

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230006901

APPLICANT REQUESTS: through counsel:

- removal of the general officer memorandum of reprimand (GOMOR), 27 May 2021, from the performance folder of his Army Military Human Resource Record (AMHRR)
- reconsideration for promotion to lieutenant colonel (LTC)/O-5 by a special selection board (SSB)
- a personal appearance hearing before the Board or alternatively via video or telephone

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)
- Counsel's Brief in Support, undated (32 pages), with Evidentiary Documents labeled and organized as enclosures by page numbers
 - Enclosure pages 1-2 – Board of Inquiry (BOI) Findings and Recommendations, 7 November 2022
 - Enclosure pages 3-45 – BOI Transcript
 - Enclosure pages 46-47 – Headquarters, U.S. Army Cyber Center of Excellence and Fort Gordon, Memorandum (GOMOR), 27 May 2021
 - Enclosure pages 48-195 – Army Regulation 15-6 (Procedures for Administrative Investigations and Board of Officers) Findings and Recommendations, 3 December 2020, with Allied Documents
 - Enclosure pages 196-229 – Army Regulation 15-6 Findings and Recommendations, 3 March 2021 with Allied Documents
 - Enclosure pages 230-435 – Allied Documents Associated with the Investigations (i.e., counseling statements, sworn statements, character statements, etc.)

FACTS:

1. The applicant states the GOMOR was based on a materially defective Army Regulation 15-6 investigation. Subsequently, a BOI determined that none of the allegations were substantiated. As a result, he requests removal of the GOMOR from his AMHRR and a referral to an SSB for reconsideration for promotion to LTC.

2. Counsel states the applicant requests removal of the GOMOR, 27 May 2021, from his AMHRR and referral to an SSB for promotion reconsideration to LTC. A preponderance of the evidence shows the GOMOR was predicated on two Army Regulation 15-6 investigations which were deficient, biased, and failed to meet the required burden of proof. A BOI was directed for him to show cause to remain on active duty due to the conduct documented in the investigations and subsequent GOMOR. The BOI determined that none of the allegations were substantiated, and therefore he should remain of active duty (see attachment for further details).

a. Summary. The applicant received a GOMOR for his service as the Signal Basic Officer Leader Course (SBOLC) Division Chief at Fort Gordon, GA. The GOMOR was based upon two investigations that generally concluded that he acted unprofessionally and created a toxic work environment for the students, subordinates, and cadre at SBOLC. However, the findings of the investigations are contradicted by the enclosed evidence as well the testimony of approximately two dozen witnesses at the BOI. Many of the witnesses who were present for the alleged misconduct were not interviewed by the investigating officer (IO) or were not questioned about events that they saw. An impartial review of the evidence collected by the IO, additional evidence collected by the applicant, and testimony given at the BOI, overwhelmingly support the finding that he conducted himself appropriately and professionally at all times.

b. There were deficiencies in the first Army Regulation 15-6 investigation conclusions. The IO relied on a substantial amount of hearsay and second-hand witnesses concerning the various specific incidents. There was bias by the Equal Opportunity Advisor (Sergeant First Class (SFC) [REDACTED]) since he never interviewed the applicant. Furthermore, there was more bias through the omission of favorable information from statements the applicant provided to the IO. He also believes that other members of the applicant's unit were creating an unprofessional and unpleasant working environment by actively targeting him, which was not considered by the IO.

c. There were deficiencies in the second Army Regulation 15-6 regarding perceived threats made by the applicant. The IO took statements out of context and failed to evaluate the statements against actual elements required to commit a threat under Article 134 of the Uniform Code of Military Justice (UCMJ). Additionally, after

involvement with the military police they opined there was no offense committed or planned.

d. The applicant submitted an appeal to the Department of the Army Suitability Evaluation Board (DASEB), requesting removal of the GOMOR from his AMHRR on the basis that the two underlying investigations used to justify the GOMOR were flawed and defective. For an unknown reason, it appears that the DASEB only considered the second investigation in its evaluation of whether the GOMOR was appropriate. This is troubling, not only because the first investigation wasn't evaluated, but also because his arguments primarily dealt with the investigation that the DASEB didn't consider. For that reason, the DASEB's reasons for denial should be discounted greatly.

e. The BOI investigation into these matters unsubstantiated all claims after speaking to over two dozen witnesses and examining hundreds of pages of documents over multiple days. The Army Regulation 15-6 investigations are simply not as thorough and effective as a live inquiry by a board. These investigations have unjustly damaged his career. He respectfully asks the Board to remove the resultant GOMOR and then refer him to an SSB for consideration for promotion.

3. The applicant is currently serving in the Regular Army in the rank/grade of major (MAJ)/O-4 with the U.S. Army Cyber Command, Fort Eisenhower, GA.

4. The applicant became the subject of an Army Regulation 15-6 investigation on 6 November 2020 as the Senior Training, Advising, and Counseling Officer for the Senior Leadership Developer Course, 442d Signal Battalion, Fort Gordon, GA. An IO was appointed on 6 November 2020 to investigate the facts and circumstances regarding allegations of a hostile work environment and potential Equal Opportunity (EO) violations based on disparate treatment of female subordinates created by him. The IO was directed to address the following questions at a minimum:

a. Determine the facts and circumstances surrounding any incidents perceived as unprofessional, offensive or hostile by Second Lieutenant (2LT) [REDACTED] between her and the applicant.

b. Identify and describe any other incidents in which a subordinate of the applicant perceived his conduct as unprofessional, offensive, or hostile.

c. Did any of the applicant's conduct during any of the incidents described above violate any of the Army's EO policies?

d. Is the applicant responsible for fostering a "hostile" work environment as defined by Army Regulation 600-20 (Army Command Policy)?

e. Did the applicant's conduct violate any other Army policy or regulation? If so, address which one(s) and how.

f. If applicable, identify any processes, training, or local policy that should be updated or amended to mitigate any issues identified during your inquiry.

g. Address any other issues, circumstances, or justifications that you find to be relevant for understanding this matter.

5. The Headquarters, 15th Signal Brigade, memorandum (Amendment to Appointment as IO), 19 November 2020, amended the 6 November 2020 appointment memorandum by instructing the IO to inquire into the following issues:

a. Whether the applicant directed Captain (CPT) [REDACTED] to call and hold a meeting with the entire SBOLC Division informing them of the Army Regulation 15-6 investigation? If so, what was the purpose of the meeting? Who attended? What specifically was communicated at the meeting? General reaction of the attendees?

b. Whether CPT [REDACTED] informed the staff that the Army Regulation 15-6 investigation was initiated at the request of the applicant? Who directed him to communicate that information? What was his knowledge of the investigation prior to the applicant speaking to him? What did the applicant explicitly advise CPT [REDACTED] to communicate? Did anyone else direct CPT [REDACTED] to meet with the SBOLC Division concerning the Army Regulation 15-6 investigation of the applicant?

c. Whether the applicant's alleged conduct delineated above amounts to an obstruction of justice, contributed to a hostile or toxic work environment, or created an environment where potential witnesses feared reprisal for cooperating?

d. Who notified the applicant of the current investigation? What was specifically communicated to him? Was he given a counselling statement concerning the investigation at its onset?

e. Whether SFC [REDACTED] (Equal Employment Opportunity (EEO)) had any communications with the applicant concerning allegations against him relating to unprofessional, offensive, or hostile conduct towards service members prior to commencement of the Army Regulation 15-6 Investigation? If so, what was specifically communicated? Did she take any statements? If so, please obtain. Did SFC [REDACTED] ever mention who raised the allegation? If so, what was communicated? Did the applicant have any other allegation made against him through the EO Section? If so, please provide details and obtain any documentation present.

f. Whether the applicant's conduct in directing a meeting concerning the Army Regulation 15-6 investigation violated any other Army policy or regulation? If so, address which one(s) and how.

g. Address any other issues, circumstances, or justifications that you find to be relevant for understanding this amended appointment order.

6. The DA Form 1574-1 (Report of Proceedings by IO), 3 December 2020, shows the IO completed the investigation and determined the following (see attachment for further details with auxiliary documents) (Note: This form was not signed by the appointing authority until 19 May 2021 due to a clerical error.):

a. Summary. SFC [REDACTED] provided him with a Formal Complaint Memorandum for Record which outlined a harassment claim from a field-grade officer towards a company-grade officer.

(1) CPT [REDACTED] Commander, Company B, 442d Signal Battalion, made telephonic contact with the Brigade Equal Opportunity Advisor on or about 28 October 2020. CPT [REDACTED] stated his company Executive Officer (XO), 2LT [REDACTED] had a negative encounter with the applicant during a routine meeting that she was required to attend. As told to the Brigade Equal Opportunity Advisor by CPT [REDACTED] the XO, upon entering the facility prior to the meeting, the applicant proceeded to give the XO correction on her uniform – apparently her side cargo pockets appeared full. The applicant instructed her to empty all of the contents from her cargo pockets and place the items, to include her personal cell phone, on the table. She was then directed by the applicant not to touch the contents until the meeting was completed. There were several other Soldiers present at the time of the incident. The exact contents 2LT [REDACTED] emptied onto the table are unknown at this time.

(2) The above behavior reported to CPT [REDACTED] by 2LT [REDACTED] has caused her to be fearful of reporting the explicit details and any previous incidents. At this time, she does not feel comfortable accomplishing her daily tasks and duties unless she is escorted by CPT [REDACTED] if and when she has to interact with the applicant. The behavior has caused her to be fearful of retaliation and any further encounters with the applicant.

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

(1) The applicant's treatment of 2LT [REDACTED] on 28 October 2020 did not violate any of the Army's EO policies; however, his behavior was a violation of Army Regulation 600-20, paragraph 4-19 (The Army Harassment Prevention and Response Program Army Personnel), which states that "Army personnel, especially those

entrusted with the mantle of leadership (Applicant), will lead by example and do what is right to prevent abusive treatment of others. Failure to do so brings discredit on the Army and may have strategic implications."

(2) 2LT [REDACTED] ability to execute the mission as the Support Platoon Leader has been hindered due to the 28 October 2020 incident when the applicant demeaned her in front of other service members by having her remove her personal belongings and place them on a desk in front of her while peers and subordinates watched. She expected support and leadership from the applicant and not belittlement in front of others. His actions were a form of bullying, as defined by Army Regulation 600-20, paragraph 4-19, in that "Hazing, bullying, online misconduct, and other acts of misconduct, undermine trust, violate our ethics and negatively impacts command climate, and readiness." His behavior affects good order and discipline within the entire Signal School. The actions of the applicant have negatively impacted the organization and the training environment.

(3) The 19 February 2020 incident between the applicant and MAJ [REDACTED] was inappropriate and the applicant's actions violated Army Regulation 600-20, paragraph 4-19a(4) (Other Acts of Misconduct). "Misconduct may or may not meet the definitions for hazing or bullying, yet may violate the dignity and respect of others." Calling MAJ [REDACTED] a "JV [junior varsity]" major under the context of making him look inferior in front of his superiors, peers, and subordinates, is a lack of respect of a fellow officer and is in fact bullying under the regulation. The applicant's actions distract service members and makes them lose focus on the intended briefing, which affects the quality of the training. Distracting trainees through unprofessional behavior in turn affects combat readiness. The applicant's actions negatively impacted the organization.

(4) On 17 December 2019, during the company urinalysis, Staff Sergeant [REDACTED] witnessed the applicant screaming in a condescending tone towards the students and cadre at the onset of the urinalysis. His actions and language hindered the unit prevention leader's ability to conduct a command-directed urinalysis and invokes fear when she has to conduct future command urinalyses. It also violates a direct order given by the applicant's commanding officer. This interference of a valid order from a superior officer undermines the authority of the 15th Signal Brigade Commander and affects good order and discipline. It also affects combat readiness by interfering with the urinalysis program whose intent is to ensure service members are drug free and ready for combat. This behavior also affects the urinalysis reporting status to U.S. Army Training and Doctrine Command (percentage completion), the U.S. Army Training and Doctrine Command directive that urinalyses be conducted in a timely manner and without interference.

(5) On 3 March 2020, the applicant's statement to CPT [REDACTED] that he would make "2LT [REDACTED] life a living hell" indicated his intent to create a hostile environment for 2LT [REDACTED].

(6) The applicant's treatment of another subordinate on 29 September 2020 at Training Area 26, his use of demeaning language and tone created a hostile and toxic environment for subordinates. Army Regulation 600-20 states, in part, that a "Hostile Environment is defined as a series of acts that are so severe and pervasive as to alter an individual's work conditions." His comments in all incidents referenced are hostile and offensive as defined in the above regulation.

(7) On 19 August 2019, the applicant's behavior towards CPT [REDACTED] left her feeling inferior and traumatized, having to remain in an environment of which she had to continue to work under the applicant. His actions towards her per Army Regulation 600-20, paragraph 4-19, are considered bullying. The regulation states bullying is the exposure of an individual or group to physical and/or emotional aggression with the intent to cause distress or harm. Bullying may involve the singling out of an individual from his or her coworkers, or unit, for ridicule because he or she is considered different or weak. It often is indirect or subtle in nature and involves an imbalance of power between the aggressor and the victim. In this instance, CPT [REDACTED] was the victim. CPT [REDACTED] observed a similar incident involving the applicant in or about February 2020, involving an SBOLC student. He kicked a student out of the classroom and threatened the student if he returned. The applicant also questioned CPT [REDACTED] ability to conduct training in front of her subordinate students in a demeaning manner. Both incidents demonstrated the applicant's use of bullying to demean his subordinates, causing a hostile environment.

(8) The applicant's actions on 9 November 2020 led the IO to believe that he could influence his investigation by injecting himself. The applicant sent him an email acknowledging that he knew he was the IO for his Army Regulation 15-6. The applicant included the names and numbers of everyone on his team. The applicant also informed him that he would organize the interviews and that if he wanted someone else on his team to organize them instead of himself that CPT [REDACTED] would be the one to do so. The IO responded to the email, letting the applicant know that he did not need his assistance.

(9) The applicant's actions on 16 November 2020 obstructed his ability to gather the factual information needed from the personnel who work directly for him within the SBOLC Division of which he is the chief. The applicant directed CPT [REDACTED] to conduct a meeting to inform his division of the investigation. This took place after the applicant was counseled and informed that an Army Regulation 15-6 investigation was going to be conducted to look into the facts and circumstances surrounding the allegations of a hostile work environment and potential EO violations. The applicant misled CPT [REDACTED]

by telling him to inform the staff that he, the applicant, wanted to determine the source of the rumors and as an officer he requested that an Army Regulation 15-6 investigation be conducted. During the IO's investigation, it was clear that the officers and civilians working directly for the applicant would not voluntarily divulge anything negative and simply responded they had never observed any EO violations by the applicant. The witnesses he interviewed who had previously worked for the applicant or in support of him provided more detail towards violations or instances that posed a concern. One of the witnesses, CPT [REDACTED] initially did not want to provide a statement due to fear of retaliation. After talking to CPT [REDACTED] further, he then became comfortable enough to write his statement. When the IO asked other witnesses outside of those who worked directly for the applicant why they hadn't reported those instances, they stated they were concerned about reprisal actions from the applicant.

c. Recommendations.

(1) The IO recommended consultation with the Brigade Judge Advocate as to the appropriate UCMJ and/or administrative action that should be administered, to include but not limited to a GOMOR. The applicant violated the following regulations: Army Regulation 600-20, paragraph 4-19 (The Army Harassment Prevention and Response Program (Hazing, Bullying, and Discriminatory Harassment)), UCMJ, Article 134 (Obstructing Justice)), which states, in part, "That the act was done with the intent to influence, impede, or otherwise obstruct the due administration of justice." The appropriate punishment should be administered.

(2) Consideration of removing the applicant from his position and reassigning him outside the training environment.

(3) Consider noting the applicant's unprofessional behavior, his bullying, and creation of a toxic and hostile work environment in his officer evaluation report and consider issuing him a relief-for-cause officer evaluation report.

(4) Additionally, he recommends that the SBOLC division implement additional training with a focus on toxic and destructive leadership styles as discussed in Army Regulation 600-100 (Army Profession and Leadership Policy). The "old combat arms/line unit" stereotypical way of interacting with subordinates has led to toxic environments within the organization. Also, the EO and Sexual Harassment/Assault Response and Prevention Program Coordinators conduct refresher training for the entire battalion.

d. The approving authority recommended furnishing a copy of the investigation to the U.S. Army Cyber Center of Excellence and Fort Gordon Commanding General for action.

7. The applicant submitted a memorandum (Response to Referral of Report of Investigation), 29 January 2021, citing rebuttal matters to the Army Regulation 15-6 investigation findings (see attachment for further details). He rebuts the finding that he is a toxic leader. He believes there were factual inconsistencies and procedural errors during the course of the investigation. There are inconsistencies in the accusations and information the IO collected. There was a biased pool of persons interviewed; procedural errors as the evidence was not provided to him; and there was inconsistency in questioning personnel. He requested dismissal of all the adverse recommendations and his reinstatement to continue his work as the SBOLC Chief.

8. The applicant became the subject of another Army Regulation 15-6 investigation on 9 February 2021. An IO was appointed on 9 February 2021 to investigate the facts and circumstances concerning perceived threats against members of the 15th Signal Brigade command made by the applicant, possible disclosure of any record(s) contained in a system of records by the applicant, potential violations of The Privacy Act by the applicant, and potential violations of the Department of Defense (DOD) Computer User Agreement by the applicant. The IO was directed to address the following questions at a minimum:

a. Explain the context of any incidents of perceived threats made by the applicant to or about 15th Signal Brigade personnel.

b. Explain the extent of law enforcement's involvement and any finding or determinations of the perceived threats.

c. Whether the applicant, at any time since October 2020, disclosed any record(s) which are contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(1) If so, did the disclosure violate The Privacy Act, Title 5, U.S. Code, section 552, and/or Army Regulation 25-22 (The Army Privacy Program), 22 December 2016?

(2) What was disclosed and to whom? Where was the data located?

(3) If data was disclosed, did the applicant make a written request to the proper authority or to the individual to whom the record pertains? If so, was release authority granted?

(4) Whether any items released by the applicant, fall under the "Conditions for Disclosure" exemptions, set forth in Title 5, U.S. Code, section 552a(b)? If so, which exemptions?

d. Whether the applicant transferred, or permitted to be transferred, data protected under The Privacy Act and/or subject to a DOD Computer User Agreement to a non-DOD computer or server. If so, where was the data located? Who was the user of the non-DOD computer or server? What data was disclosed and to whom?

e. Whether the applicant violated the DOD Computer User Policy by allowing a report of investigation, its exhibits, counseling statements, and associated documents to reside and/or be transferred outside the DOD Information Network.

f. Did the applicant transfer or cause to be transferred any data to a computer or server owned and/or operated by C4 Planning Solutions, Limited Liability Company. If so, are C4 Planning Solutions or its employee authorized to receive data relating to the applicant's toxic/hostile environment report of investigation?

g. Address any other issues, circumstances, or justifications you may find to be relevant to this matter.

9. The DA Form 1574-1 shows the IO completed the investigation and, in a 3 March 2021, memorandum determined the following (see attachment for further details with auxiliary documents):

a. Findings.

(1) Taken in context with the findings of the previous Army Regulation 15-6 investigation, the applicant's remarks on 4 and 8 January 2021 were, at the very least, unprofessional and inconsistent with Army values.

(2) The applicant displayed a pattern of defensive and combative behavior that was unnecessary, especially when referring to superior officers. While the chain of command prudently considered his statements to be credible threats at the time, and took the necessary precautions to mitigate the possible threat, it is obvious that the applicant should have chosen less violent language to express his frustrations.

(3) The applicant's comments about CPT [REDACTED] to First Sergeant [REDACTED] can be perceived as a reasonable threat in an attempt to influence the ongoing investigation.

(4) The applicant's conduct confirms the findings of the previous investigation, in that he exhibited poor judgment on numerous occasions – especially when addressing Soldiers of subordinate rank in an apparent attempt to correct them or others.

(5) The IO concurs with the previous IO's report of investigation, which made specific recommendations to address conduct unbecoming an officer. The recommendation included reassignment outside the training environment.

(6) The applicant admits that he emailed documents related to the original investigation to his wife's personal email account, who then transferred those files to a thumb drive for his use. It is apparent that even though the applicant was directed to telework during the investigation, he was not furnished with a Government computer that would have had the necessary resources for him to access the files, and thus did what he thought was right at the time. While his use of the counseling statement appears to be negligent as a part of the rebuttal to the original investigation, it does not appear that the applicant willfully violated the Privacy Act, or the Acceptable Use Policy, nor did he appear to divulge any For Official Use Only information in that process to anyone with unauthorized access.

b. Recommendation.

(1) No further investigation is needed as sufficient facts exist in which the command could render a decision.

(2) Issuance of a GOMOR to be placed in the applicant's permanent file that addresses his lack of judgment in making the threatening statements.

(3) Consultation with the Brigade Trial Counsel to determine appropriate administrative or punitive actions against the applicant is necessary.

c. On 28 April 2021, the approving authority recommended issuing the applicant a GOMOR to address his lack of judgment and furnishing a copy of the investigation to the U.S. Army Cyber Center of Excellence and Fort Gordon Commanding General for any further action.

10. The applicant's memorandum (Response to Referral of Report of Investigation), 2 April 2021, rebuts any findings that he was unprofessional, violated Army Values, or attempted to influence an investigation. He believes there were factual inconsistencies and procedural errors in the investigation. He addresses each finding in the IO's memorandum and states the Army Regulation 15-6 investigation did not meet legal standards. He requests dismissal of all adverse recommendations and reinstatement to continue his work as the SBOLC Chief.

11. The applicant was reprimanded in writing by the Commanding General, U.S. Army Cyber Center of Excellence and Fort Gordon, on 27 May 2021, wherein he stated:

You are reprimanded for bullying and threatening subordinates, obstructing an investigation, and counterproductive and toxic leadership.

During your tenure as the Signal Basic Officer Leader Course Division Chief, you have repeatedly used abusive, abrasive and bullying leadership towards your

subordinate military and civilian personnel. You have also displayed anger management issues and complete lack of professional decorum. As a senior leader, you have often gone on tirades against students and other cadre, insulting and berating them in view of others. While in conversation with First Sergeant [REDACTED] you stated that "[Captain [REDACTED] is about to get murdered and he doesn't even know it." You also misinformed personnel in your section of the intent for the investigation, thus obstructing the Investigating Officer's ability to gather factual information. Your abrasive leadership manner has been detrimental to the morale and esprit de corps of your section, and contributed to the perception of a hostile work environment and fear of retaliation.

As a field-grade officer in a key leadership position, you are entrusted with leading others. This includes more than mission accomplishment. Your responsibilities include building unit cohesion, creating an inclusive environment, and maintaining the trust of your subordinates. You must treat your peers and subordinates with respect and dignity. Your lack of professionalism and empathy and awareness regarding the impact of your actions causes me to question your judgment and potential for further military service.

This is an administrative reprimand imposed under the provisions of Army Regulation (AR) 600-37, Unfavorable Information, and not as punishment under the Uniform Code of Military Justice. You are advised, in accordance with [Army Regulation] 600-37, para[graph] 3-5c, I currently intend to direct the permanent filing of this reprimand in your Army Military Human Resource Record. Prior to making my final filing determination, I will consider any matters you submit in extenuation, mitigation, or rebuttal. You will acknowledge receipt of this reprimand and a copy of the supporting evidence by executing the enclosed acknowledgment in accordance with [Army Regulation] 600-37, para[graph] 3-7. You will forward any matters you wish me to consider through your chain of command within seven (7) calendar days from the receipt of this memorandum of reprimand.

12. The applicant acknowledged receipt of the GOMOR on 3 June 2021. His memorandum for the Commander, U.S. Army Cyber Center of Excellence and Fort Gordon (Response to GOMOR), 21 June 2021, requested rescission of the GOMOR. He stated he did not commit a single one of the acts of which he was accused. He noted that of the 44 individuals who provided statements for the two investigations underlying the GOMOR, the overwhelming majority of them were positive and directly refuted the accusations made against him. He believes the IO was biased and ignored or overlooked key evidence that proved the accusations against him were misinformation, mistaken, or false (see attachment for further details).

13. After carefully considering the matters submitted in rebuttal, the U.S. Army Cyber Center of Excellence and Fort Gordon Commanding General directed filing the GOMOR in the applicant's AMHRR on 24 June 2021.

14. A review of the applicant's AMHRR revealed the GOMOR and allied documents are filed in the performance folder.

15. The applicant petitioned the DASEB for removal of the GOMOR, 27 May 2021, from his AMHRR. On 1 February 2022 in Docket Number AR20220000519, the DASEB, by unanimous vote, determined the overall merits of the case did not warrant removal of the GOMOR.

16. The U.S. Army Human Resources Command memorandum (Initiation of Elimination), 15 July 2022, notified the applicant that he was required to show cause for retention on active duty under the provisions of Army Regulation 600-8-24 (Officers and Discharges), paragraphs 4-2b and c, because of misconduct, moral, or professional dereliction, and derogatory information. It further noted his options in accordance with the regulatory guidance (see attachment for further details). The reasons cited for this action were:

a. substantiated derogatory activity resulting in a GOMOR, 27 May 2021. He was reprimanded for bullying and threatening subordinates. obstructing an investigation, and counterproductive and toxic leadership; and

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

17. The U.S. Army Cyber Central of Excellence and Fort Gordon memorandum from the Commanding General (Referral of BOI – (Applicant)), 9 September 2022, directed the applicant's referral to a BOI. In a 20 September 2022 memorandum, he was notified to appear before the BOI and he acknowledged this action on 21 September 2022.

18. The DA Form 1574-2 (Report of Proceedings by Board of Officers) shows a BOI was conducted at Fort Gordon on 7 November 2022. The BOI's noted:

a. Findings.

(1) The allegation that the applicant did have substantiated derogatory activity resulting in a GOMOR, 27 May 2021, for bullying and threatening subordinates, obstructing an investigation, and counterproductive and toxic leadership, is not supported by a preponderance of the evidence. The BOI found the specific circumstance of the information above does not warrant the applicant's involuntary separation under the provisions of Army Regulation 600-8-24.

(2) The allegation that the applicant did exhibit conduct unbecoming an officer in relation to the item(s) referenced in paragraph(s) is not supported by a preponderance of the evidence. The BOI found the specific circumstance of the information above does not warrant the applicant's involuntary separation under the provisions of Army Regulation 600-8-24.

b. Recommendations. The BOI recommended the applicant's retention in the U.S. Army without reassignment.

c. The approving authority approved the board's findings and recommendation.

19. The Headquarters, U.S. Army Cyber Center of Excellence and Fort Gordon, memorandum from the Commanding General (Officer Elimination Action – (Applicant)), 22 December 2022, approved the BOI's recommendation, closed the case, and retained him without further action.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is not warranted. Counsel's contentions, the applicant's military records, and regulatory guidance were carefully considered. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The applicant has not demonstrated by a preponderance of evidence that relief is warranted. Each AR 15-6 investigation contains sufficient evidence (in the form of sworn statements from witnesses) indicating that the applicant's professional behavior often was substandard. The first AR 15 – 6 investigation was initiated in November 2020 and concluded in December 2020. In that investigation, Mr. [REDACTED] provided a statement indicating the applicant's workplace language and demeanor were sometimes inappropriate. LTC [REDACTED] who was the applicant's supervisor, had received so many complaints about the applicant's inappropriate workplace behavior and poor leadership that he (LTC [REDACTED]) was compelled to counsel the applicant in writing. The written counseling discusses LTC [REDACTED] concerns about the applicant's "leadership style," his "interpersonal skills," and his "ability to create [a] positive environment as a team." This written counseling occurred prior to the commencement of the first AR 15-6 investigation. MAJ [REDACTED] provided sworn testimony which described the applicant as using insulting and aggressive language in the workplace.

3. The second AR 15-6 investigation was commenced in February 2021 and ended in March 2021. In the second AR 15 – 6 investigation, 1SG M.R.Y. provided a sworn statement indicating the applicant, when referring to a fellow officer, stated in a workplace setting and for other to hear that, "He is about to get xxxing murdered and he doesn't even know it." The applicant followed this statement by engaging in what the

1SG described as a “several minute rant.” COL [REDACTED] provided written testimony that, in an incident separate from the one described by 1SG [REDACTED] the applicant engaged in a “diatribe” and a “rant” and then told COL [REDACTED] that, “I want blood.” These items of evidence are not exhaustive of the entirety of evidence that indicates the applicant’s workplace behavior needed improvement. Consequently, the Board finds that the AR 15-6 investigations contain sufficient evidence to meet the preponderance of evidence standard and sufficient evidence to support the assertions contained in the GOMOR. The applicant’s counsel has highlighted evidence that undermines and / or contradicts some of the investigation’s inculpatory evidence. However, proof by a preponderance of evidence does not mean that the inculpatory evidence must be free of conflict. The Board acknowledges that an FBOI decided to not substantiate the allegations against the applicant and to retain him as an Army officer. However, the main mission of an FBOI is to determine whether an officer should or should not be retained. The FBOI’s findings and recommendations in this regard obviously are not binding on the ABCMR.

4. The applicant’s counsel’s assertions of improper bias or prejudice are based primarily upon an email an investigating officer received from a Sergeant First Class (SFC) (E-7) that unfavorably described the applicant’s workplace behavior. The Board found it difficult to believe that the investigating officer, who was an LTC (O-5) at the time, would be improperly influenced by the one-paragraph opinion from a SFC (E-7), whether that opinion was favorable or unfavorable. As for the applicant’s counsel’s assertion that bias / prejudice may be inferred from the fact that the investigating officers failed to interview this or that witness, the Board is cognizant the AR 15 – 6 investigations are informal investigations conducted by Army officers, not by criminal law enforcement investigators. The Board considered these allegations of bias / prejudice and found it unpersuasive. Overall, the Board found that the quality of the investigations was well within the standards of thoroughness and impartiality one might expect from an informal AR 15 – 6 investigation. Overall, this Board finds that the AR 15-6 investigations produced a preponderance of evidence indicating that the applicant’s workplace behavior was censurable; that the AR 15-6 investigations support the allegations in the GOMOR; and that the applicant has not demonstrated by a preponderance that an error or injustice occurred warranting corrective action.

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.

7/24/2024

X

CHAIRPERSON

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

REFERENCES:

1. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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

3. 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 4-19 (The Army Harassment Prevention and Response Program (Hazing, Bullying, and Discriminatory Harassment)) states the Army is a values-based organization where everyone is expected to do what is right by treating all persons as they should be treated – with dignity and respect. Army personnel are expected to treat all people with respect in all aspects of life and forms of communication (for example, online or in person). Furthermore, Army personnel, especially those entrusted with the mantle of leadership, will lead by example and do what is right to prevent abusive treatment of others. Failure to do so brings discredit on the Army and may have strategic implications. Hazing, bullying, and discriminatory harassment of people or their property is prohibited; allegations of harassment will be addressed swiftly, individually, and in light of their circumstances. Hazing, bullying, online misconduct, and other acts of misconduct, undermine trust, violate our ethic, and negatively impact command climate and readiness.

(1) Hazing. A form of harassment that includes conduct through which Soldiers or Department of the Army Civilian employees (who haze Soldiers), without a proper military authority or other governmental purpose but with a nexus to military service, physically or psychologically injures or creates a risk of physical or psychological injury to Soldiers for the purpose of: initiation into, admission into, affiliation with, change in status or position within, or a condition for continued membership in any military or Department of the Army Civilian organization. Hazing can be conducted through the use of electronic devices or communications, and by other means including social media, as well as in person. Hazing is evaluated by a reasonable person standard and includes, but is not limited to, the following when performed without proper military authority or other governmental purposes:

(a) any form of initiation or congratulatory act that involves physically striking, beating, paddling, whipping, or burning another person in any manner or threatening to do the same;

(b) pressing any object into another person's skin, regardless of whether it pierces the skin, such as "pinning" or "tacking on" of rank insignia, aviator wings, jump wings, diver insignia, badges, medals, or any other object;

(c) oral or written berating of another person with the purpose of belittling or humiliating;

(d) encouraging another person to engage in illegal, harmful, demeaning, or dangerous acts;

(e) playing abusive or malicious tricks;

(f) excessive physical exercise;

(g) confinement to restricted areas, isolation, or sleep-deprivation;

(h) immersion in noxious substances;

(i) branding, handcuffing, duct taping, tattooing, shaving, greasing, or painting another person;

(j) subjecting another person to excessive or abusive use of water; and

(k) forcing another person to consume food, alcohol, drugs, or any other substance.

(2) Bullying. A form of harassment that includes acts of aggression by Soldiers or Department of the Army Civilian employees, with a nexus to military service, with the intent of harming a Soldier either physically or psychologically, without proper military authority or other governmental purpose. Bullying is the exposure of an individual or group to physical and/or emotional aggression with the intent to cause distress or harm. Bullying may involve the singling out of an individual from his or her coworkers, or unit, for ridicule because he or she is considered different or weak. It often is indirect or subtle in nature and involves an imbalance of power between the aggressor and the victim. Bullying can be conducted through the use of electronic devices or communications, and by other means including social media, as well as in person. Bullying is evaluated by a reasonable person standard and includes, but is not limited to, the following when performed without a proper military authority or other governmental purpose:

(a) physically striking another person in any manner or threatening to do the same;

(b) intimidating, teasing, name calling, mockery, threats of violence, harassment, taunting, social exclusion, isolating, manipulating, blackmailing, and spreading rumors in which there is often a power differential, whether by rank, position, physical stature, social standing or other measures, between the aggressor (one or more) and the victim (one or more);

(c) oral or written berating of another person with the purpose of belittling or humiliating;

(d) encouraging another person to engage in illegal, harmful, demeaning, or dangerous acts;

(e) playing abusive or malicious tricks;

(f) branding, handcuffing, duct taping, tattooing, shaving, greasing, painting, hitting, spitting, shoving another person;

(g) subjecting another person to excessive or abusive use of water;

(h) forcing another person to consume food, alcohol, drugs, or any other substance; and

(i) degrading or damaging another's property or reputation.

b. Paragraph 7-7g(2) states a hostile environment, to include the work environment, can occur when Soldiers or Department of the Army Civilians are subjected to offensive, unwanted and unsolicited comments, or conduct of a sexual nature. An abusive or hostile environment need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive. A hostile environment brings the topic of sex or gender into the environment in any one of a number of forms. Conduct considered under the hostile environment definition generally includes nonviolent, gender-biased sexual behaviors (for example, the use of derogatory gender-biased terms, comments about body parts, suggestive pictures, and explicit jokes).

c. Glossary, Section II (Terms), defines hostile work environment as a series of acts that are so severe and pervasive as to alter an individual's work conditions. The acts may be discreet acts which are offensive, intimidating, or abusive to another person using the reasonable person standard. They need not result in concrete psychological harm but need only be perceived by a reasonable person as hostile or offensive.

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

c. Paragraph 3-5 (Filing of Nonpunitive Administrative Memoranda of Reprimand, Admonition, or Censure) states:

(1) Authority to issue and direct the filing of such memoranda in an officer's local file is restricted to:

(a) the recipient's immediate commander or a higher-level commander in the chain of command (if such commander is senior in grade or date of rank to the recipient);

(b) the designated rater, intermediate rater, or senior rater, under the officer evaluation reporting system; or

(c) the general officer (to include one frocked to the rank of brigadier general) who is senior to the recipient, or an officer who exercises general court-martial jurisdiction over the recipient.

(2) A memorandum, regardless of the issuing authority, may be filed in the AMHRR, and managed by the U.S. Army Human Resources Command or the proper State Adjutant General (for Army National Guard personnel) upon the order of a general officer (to include one frocked to the rank of brigadier general). The general officer directing filing must exercise general court-martial convening authority over the

recipient, be the designee or delegate of the individual exercising general court-martial convening authority over the recipient, be a filing authority from the recipient's losing command pursuant to paragraph (f)(1) below, or be the chief of any designated special branch pursuant to Title 10, U.S. Code, section 3064, acting pursuant to their statutory authority over members of their respective special branches. Memoranda filed in the AMHRR will be filed in the performance folder.

d. Paragraph 7-2 (Policies and Standards) states that once an official document has been properly filed in the OMPF, 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 OMPF.

e. Paragraph 7-3c (Filing Authority to Redress Actions) states an officer who directed filing an administrative memorandum of reprimand, admonition, or censure in the AMHRR may request its revision, alteration, or removal, if evidence or information indicates the basis for the adverse action was untrue or unjust, in whole or in part. An officer who directed such a filing must provide the DASEB a copy of the new evidence or information to justify the request.

5. Army Regulation 600-8-104 (Army Military Human Resource Records Management), 7 April 2014, prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The AMHRR includes, but is not limited to the OMPF, finance-related documents, and non-service related documents deemed necessary to store by the Army.

a. Paragraph 3-6 (Authority for Filing or Removing Documents in the AMHRR Folders) 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 other authorized agency.

b. Appendix B (Documents Required for Filing in the AMHRR and/or Interactive Personnel Electronic Records Management System) states memoranda of reprimand, censure, and admonition are filed in accordance with Army Regulation 600-37.

6. Army Regulation 600-100 (Army Profession and Leadership Policy) establishes Army Profession and leadership policy by defining key terms and responsibilities associated with the Army Profession and appropriate leadership practices and methods for Soldiers and Army Civilians. Paragraph 1-11 discusses and describes core leader competencies, "toxic" leadership, and destructive leadership styles.

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

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

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

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

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

//NOTHING FOLLOWS//