lead a team of five Soldiers on temporary duty (TDY) to Fort Leavenworth, KS for a training exercise. The team consisted of herself, a female Sergeant First Class (SFC) (SFC [REDACTED] (S-6 Noncommissioned-Officer-In-Charge (NCOIC)) and four males. Upon the team's arrival at Fort Leavenworth, they were placed in an off-post hotel and assigned a van for transportation to and from the post.

(a) On evening of 2 March 2018, the applicant and her entire team went to a local area known for its restaurants; during dinner, several team members drank alcohol, but the applicant points out she never bought drinks for anyone. At some point during the evening, her female NCOIC, SFC [REDACTED] became inebriated, so they all decided to return to their hotel; on the return trip, SFC [REDACTED] vomited "on more than one occasion."

(b) At their hotel, the applicant and the rest of the team discussed how best to care for SFC [REDACTED], with her safety being of paramount concern. "Knowing the adverse and detrimental effects of alcohol and, with knowledge that she was the only other female on this TDY, I decided that she should stay in the extra bed in my hotel room so that I could keep a close watch over her during throughout the night." The following morning, (SFC [REDACTED]) appeared to be just fine and returned to her own room. The remainder of the TDY went smoothly without incident."

(c) "Upon returning to Fort Hood, Texas, SFC [REDACTED] reported that during the TDY, on the night that she was inebriated, a male member of the team (CW2 [REDACTED]) sexually assaulted both her and (applicant). "Knowing the allegations to be false, I informed investigators with the Army CID that I was not sexually assaulted and that, to the best of my knowledge, (SFC [REDACTED]) was likewise not sexually assaulted." Within 15 weeks after this interview, the division commanding general (CG) (MG [REDACTED]) issued the applicant a GOMOR, which specifically alleged that the applicant had engaged in conduct unbecoming of an officer and fraternization; the allegations were not true, and she submitted a rebuttal in response.

(d) After the GOMOR, the division CG initiated separation action against her and, on 21 December 2018, she appeared before a BOI. The BOI concluded that the preponderance of the evidence did not support the allegations against the applicant; the board recommended the applicant's retention on active duty and rehabilitative transfer. (Prior to the BOI, on or about 16 July 2018, the applicant moved from the brigade S-6 to the division G-6); in February 2020, the applicant's division G-6 rating chain issued her an OER and the report did not mention either the GOMOR or BOI.

(e) In October 2022, the FY23 AC PSB did not select her for promotion to LTC. In April 2023, she requested reconsideration for promotion by a Special Selection Board (SSB); however, on 11 April 2023, the SSB denied her request because "the exclusion of my DASEB result (was) not presented."

(2) First Memorandum – Analysis. The applicant cites Army Regulation (AR) 600-20 (Army Command Policy), in which the regulation prohibits interactions between officers and enlisted Soldiers that could create and actual or clearly predictable perception of undue familiarity. The interactions include, but are not limited to, "repeated visits to bars, nightclubs, eating establishments, or homes...except for social gatherings that involve an entire...work section (emphasis added by applicant)."

(a) "While TDY, our team was issued one van, which we used to go to dinner. On the night in question, our entire team went to dinner together using the only available means to do so – our assigned van. During this TDY, there was no actual or clearly predictable perception of undue familiarity, as our conversations remained professional, respectfully, and in keeping with military customs and traditions (i.e., use

of ranks) and none of the six soldiers interviewed by Army CID expressed any concerns about a perception of undue familiarity between myself and them. It is not my practice to have dinner with my enlisted colleagues while at home station and only did so because we were TDY with only one mode of transportation. As such, I did not fraternized (sic) with my subordinates."

(b) "My actions during the entire TDY, and on the night in question, were not conduct unbecoming of an officer, a term defined as conduct which 'seriously compromises the officer's character...or action or behavior...which, in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer.' On the night in question, I did not provide SFC [REDACTED] any alcoholic beverages. As each Soldier had their own room, I am not aware of each if she consumed any alcoholic beverages in the privacy of her hotel room prior to us going out for dinner. However, upon learning and observing her state of intoxication, I (did) what any reasonable person and officer confronted with the same situation would do – directed that she remained with me so that I could keep a close eye on her and care for her safety should anything arise. My conduct in caring for the well-being of the only other female Soldier, who was intoxicated, in a group of men, did not seriously compromise my character, did not dishonor or disgrace me personally, and did not call into question my standing as an officer. As such, I did not engage in any conduct that was unbecoming of an officer."

(c) "When the allegations contained in the Letter of Reprimand were presented to a disinterest(ed) group of senior field grade officers, namely colonels (COL), they concluded that the allegations were not supported by the preponderance of the evidence standard. Specifically, they concluded that the greater weight of the evidence did not support that I engaged in fraternization or conduct unbecoming."

(3) First Memorandum – Good Soldier Paragraph. The applicant maintains her service has been exemplary. Even after receiving the GOMOR, her leadership awarded her a Meritorious Service Medal; further, she completed four military schools and received IT (Information Technology) certifications. Significantly, her leadership hand-selected her to be the Corps Warfighter Network Officer, and she excelled as a battalion executive officer and, while deployed, served as an acting battalion commander. In addition, she prepared and aligned her battalion for DEFENDER 2020 and, in her current position, she helped to build the Satellite Communications (SATCOM) foundation for a Combatant Command (COCOM).

(4) Second Memorandum – On 13 August 2024, the applicant submitted additional documents for the Board's consideration and provided further arguments.

(a) On 26 December 2018, the applicant's battalion commander (LTC [REDACTED]) sent a letter to the applicant's U.S. Representative. In the letter, LTC [REDACTED]

falsely claimed the unit had conducted an investigation under AR 15-6 (Procedures for Administrative Investigations and Boards of Officers). That statement essentially invalidated the applicant's 2018 request for Congressional assistance. Also, her U.S. Representative's office did not follow up on the false AR 15-6 claim. "The process was not conducted properly, and (applicant's division) closed out my inquiry three years later after I received the GOMOR and BOI."

(b) The applicant summarized the actions she has taken to exhaust administrative remedies and obtain documents.

- She reached out to DOD after the DODIG closed her whistleblower case (apparently referring to requests made under Title 10, USC, Section 1034 (Military Whistleblower Protection Act (MWPA)); (after a few months of investigation, the DODIG closed her case due to a lack of timeliness)
- She is now awaiting a response from the DODIG concerning her request for documents
- She also filed a Freedom of Information Act request with Fort Cavazos, but, to date, they have not provided documents
- She contacted her U.S. Senator's office, who advised her to submit a request to the Army Board for Correction of Military Records (ABCMR).

d. On 19 April 2024, HRC sent her a notification of her mandatory removal date (MRD).

(1) The memorandum announced the applicant's non-selection for promotion to LTC by FY24 ACC PSB and stated the applicant had to be removed from active duty no later than the first day of the seventh month after approval of the board's report; as an exception, the applicant would be retained on active duty if, on the report's approval date, she was within two years of retirement eligibility.

(2) The memorandum further informed her that a selection board had recommended her for selective continuation (SELCON) on active duty. The maximum period authorized for SELCON was three years (i.e., 30 September 2027) or until the applicant was retirement eligible; because the applicant would be retirement eligible prior to 30 September 2027, the Army was unable to offer her SELCON.

2. The applicant provides documents from her service record and additionally submits the following:

a. CID Final LER, dated in July 2018. The report shows the offense investigated was "Abusive Sexual Contract (Adult)," the subject was SFC [REDACTED] (former Brigade S-6 NCOIC), and the applicant and CW2 [REDACTED] were listed as victims. On

23 April 2018, Captain (CPT) [REDACTED] reported that SFC [REDACTED] had claimed the applicant and CW2 [REDACTED] had touched her sexually.

(1) During an interview, conducted as part of an unrelated AR 15-6 investigation, SFC [REDACTED] accused the applicant and CW2 [REDACTED] of trying to remove her underwear and of touching her in a sexual manner while they were on TDY.

(2) Both the applicant and CW2 [REDACTED] denied SFC [REDACTED] allegation, and CW2 [REDACTED] affirmed instead that SFC [REDACTED] had touched him in a sexual manner while they were traveling back to their hotel in the van; Specialist [REDACTED] confirmed this, stating he had seen SFC [REDACTED] touching CW2 [REDACTED] genital area while in the van, and CW2 [REDACTED] tried to push her away.

(3) On 19 June 2018, the brigade's trial counsel opined that the allegations were baseless and there was no probable cause to believe that either the applicant or CW2 [REDACTED] had committed the offense of Abusive Sexual Contact.

b. BOI Findings and Recommendations, dated on or about 21 December 2018:

(1) The BOI convened to determine whether the applicant should be retained, under the provisions of AR 600-8-24 (Officer Transfers and Discharges), paragraph 4-2b (Reasons for Elimination – Misconduct, Moral or Professional Dereliction, or in the Interests of National Security).

(2) The BOI issued the following findings:

(a) The allegation that, "on or about 2 March 2018, [applicant] created a perception of undue familiarity with an NCO and a junior enlisted Soldier while TDY, in violation of AR 600-20, paragraph 4-14b (Relationships Between Soldiers of Different Grade), was not supported by the preponderance of evidence and did not warrant separation.

(b) "The allegation of, on 15 August 2018, [applicant] received a GOMOR filed in [applicant's] permanent (OMPF) for the above misconduct is supported by the preponderance of the evidence and does not warrant separation."

(c) "The allegation of conduct unbecoming an officer, for the above-referenced items is supported by the preponderance of the evidence and does not warrant separation."

(3) The BOI recommended the applicant's retention in the Army and rehabilitative transfer.

c. Memorandum for President, FY23 LTC ACC PSB, dated 12 October 2022, in which the applicant notes that, although her GOMOR and DASEB were in the restricted portion of her OMPF, both appeared to be a part of her MBF (My Board File). She pointed out that a BOI had determined the GOMOR allegations were not supported by the preponderance of the evidence, and the DASEB had directed the GOMOR's placement in her restricted folder. She expressed her desire to continue her Army service and to "do the job that is required of me for the next Field Grade Rank of LTC."

d. Memorandum for HRC, dated 10 April 2023 and requesting an SSB for reconsideration of her non-selection for LTC.

(1) "Prior to the board, I noticed My Board File did not reflect what was in my restricted portion of my AMHRR. The restricted portion of my (OMPF) contained a reprimand and Department of the Army Suitability Review Board (DASEB). I've been fighting to get the reprimand out of my records due to all allegations against me (were) unsubstantiated/not supported by preponderance of the evidence in a BOI."

(2) "If you reconsider my file, it will reflect that my career has been stellar and the incident that took place during my time on Fort Hood was a form of reprisal towards me. All supporting documents will reflect. With that being said, it was hard to get a TOP BLOCK rating when all the odds are against me; however, I still received Highly Qualified . My tenure in USSPACECOM has been rewarding and a chance to continue what I love to do without fear or forms of reprisal."

e. On 5 May 2023, MG [REDACTED] signed a memorandum of support for the applicant.

(1) MG [REDACTED] supported removing the applicant's GOMOR and stated, after careful consideration and review of the applicant's record, he found that all allegations against the applicant were not supported by a preponderance of the evidence.

(2) During the applicant's tour with U.S. Space Command, she performed her duties in an exemplary and professional manner, and her hard work was a global effort, in that she worked tirelessly with Allies and Coalition partners.

3. The Board will not be addressing the applicant's request to review three DA Forms 67-10-2, covering the respective rating periods of 20170629 – 20180628, 20180629 – 20190628, and 20190629 – 20200618. Her request does not specify what she is asking the Board to correct, and she does not offer clear and compelling evidence that demonstrates how the three OERs contain a material error, inaccuracy, or injustice.

a. As outlined in its governing regulation (AR 15-185 (ABCMR)):

(1) The Board's mandate is to correct military records; it is not an investigative body and begins its review of each application with a presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate).

(2) An applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

b. AR 623-3 (Evaluation Reporting System), in effect when the OERs were issued, spells out in chapter 4 (Evaluation Report Redress Program) what is required for an OER appeal.

(1) Paragraph 4-7 (Policies) states that, once accepted into a rated Soldier's OMPF, the OER is presumed to be administratively correct, to have been prepared by the proper rating officials, and to represent the considered opinions and objective judgments of the rating officials at the time the report was prepared.

(2) The Soldier appealing an OER has the burden of proving errors or injustices within the report and must do so by submitting clear and convincing proof that the presumption of regularity should not be applied and that action is warranted to correct a material error, inaccuracy, or injustice.

4. A review of the applicant's service record shows the following:

a. On 22 July 2006, after completing Reserve Officers' Training Corps requirements and graduating from a university, the applicant executed her oath of office as a U.S. Army Reserve Commissioned Officer.

b. After a short stint of honorable service in the South Carolina Army National Guard, during which the Army awarded her Area of Concentration 25A (Signal), the applicant entered active duty and was assigned to Korea as her first duty assignment.

c. She continued her service as a Regular Army officer in a variety of positions and was deployed to Afghanistan, from 4 December 2012 to 28 August 2013. On or about 19 July 2017, orders assigned her as the S6 for a sustainment brigade at Fort Hood. Effective 1 December 2017, the Army promoted her to major (MAJ)/O-4.

d. On 23 April 2018, CPT [REDACTED] reported to CID that SFC [REDACTED] accused the applicant and CW2 [REDACTED] of abusive sexual contact. The CID investigation included three Agent's Investigation Reports, respectively dated 26 April,

30 April, and on or about 16 May 2018; the reports showed summarized sworn statements made by the applicant, SFC [REDACTED] and CW2 [REDACTED] and other members of the team.

(1) SFC [REDACTED] had told CPT [REDACTED] that she and the applicant were highly intoxicated, and that CW2 [REDACTED] had escorted her and the applicant back to the applicant's room. SFC [REDACTED] continued, claiming she heard the applicant saying "No" repeatedly. SFC [REDACTED] said, "I didn't know why until next morning...she (applicant) stated he (CW2 [REDACTED]) was trying to pull her panties down, and she was trying to stop him and it felt (like) his pants were down."

(2) Later, on 23 April 2018, CID interviewed the applicant who confirmed she had been on TDY with SFC [REDACTED]. In an Agent's Investigation Report, the CID Special Agent (SA) wrote, "[Applicant] stated she was aware and coherent enough to understand the events of the evening. [Applicant] stated CW2 [REDACTED] helped SFC [REDACTED] to her room because he (CW2 [REDACTED]) was being a good 'battle buddy.' [Applicant] stated SFC [REDACTED] laid down in her bed and CW2 [REDACTED] stayed in the room."

(3) On 24 April 2018, SFC [REDACTED] called CID and said she did not feel she was a victim in any capacity. She maintained she did not believe CW2 [REDACTED] had done anything to her, and she thought there had been a miscommunication. Later that same day, SFC [REDACTED] came to CID office and told the CID SA that, while on TDY, the group she was with went to a bar downtown, and she and the applicant consumed "several shots." An individual, who identified himself as a Federal Bureau of Investigation (FBI) agent just back from Afghanistan, came up to them and bought her and the applicant several shots, which they drank in rapid succession. At one point, this individual grabbed SFC [REDACTED] rear, which made her uncomfortable because she is married.

(4) Others from the group, to include CW2 [REDACTED] came to the bar, and CW2 [REDACTED] told the individual to "back off." The group left the bar; SFC [REDACTED] acknowledged she was highly intoxicated. On their arrival at the hotel, SFC [REDACTED] vomited and had to be helped into the building. CW2 [REDACTED] helped her and the applicant get to the applicant's room. She heard the applicant to tell CW2 [REDACTED] to leave SFC [REDACTED] alone.

(a) "SFC [REDACTED] stated CW2 [REDACTED] laid between [applicant] and herself. SFC [REDACTED] stated she knew this as her arm touched what she believed to be CW2 [REDACTED]. SFC [REDACTED] related the bed was a queen sized bed. SFC [REDACTED] stated she heard [applicant] saying 'No, stop' but was unable to provide any details about what happened. SFC [REDACTED] stated she does not remember anything after and woke up the following morning. SFC [REDACTED] stated

she woke up in the bed on the right hand side of the room in her 'bra' and 'panties' with her clothes piled up at the end of the bed...."

(b) "SFC [REDACTED] stated (that) [applicant] woke up with no clothes on, in the bed (left), and asked where her clothes were...[applicant] told her CW2 [REDACTED] attempted to remove her panties." SFC [REDACTED] told the CID SA that no one had approached her and that she simply wanted to tell the truth and clarify any misunderstandings or discrepancies. She added that she believed there may have been consensual sex between CW2 [REDACTED] and [applicant] and that could have been the reason she was moved to the other bed. "SFC [REDACTED] related that CW2 [REDACTED] told her several details about the sequence of events during that night as her memory was affected by (her) intoxication level."

e. The Agent's Investigation Reports additionally stated the following:

(1) During a video/audio recorded interview, conducted 24 April 2018, the applicant reconfirmed she had gone TDY with First Lieutenant (1LT) [REDACTED] CW2 [REDACTED] and Specialist (SPC) [REDACTED]

(a) She told the CID SA that, "they all bought each other drinks and stayed in contact with each other in a group message if they did their own thing." At one point, SFC [REDACTED] messaged the group to come get her because she was very intoxicated. SFC [REDACTED] stayed in the applicant's room that night because of her level of intoxication. Once she and CW2 [REDACTED] got SFC [REDACTED] to the applicant's room, they put her in the room's other bed.

(b) [Applicant] stated she sat down on the edge of the bed because she felt like if she laid down she would have gotten sick...CW2 [REDACTED] wanted her to lay down and go to sleep as well, but she did not want to and told him 'no' and 'I'm good.' [Applicant] stated CW2 [REDACTED] left the room, then she began to get ready for bed. [Applicant] stated she removed her pantyhose and changed out of her dress into a T-shirt and went to bed...once CW2 [REDACTED] left the hotel room he did not reenter...or have access...to the room."

(2) In separate interview, 25 and 30 April 2018, 1LT [REDACTED] told a CID SA that he was the designated driver because he does not drink. On the night of 2 March 2018, he and the team went out for dinner; after dinner, the team went out for drinks. While others went inside a bar to drink, he remained outside and on his phone. Around midnight, CW2 [REDACTED] and every came outside; SPC [REDACTED] CW2 [REDACTED] and the applicant were "acting normally," but SFC [REDACTED] was laughing and could not walk in a straight line. 1LT [REDACTED] drove everyone back to the hotel; once they arrived at the hotel, SFC [REDACTED] threw up and, while most of the team went inside, he and SPC [REDACTED] stayed behind to clean up.

(3) On 26 April 2018, CW2 [REDACTED] told CID that, on the evening of 2 March 2018, the team decided to go to [REDACTED] "to party."

(a) CW2 [REDACTED] said they started off at an Irish pub, where a round of shots was bought for everyone. The applicant and SFC [REDACTED] decided to go separate ways and left the Irish pub to go to a different bar while CW2 [REDACTED], SPC [REDACTED], and 1LT [REDACTED] bar hopped. SFC [REDACTED] sent several group text messages to the group, giving a play-by-play update on what was happening at the bar and how many shots she had consumed.

(b) SFC [REDACTED] wrote in one text message that an "alleged GS 17 FBI Agent" was talking to them and was buying them shots. SFC [REDACTED] sent a text message after almost every shot and continued to state how drunk she was; at one point, she sent a picture of an empty shot glass and wrote, "number 8." CW2 [REDACTED] decided it was time to get SFC [REDACTED] and the applicant out of there; he and the other team members went to the bar and he observed an unknown male standing at the bar behind SFC [REDACTED] and the applicant with his hands on each of their buttocks'. CW2 [REDACTED] walked over to the unknown male, pointed him away from SFC [REDACTED] and the applicant, and told SFC [REDACTED] and the applicant that it was time to leave.

(c) CW2 [REDACTED] then described how, during the van ride back to the hotel, SFC [REDACTED] made sexually suggestive remarks and tried to put her hands in his groin area; CW2 [REDACTED] pushed her hands away, but she continued to put them back. At the hotel, he helped get SFC [REDACTED] to the applicant's room and helped SFC [REDACTED] lay down on the bed. The applicant was curled up in a ball on floor because she was not feeling well. CW2 [REDACTED] grabbed an ice bucket and brought it to applicant so she could throw up in it, but she never threw up. The applicant then laid down on the bed just as SFC [REDACTED] took off her shirt off, exposing her bra and saying, "it is hot in here." Once SFC [REDACTED] began to take her shirt off, CW2 [REDACTED] took this as his cue to leave. He affirmed he never laid down in bed with either the applicant or SFC [REDACTED], and, once he left the applicant's room, he ran into SPC [REDACTED] and 1LT [REDACTED] in the hallway; they each went to their own rooms and went to bed.

(d) On 30 April 2018, SPC [REDACTED] told CID he remembered seeing a male standing between SFC [REDACTED] and the applicant with his hands on each of their buttocks. He also confirmed hearing SFC [REDACTED] making sexually explicit remarks to CW2 [REDACTED] W. [REDACTED]. Later, after they arrived at the hotel and he helped to clean up the mess made at the van by SFC [REDACTED], he walked by the applicant's room and saw the door was wide open; he witnessed the applicant trying to put SFC [REDACTED] to bed, and CW2 [REDACTED] standing in the doorway saying, "go to bed" and "lay down"

continually. SPC [REDACTED] continued on to his room, where he threw up; about 2 minutes later, CW2 [REDACTED] knocked on his door and asked if he was doing okay; SPC [REDACTED] responded that he was. After CW2 [REDACTED] asked if he was okay, SPC [REDACTED] watched CW2 [REDACTED] walk into his own room and close the door.

f. On 15 August 2018, the division CG, MG [REDACTED], issued the applicant a GOMOR; the GOMOR stated that, on 2 March 2018, the applicant went out to a bar and drank excessive amounts of alcohol with an NCO and a junior Soldier, in violation of AR 600-20, paragraph 4-14. In addition to her conduct being unacceptable, the applicant had violated Article 133 (Conduct Unbecoming an Officer and Gentlemen), Uniform Code of Military Justice (UCMJ).

g. On 6 September 2018, the applicant submitted her GOMOR rebuttal. Through counsel, she argued:

(1) The applicant did not violate paragraph 4-14, AR 600-20.

- 1LT [REDACTED] told CID that, apart from SFC [REDACTED], the applicant and the other team members were acting normally as they left the bar
- CW2 [REDACTED] confirmed that, while the male members of the team went from bar to bar, the applicant and SFC [REDACTED] remained in one bar
- The applicant's statement was consistent with the above-cited versions of events and, at the hotel when the applicant recognized SFC [REDACTED] level of intoxication, she had SFC [REDACTED] stay with her so she could watch over her
- There is no evidence the applicant violated paragraph 4-14b; there were no repeated visits to bars and none of the statements indicated an actual or clearly predictable perception of familiarity

(2) The applicant's actions did not constitute conduct unbecoming an officer.

- Counsel gave the UCMJ's description of "Conduct Unbecoming an Officer" and contended that, while the applicant could have handled the situation differently, that alone did not mean her conduct fit the UCMJ's definition
- Although SFC [REDACTED] became extremely intoxicated, "it does not appear that it was at the direction or suggestion of [applicant]"; after the SFC [REDACTED] became intoxicated, the applicant took steps to minimize any possible danger for SFC [REDACTED]

(3) Placement of the GOMOR in the applicant's OMPF would do permanent damage to her military career.

(a) By that point, the applicant had completed 12 years of service and as reflected in her OERs, she performed her duties in an exemplary manner.

(b) "Even if you believe that her actions constituted fraternization and/or conduct unbecoming, please consider that while her actions on the night of the incident certainly were not perfect, they were not so serious as to rise to the level of an officially filed reprimand." "A local filing of this reprimand will be a continual reminder to [applicant] that a senior officer must always try to set the best example for her Soldiers."

h. On 27 September 2018, the imposing commander directed the GOMOR's placement in the applicant's OMPF.

i. On 3 October 2018, the division CG advised the applicant via memorandum that she was required to show cause of retention on active duty; he was initiating this action under the provisions of paragraph 4-2b (5) (Acts of Personal Misconduct) and 4-2b (8) (Conduct Unbecoming an Officer), AR 600-8-24. On or about 21 December 2018, a BOI found the preponderance of the evidence did not support separation.

j. On 26 February 2021, the applicant petitioned the DASEB, requesting the removal of her GOMOR.

(1) In her statement to the DASEB, the applicant summarized the basis for the GOMOR and described how ostracized she had felt after SFC [REDACTED] wrongly accused her and CW2 [REDACTED] of sexual misconduct.

(a) The applicant noted that, by contrast, CW2 [REDACTED] treatment within the unit was much better and, ultimately, he left for a reassignment and received only a locally filed reprimand. The applicant and SFC [REDACTED] however, received harsher administrative actions. "At the end of all of this, my BOI results and CID LER are not in my files with my GOMOR. Those results are proven documents to clarify those allegations and clear my character."

(b) In addition to submitting the GOMOR and associated documents, the applicant provided the CID LER, BOI results, and documents showing her IG and EO (equal opportunity) complaints against her command.

(2) On 13 July 2021, the DASEB determined the overall merits of the applicant's case did not warrant removal of the GOMOR, but the majority of the board voted to transfer the GOMOR and associated documents to the applicant's OMPF restricted folder. The DASEB stated:

(a) The GOMOR's governing regulation stated, once properly filed, the GOMOR was presumed to be administratively correct and filed pursuant to the objective

determination of competent authority. To overcome that presumption, the applicant would have to have submitted clear and convincing evidence that the GOMOR was inaccurate, unjust, or otherwise flawed. The applicant did not meet that standard.

(b) The applicant did, however, fulfill the regulation's conditions for transfer to her restricted folder: more than a year had elapsed since the GOMOR's issuance, and she had received as least one non-academic OER since receiving the GOMOR.

k. The applicant continues her service, and, on 19 April 2024, HRC notified her of her MRD.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was 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 applicant's petition and military records, the Board made the following recommendations:

a. Removal of the GOMOR from her AMHRR, along with all associated documentation including those related to her DASEB. Grant. The Board majority determined the GOMOR demonstrates an injustice and supports removal. The Board noted the Board of Inquiry found the applicant's conduct was not supported by a preponderance of the evidence and did not warrant separation. Therefore, the Board majority concluded, based on a preponderance of the evidence found in the military record, the applicant's claim for removal of the GOMOR is warranted and associated documents is warranted. The Board minority determined the applicant did not demonstrate by a preponderance of evidence that an error or injustice occurred to support removal.

b. Review of three DA Forms 67-10-2 (Field Grade Plate (O4 – O5; CW3 (Chief Warrant Officer Three) – CW5) Officer Evaluation Reports (OER). Deny. 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 three OERs are substantially incorrect and support removal. Therefore, the Board denied relief.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial 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, dated 15 August 2018, with auxiliary documents from her Army Military Human Resource Record.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any additional amendments of her DD Form 214 in excess of the above.

6/10/2025

X  \_\_\_\_\_

CHAIRPERSON  


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

REFERENCES:

1. Army Regulation (AR) 600-37 (Unfavorable Information), in effect at the time, set forth policies and procedures to ensure the best interests of both the Army and Soldiers were served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's official military personnel file (OMPF).

a. Paragraph 1-5 (Objectives). The regulation's objectives included the following:

- Fair and just application of standards for all Soldiers
- Protection of individual Soldiers' rights, while at the same time permitting the Army to consider all available relevant information when choosing Soldiers for positions of leadership, trust, and responsibility
- Prevention of placing adverse personnel actions in a Soldier's personnel file that was based on unsubstantiated derogatory information or mistaken identity
- Providing a means for correcting injustices, if they occur; and, ensuring that Soldiers of poor moral character were not continued in Service or advanced to positions of leadership, trust, and responsibility

b. Paragraph 3-2 (Policies). Unfavorable information could not be filed in official personnel files unless the recipient was given the opportunity to review the documents and was given a reasonable amount of time to make a written response.

c. Paragraph 3-5 (Filing of Non-Punitive Administrative Memoranda of Reprimand, Admonition, or Censure).

(1) Authority to issue and direct the filing of such memoranda in an officer's local file was restricted to the recipient's immediate commander or higher level commander; the designated rater, intermediate rater, or senior rater, per AR 623-3 (Evaluation Reporting System); or a general officer who was senior to the recipient.

(2) A memorandum, regardless of issuing authority, could be placed in a recipient's OMPF upon the order of a general officer who exercised general court-martial convening authority over the recipient.

d. Paragraph 7-2 (Policies and Standards).

(1) Once an official document has been properly filed in an OMPF, it is presumed to be administratively correct, and to have been filed pursuant to an objective decision by a competent authority.

(2) For removal of derogatory information, there was no time restriction for submitting an appeal for removal of unfavorable information

(a) The recipient had the burden of proof to show, by clear and convincing evidence, to support assertion that the document is either untrue or unjust, in whole or in part.

(b) Evidence submitted in support of the appeal may include but was not limited to the following: an official investigation showing the initial investigation was untrue or unjust; decisions made by an authority above the imposing authority overturning the basis for the adverse documents; notarized witness statements; historical records; official documents; and/or legal opinions.

(c) Appeals that merely allege an injustice or error without supporting evidence or a compelling argument were not considered.

2. AR 600-20 (Army Command Policy), in effect at the time, prescribed policies and command responsibilities, to include those addressing fraternization.

a. Paragraph 4-14 (Relationships Between Soldiers of Different Grade).

(1) Soldiers of different grades had to ensure that their interactions did 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.

(a) Examples of familiarity between Soldiers that could become "undue" included repeated visits to bars, nightclubs, eating establishments, or homes between an officer and an enlisted Soldier, or an NCO and a junior-enlisted Soldier, except for social gatherings, that involved an entire unit, office, or work section.

(b) All relationships between Soldiers of different grade were prohibited if they met any of the following criteria:

- Compromised, or appear to compromise, the integrity of supervisory authority or the chain of command
- Caused actual or perceived partiality or unfairness
- Involved, or appear to involve, the improper use of grade or position for personal gain
- Were, or were perceived to be, exploitative or coercive in nature
- Created an actual or clearly predictable adverse impact on discipline, authority, morale, or the ability of the command to accomplish its mission

(2) The foregoing prohibitions were not intended to preclude unit based normal team building or activity based on interactions that occurred in the context of community based, religious, or fraternal associations such as scouting, youth or adult sports leagues or teams; membership in organizations such as the Masons or Elks; religious activities including chapel, church, synagogue, mosque, or religious education; Family gatherings; unit-based social functions; or athletic events.

(3) All military personnel shared the responsibility for maintaining professional relationships. However, in any relationship between Soldiers of different grade or rank, the senior member was generally in the best position to terminate or limit the extent of the relationship. Nevertheless, all members could be held accountable for relationships that violated this policy.

b. Paragraph 4-16 (Fraternization). Violations of paragraph 4-14 could be punished under Article 92 (Violation of a General Regulation), Uniform Code of Military Justice (UCMJ).

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//