

IN THE CASE OF: ██████████

BOARD DATE: 9 November 2023

DOCKET NUMBER: AR20230007085

APPLICANT REQUESTS: removal of the following records from his Army Military Human Resource Record (AMHRR) -

- a general officer memorandum of reprimand (GOMOR), 27 May 2021
- a referred DA FORM 67-10-3 Officer Evaluation Report (OER), 5 August 2021

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's undated petition (9 pages)
- Incident report and allied documents, 8 May 2021
- two DA Forms 4187 (Personnel Action), 8 and 10 May 2021
- Article 32 Rights, 10 May 2021
- DA Form 4856 (Developmental Counseling Form), 10 May 2021
- DA Form 2873 (Military Protective Order (MPO), 10 May 2021
- two DA Forms 268 (Report to Suspend Favorable Personnel Actions (Flag)), 10 and 12 May 2021
- Officer Record Brief, 12 May 2021
- GOMOR, 27 May 2021
- Memorandum for acknowledgement of receipt of reprimand, 3 June 2021
- Counsel's notification letter for dismissal of charges, 3 June 2021
- Memorandum for an extension request for GOMOR matters, 4 June 2021
- Applicant's spouse alcohol treatment plan, 7 June 2021
- Memorandum for a statement in support of rebuttal to GOMOR, 15 June 2021
- Memorandum for rebuttal of GOMOR, 17 June 2021
- Chain of command recommendations for filing GOMOR, from 17 through 28 June 2021
- GOMOR filing determination, 16 July 2021
- Memorandum for acknowledgement of receipt of filing determination 26 July 2021
- Memorandum for the initiation of elimination action, and DA Form 268, 22 February 2022
- Acknowledgment of receipt of elimination memorandum, unsigned and undated

- Memorandum for legal matters in response to initiation of elimination (with four enclosures), 22 March 2022 -
 - Spouse Letter
 - Dismissal Letter
 - Applicant's Good Soldier Book (entire service record)
 - GOMOR Rebuttal (previously listed)
- Human Resources Command (HRC), Director of Office of Personnel Management Division (OPMD) recommended termination of elimination, 7 July 2022
- HRC, Commanding General returned elimination processing for initiation of a Board of Inquiry (BOI), 12 July 2022
- Memorandum for referral to BOI and appointment of BOI Board members, 11 August 2022
- DA Form 1574-2 (Report of Proceedings by Board of Officers) and BOI findings and recommendations, 3 October 2022
- Department of the Army Suitability Evaluation Board (DASEB), Docket Number AR20220008592, 11 October 2022
- DASEB denial letter, 17 October 2022

FACTS:

1. The applicant defers to counsel.

2. Counsel states:

a. The applicant requests removal of the GOMOR and referred OER, based on the incident on 8 May 2021, from his AMHRR. The GOMOR resulted from a late morning traffic stop, where his wife drove while intoxicated without his knowledge and assaulted him. The applicant adamantly denied any wrongdoing. He had the opportunity to appear before a BOI to present the facts of what happened. The board unfounded his misconduct, and recommended he be retained for further service. Accordingly, he requests consideration of all the facts and circumstances to remove the GOMOR from his AMHRR in the interest of fairness, clear legal error, and justice.

b. On 27 May 2021, the applicant received a GOMOR from the Commander, XVIII Airborne Corps that claimed: "You are hereby reprimanded for allowing your spouse to drive while impaired, committing domestic assault against your spouse, and lying to civilian authorities." The GOMOR also stated: "The civilian magistrate found probable cause to charge you with assault on a female, and you were arrested and released on an unsecured bond." As stated in his rebuttal, the accusations against him were false

and represented a rush to judgment by the leadership of the XVIII Airborne Corps before having the facts or reviewing the evidence. In their haste, they issued him a GOMOR based solely on police reports and charging documents by the state of ■■■, but his entire case was completely dismissed on 3 June 2021, before he had an opportunity to defend himself from the police officer's allegations. However, his leadership acted with an unyielding disposition regarding the domestic assault allegations despite not having all the evidence, and him being accused by local law enforcement of domestic violence was enough for them to permanently file the GOMOR despite his innocence. After the GOMOR was issued, he transferred to Fort Leonard Wood, MO, and continued supplying the same high level of service he provided before and during the allegations. Nothing in his military record or personal life supports any notion that he is capable of the accusations against him. Finally, the reality is that the applicant [a black man] was arrested when his wife [a white woman], accused him of a crime in rural ■■■, even though his wife was entirely at fault. Thankfully, cooler, and rational heads prevailed with the prosecutor and the entire case was dismissed, but this legacy of racism associated with the traffic stop should not hinder his career.

c. Counsel notes Army Regulation 600-37 concerns "Unfavorable Information" paragraph 3-2a states: except as indicated in paragraph 3-3, unfavorable information will not be filed in the AMHRR unless the recipient has been given the opportunity to review the documentation that serves as the basis for the proposed filing (a) the documentation will be reviewed by the release authority prior to forwarding to the recipient to ensure personally identifying information and other sensitive information, such as social security numbers and home addresses, has been redacted; and (b) redactions should be minimal; however, to ensure the recipient is afforded full due process rights in providing a meaningful rebuttal.

d. Thus, a respondent to unfavorable information should be given the opportunity to review any documentation that would serve as the basis for the proposed filing so they can rebut said information with matters in defense, extenuation, and mitigation and receive full procedural due process. This implies something more than a police report and a magistrate's probable cause determination. Here, there should be witness statements, a dash camera video, law enforcement body camera footage, and investigative activity by local law enforcement or Department of Defense (DoD) investigative agencies. However, this unfavorable information is based on one-sided evidence with no corroboration. Put simply, this is a GOMOR for being accused of an offense with no effort whatsoever to gather any additional evidence or the issuing authority even conducting their own investigation.

e. The DoD also has a policy against using "probable cause" determinations as the basis of adverse administrative actions. Generally, "probable cause" is a much lower standard of proof than "preponderance of the evidence." Further, the DoD policy explicitly prohibits solely using titling and indexing determinations for the purpose of

administrative separation. "DoD Instruction (DoDI) 5505.07: Titling and Indexing in Criminal Investigations" provides the guidelines for titling and indexing of alleged criminal subjects into national databases. Thus, this GOMOR is based on a probable cause determination by a magistrate, which is clearly contrary to DoD policy. Further, the case was dismissed entirely after this probable cause determination.

f. These offenses have failed to consider the applicant's lack of intent, mens rea, or a guilty mind for these offenses.

(1) The allegation he "allowed" his spouse to drive while impaired, there is no evidence that he knew his spouse was impaired when she drove them to the beach that morning. First, consider the time: approximately 1030 on 8 May 2021. Logically, he had no reason to believe she was drinking alcohol that early. His wife admitted in her statement that she had concealed her excessive drinking from her family and friends for years. Further, she admitted that she concealed her alcohol in a metal bottle. Finally, he was completely sober. If he knew his wife wanted to drink, logic, common sense, and self-interested preservation of avoiding a car accident dictates that he could have just driven himself. Thus, he did not "allow" his wife to drive while impaired.

(2) He did not assault his wife. To the contrary, she admitted to assaulting him after he discovered that she drank wine instead of a non-alcoholic substance and dumped her alcohol out the side of the car. This not only caused her erratic driving, but she started to attack him with her hands after he dumped the alcohol. Once she started striking him, he had the absolute right to use a reasonable amount of force to defend himself. He defended himself using his hands to stop the incoming strikes from his wife. Again, the underlying GOMOR does not address why he would be attacking his wife while she drove their vehicle to the hazard of them both.

(3) He did not lie to civilian authorities. Lying implies an intent to deceive; and he did not intend to deceive anyone. If the law enforcement authorities believed he had lied to them, he would have violated [REDACTED] law. "[REDACTED]: False reports to law enforcement agencies or officers" states: "Any person who shall willfully make or cause to be made to a law enforcement agency or officer any false, misleading or unfounded report, for the purpose of interfering with the operation of a law enforcement agency, or to hinder or obstruct any law enforcement officer in the performance of his duty, shall be guilty of a Class 2 misdemeanor." He was not charged with lying to or misleading civilian authorities or even making a false report. Here, his leadership capriciously accused him of lying because they chose to take the words of his wife where it is important to remember that at the time, she was irate, intoxicated, and making self-interested statements without reviewing any of the evidence or conducting any investigation on their own. When questioned, he truthfully did not recall scratching her when she attacked him and when he attempted to stop her. Clearly, any scratching would have been incidental.

(4) Alternatively, he did not violate Article 107 of the Uniform Code of Military Justice (UCMJ) False Official Statement. Article 107(a) states: False Official Statements - Any person subject to this chapter who, with intent to deceive; signs any false record, return, regulation, order, or other official document, knowing it to be false; or makes any other false official statement knowing it to be false; shall be punished as a court-martial may direct. Thus, an "official statement" must have a military nexus or relationship to have violated Article 107, UCMJ. Here, his alleged statement to the law enforcement officer had no bearing on any military function, occurred on his personal time and not "in the line of duty" or in relationship to his official military duties, and the civilian law enforcement was not "necessarily performing a military function." Everything occurred because of a local law enforcement traffic stop with no military nexus.

g. There is insufficient evidence to support the allegations against him. Any charges including the allegation of domestic violence brought by [REDACTED] have been completely dismissed. He respectfully requests the review of the evidence that allegedly supports the GOMOR. Including a Conditions of Release document; Suspension of Favorable Action paperwork; an MPO; a Bladen County Sherriff's Office Incident Report with a page of narrative from the police report; and his ORB. Critically and suspiciously absent from the GOMOR packet is any photos of the alleged injuries that he inflicted on his wife, no video or recordings from the alleged incident including dash camera or body camera footage; no written statements from his wife, and no examinations of his hands to look for evidence of scratching. Thus, relying on the memory of a law enforcement officer drafted in a police report on 10 May 2021 and two days after the event in question. Nonetheless, his leadership treated these words as infallible and sacrosanct. However, it is clear [REDACTED] reviewed the evidence and dismissed this case almost immediately. He has tried to obtain the dash and body camera footage, but the dash camera footage was deleted, and the responding officers did not have body cameras. The XVIII Corps presumably could have been able to obtain this evidence but chose not to make any investigative effort to further elaborate on the allegations. Thus, it comes down to the officer's memory two days after his arrest and undoubtedly done to justify the decision to arrest - a black man. Thus, this GOMOR is entirely divorced from common sense, reality, and due process.

h. Given the seriousness of the accusations and the senior level of the applicant, the leadership at XVIII Airborne Corps should have done more to obtain the evidence against him. As stated above, they did not make any effort to obtain the evidence in his case or otherwise conduct their own investigation including interviewing the alleged victim in the case. This is nothing less than folly, and it is certainly not justice or the required procedural due process. Army Regulation 600-37, paragraph 3-2a implies a duty by the GOMOR issuing authority to provide the evidence that supports the basis of the GOMOR to allow for the recipient to "provide a meaningful rebuttal." The XVIII Airborne Corps leadership not obtaining actual evidence in this case likely exculpatory evidence relating to a criminal accusation is dereliction of duty to afford one of their

Soldier's due processes. Indisputably, this is an unquestionable and clear injustice because he cannot supply a meaningful rebuttal if the issuing authority fails to obtain basic evidence.

i. In closing, counsel states, the applicant has served honorably throughout his career, he has been unjustifiably accused of a serious crime, fought, and proved his case before an impartial board of officers, and found vindicated in the end through their findings. General officers have almost unlimited authority to issue GOMORs. However, Army Regulation 600-37, paragraph 3-2 supplies the minimum requirements. Further, this board also has the authority to remove GOMORs, if the allegations are untrue or unjust. Here, the XVIII Airborne Corps issued this GOMOR before they had all the facts and extrapolated his GOMOR based on a police report. As explained above, this GOMOR is both untrue and unjust given the clear facts of the accusations that form the basis of the GOMOR. Further, a BOI unfounded the allegations. Thus, the grounds of the GOMOR are clearly unsubstantiated and untrue. Therefore, he requests the removal of this GOMOR and referred OER from his AMHRR.

3. The applicant, a Regular Army Soldier, was assigned to Fort Bragg, NC and serving in the rank/grade of Colonel (COL)/O-6 when the incidents leading to his receipt of the GOMOR occurred.

4. A County Sheriff's Office Incident Report shows, on 8 May 2021, the applicant and his spouse were arrested.

a. The incident narrative shows officers were called by someone when they saw a couple fighting on the side of the road outside of a purple jeep. Other callers noted the same vehicle was driving at a high rate of speed and running cars off the road. Trooper [REDACTED] later stopped the vehicle for speeding. (sic) Officers note they saw marks on the female and asked the male to follow them to the station where the magistrate found probable cause to charge him with domestic assault on a female and he was turned over to jail.

b. The applicant's wife reported they had been arguing and he had grabbed her while she was driving. They were going to go and spend the day at the beach but got into an argument and decided to return home. The argument got bad, and she pulled over to the shoulder and they got out of the jeep next to the road and she sat down for a minute to catch her breath. The scratches and marks on her neck and arms were caused by him during the argument/altercation in the jeep while she was driving. He has never before assaulted her, nor has he ever been abusive towards her. She did not want charges filed due to possible complications it would cause with his job.

c. He reported he and his wife were going to the beach and got in an argument and decided to go back home. The argument was all verbal and never turned physical. The marks on her neck happened earlier that morning as they were having rough sex.

5. Two DA Forms 4187, show his duty status was changed from present for duty to confined by civilian authorities on 8 May 2021 and back to present for duty on 10 May 2021.

6. On 10 May 2021, the following documents/actions were taken against the applicant:

a. The company issued a memorandum for record advising the applicant of his rights under Article 31 of the Uniform Code of Military Justice, which the applicant acknowledged understanding. Specifically, he was informed he had the right to remain silent, that is, say nothing at all. Any statements he made, oral or written, may be used as evidence against him in a trial by court-martial or in other judicial or administrative proceedings. He had the right to consult a lawyer and to have a lawyer present during this interview. He had the right to military legal counsel free of charge. In addition to military counsel, he was entitled to civilian counsel of his own choosing, at his own expense. If he decided to make any statements or answer any questions, he may stop the questioning at any time.

b. DA Form 4856 showing he was counseled by the company commander to inform him a flagging action (Law Enforcement) would be initiated.

c. A military protective order was initiated against the applicant for domestic violence. He was informed he was required to stay away from his wife and children, and he must vacate his home and temporarily move into a hotel.

d. DA Form 268 shows his company commander initiating a law enforcement flag.

7. On 12 May 2021, DA Form 268 was completed initiating an adverse action flag; his ORB also shows the flagging action and arrest.

8. He was reprimanded in writing by the Commander, Headquarters, Fort Bragg, NC, on 27 May 2021, who stated:

You are hereby reprimanded for allowing your spouse to drive while impaired, committing domestic assault against your spouse, and lying to civilian authorities. On 8 May 2021, the... County Sheriff's office received calls about a male and female fighting next to a purple Jeep near the roadway... and a purple Jeep speeding and running other cars off the road. Police stopped the purple Jeep... driven by your spouse with you in the passenger seat, sober enough to drive. The responding officer noticed fresh injuries on your spouse's neck while administering field sobriety

tests, which she explained occurred as a result of a physical altercation with you. Your wife was arrested for driving while impaired and while at the Sheriff's office, officers noticed more fresh scratches on her body, which she also attributed to the roadside altercation with you. When questioned by law enforcement, you said the fresh marks on your wife's neck happened earlier in the morning during rough sex. The civilian Magistrate found probable cause to charge you with assault on a female, and you were arrested and released on an unsecured bond...

This is an administrative reprimand imposed under the provisions of Army Regulation 600-37 and not as punishment under Article 15, UCMJ. You are advised that in accordance with Army Regulation 600-37, Paragraph 3-5b, I am considering whether to direct this reprimand be filed permanently in your AMHRR. Prior to making my filing decision, I will consider any matters you submit in extenuation, mitigation, or rebuttal. You will be provided, by separate cover, a copy of the evidence which forms the basis for this reprimand. You will immediately acknowledge receipt of this reprimand in writing. You will forward any matters you wish me to consider through your chain of command within seven calendar days, using the format prescribed in Army Regulation 600-37, paragraph 3-7.

9. On 3 June 2021, he signed a memorandum for acknowledgment of receipt of reprimand noting his intent to submit written matters within seven calendar days. On the same day, the applicant received a letter from a law firm noting the dismissal of his assault on a female charge.
10. On 4 June 2021, counsel submitted a memorandum requesting an extension to present GOMOR rebuttal matters.
11. He submitted his spouse's addiction recovery treatment plan, dated 7 June 2021.
12. On 15 June 2021, his spouse sent a rebuttal letter wherein she noted the incident on 8 May 2021 was entirely her fault. She was angry and not in a sober state of mind. As a result, she made comments that implied her husband acted out of character when she started the physical altercation and concealed her alcohol drinking. She wanted to make it clear that her husband has never been violent towards her. She confessed to hiding her drinking problem for the last several years. The incident gave her a moment of clarity and she realized she needed help. He had no idea she hid wine in her water bottle that morning until he confronted her and dumped it outside of the car. Therefore, she enrolled in an addiction program. She wants to apologize for causing this ordeal and stated she was aware her action and conduct reflect her husband and the U.S. Army. She stated she will always represent herself with that in mind in the future. Her husband has been incredibly caring, thoughtful, and understanding as she comes to terms with her issues with alcohol. He has stood proudly beside her as they face this together. She asked the issuing authority to consider her complete culpability for this

incident and that they consider what happened with compassion, as she knows her husband did nothing wrong.

13. On 17 June 2021, the applicant submitted his rebuttal through counsel noting he vehemently denied all allegations, and civilian authorities have dismissed all of the charges against him. He had honorably served for over 20 years on active duty and without incident, and for the reasons listed below, his service history, and character references, he requested the GOMOR be rescinded, or, alternatively, filed locally.

a. He believed the police reports were misleading and did not provide the full picture of what transpired. He continues to describe the events of Saturday 8 May 2021. (sic) Although law enforcement also arrested him, all charges were dismissed. He did not intentionally scratch his wife and, if he had touched her, he did so in self-defense after she attacked him when he dumped out the wine. He has never and would never strike anyone in anger especially his wife.

b. He has never seen this type of behavior in his wife before. He did not know she had been drinking, and obviously would have driven if he knew she had alcohol in her system. Due to her rising level of intoxication, he understands why she made some statements that seem contrary to what really happened; she was belligerent, angry, and vindictive. He honestly did not know how to react other than getting rid of the alcohol and defending himself. He knows he should have made more of an effort to get the keys away from her but wanted to deescalate the situation as much as possible and believed getting physical would have made things much worse. He cannot describe how it felt to see the person he deeply loves acting this way. The whole situation caught him off guard. After they reunited, he had an honest and loving conversation with her about whether she thought she had an issue with alcohol. As a result, she voluntarily enrolled in an addiction service. They will get through this issue together.

c. The initial police report appears bad, but he believes the allegations were overdramatized by law enforcement officers, whom he knows were ultimately looking out for his wife's, his, and the community's safety. Thus, he is sure that is why the charges against him were dismissed. He is incredibly thankful that no one was hurt, and that they were given the opportunity to allow his wife to receive treatment. Ultimately, he is not sure how he could have acted differently without making the situation worse. He tried to remain calm and deescalate the situation, he took reasonable actions to lawfully defend himself and did everything he could to calm her down in her irrational and erratic state, there was no way he was going to allow her to drive away alone in her state.

d. Serving this great nation has been a family tradition. His father retired from the Air Force and all of his siblings have also served. When his opportunity came to join, he did not hesitate to enlist in the National Guard Reserve in 1985. He commissioned as an officer in 1999 and is incredibly proud of his service. He has had an exciting and

rewarding career in the Army, and it was his sincere desire to continue to serve and be a leader and a provider. He has served overseas on four occasions, including three combat deployments. Of his greatest accomplishments, he successfully completed the U.S. Army Graduating Program in Anesthesia Nursing, one of the most difficult programs in all of the Armed Services. As a result, he is able to provide anesthesia care to fellow warriors, Soldiers, Servicemembers from other branches, dependents, and retirees.

e. Although he has over 20 years on active duty in the Army, he truly believes he has a lot more to offer as an effective leader and provider. He aspires to be in a command position and influence, develop, and grow junior officers in becoming great leaders and providers. This whole incident is an aberration in his personal life and with his relationship with his wife, and he regrets not recognizing she had a problem with alcohol earlier. He hopes the materials will be carefully reviewed and thoughtfully considered; he is not the type of Soldier, officer, husband, or man that would engage in such conduct.

14. On 16 July 2021, the imposing authority directed the placement of the GOMOR permanently in the applicant's AMHRR, noting all enclosures would be forwarded with the reprimand for filing as appropriate. The applicant acknowledged the filing determination on 26 July 2021.

15. On 5 August 2021, the applicant received a referred OER for the rated period 18 June 2020 through 17 June 2021, containing the following comments and information:

a. Part IV - Performance Evaluation - Professionalism, Competencies, and Attributes showing -

(1) Block c1 (Character) - "[Applicant] ...treats everyone with dignity and respect and fosters a positive clinical environment. Adheres to unit safety, SHARP, and EO/EEO initiatives. [Applicant]... received a GOMOR during the rating period."

(2) Block c2 (Provide narrative comments which demonstrate performance and potential regarding strategic competencies in the Rated Officers current duty position) -

(a) Comments on Performance: "[Applicant] ...performed his duties as Chief well, and according to standard for 11 months of the rating period. However, [Applicant]... received an unrestricted General Officer Memorandum of Reprimand (GOMOR) and was relieved of all leadership duties and responsibilities."

(b) Comments on Potential: "[Applicant's] ... unrestricted GOMOR places severe limitations on his future potential as a strategic leader in the AMEDD. [Applicant] ...will make meaningful contributions as an anesthesia provider, in good clinical standing.

b. Part VI-Senior Rater -

(1) Part VIa. (Potential Compared With Officers Senior Rated In Same Grade) - Unsatisfactory.

(2) Part Vic. (Comments on Potential) - "Some potential for continued service. [Applicant] ...ranks #5 out of 5 Colonels I senior rate. He is an astute clinician and leads and manages well in a complex environment. [Applicant] ...received a GOMOR during this rating period."

c. Evaluation Record Letter of Referral Rated Officer Response, dated 16 August 2021, prepared by the applicant, reads:

I am the victim of domestic violence from my spouse. On the morning in question, my wife assaulted me when I discovered she was drinking alcohol while she drove us to the beach. In her intoxicated state, she accused me to law enforcement of striking her when in reality I had only defended myself with reasonable force. Although I was arrested, all charges against me have been fully dismissed by local authorities. My wife has entered alcohol rehab, and we are resolving this issue together. This is a private matter, and I did nothing wrong. I received the GOMOR as a result of my wife's misconduct. I am actively in the process of appealing and removing the said GOMOR because it is an injustice. Further, I would respectfully request the word "unrestricted" be removed-there is no such thing as an "unrestricted GOMOR." Further, I would ask that the fact that I received a GOMOR be only included in the sections that are relevant, if any, it does not belong on each paragraph.

16. On 27 August 2021, the applicant was reassigned to his current duty location at Fort Leonard Wood, MO.

17. A memorandum for the initiation of elimination, dated 22 February 2022, notes the applicant was required to show cause for retention on active duty under the provisions of Army Regulation 600-8-24 (Officer transfers and Discharges), paragraph 4-2 b and c, because of misconduct, moral or professional dereliction, and derogatory information. The "show cause" was based on the following specific reasons: Substantiated derogatory activity resulting in a GOMOR (as described above) dated 27 May 2021 and a referred OER for the period 18 June 2020 - 17 June 2021; and conduct unbecoming an officer as indicated by the above referenced items. Additionally, this memorandum informed the applicant a DA Form 268 would be initiated in accordance with Army Regulation 600-8-2 (Suspension of Favorable Personnel Actions (Flag)).

18. A DA Form 268, dated 22 February 2022, which was initiated as required by the memorandum for elimination, shows effective 22 February 2022, a flag was initiated for "HQDA-Involuntary Separation."

19. The record contains an unsigned and undated acknowledgment of receipt of elimination memorandum.

20. Counsel provides a memorandum for legal matters in response to initiation of elimination, on 22 March 2022. The memorandum notes that the accusations against the applicant are false and represent a rush to judgment by leadership of the XVIII Airborne Corps before they had all the facts. In their haste, they issued him his GOMOR based on a police report and charging documents by the State, but his entire case was completely dismissed before he had the opportunity to defend himself from the allegations by the law enforcement officers. However, his leadership clearly had an unyielding disposition regarding domestic assault allegations, and the mere fact that he had been accused by local law enforcement was enough for them to issue and permanently file the GOMOR despite his innocence. Therefore, he requests disapproval of the elimination recommendation, or, alternatively, the referral of this matter to a Board of Inquiry (BOI) so an impartial board of officers could hear and assess the facts of this case. This memorandum was submitted with the four following enclosures:

- spousal support letter, showing his spouse again repeated her comments in the statement she made on 15 June 2021, taking responsibility for the incident on 8 May 2021
- two dismissal letters on 3 and 17 June 2021 from his counsel showing the charges were completely dismissed
- applicant's Good Soldier Book with his entire service record attached (including three character reference letters, OERS, awards, college transcripts, training certificates, six photographs and his commissioning documents) - see supporting documents
- GOMOR rebuttal as detailed above

21. On 12 July 2022, the HRC, Commanding General directed the elimination action be closed, and a BOI be convened.

22. On 11 August 2022, U.S. Army Maneuver Support Center of Excellence and Fort Leonard Wood and Fort Leonard Wood, MO, Commanding General referred the applicant to a BOI.

23. On 3 October 2022, a BOI convened and considered the following:

a. the applicant had adverse information filed in his AMHRR, namely an OER for the period of 18 June 2020 - 17 June 2021, this was supported by a preponderance of evidence and did not warrant separation; and

b. his conduct amounts to acts of personal misconduct as indicated in the GOMOR and OER for the period of 18 June 2020 - 17 June 2021, was not supported by a preponderance of evidence and did not warrant separation.

c. The BOI recommended he be retained in service.

24. The applicant petitioned the DASEB for removal of the GOMOR, 27 May 2021, from his AMHRR. On 11 October 2022 in Docket Number AR20220008592, the DASEB by majority vote, determined that the overall merits of the case did not warrant the requested relief for removal of the GOMOR.

25. On 1 December 2022, a Field of Board Inquiry approved the BOI's recommendation for the applicant's retention and noted the results would be forwarded to the Commander, HRC, Officer Elimination Branch, Fort Knox, KY.

26. On 17 March 2023, HRC officially closed the applicant's elimination action and the corresponding DA Form 268.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted.

2. A majority of the Board found the decision to reprimand the applicant was premature, noting the assault charge against him was dismissed and further noting that his wife provided an explanation of the incident on 8 May 2021 in which she took complete responsibility for the altercation. The decision to reprimand him with insufficient information available further led to a referred OER filed in his record. A majority of the Board determined there is sufficient evidence of a clear and convincing nature that the GOMOR is unjust, thereby warranting its removal from his record. Because the basis for the referred OER was the GOMOR, a majority of the Board further determined its removal is warranted as well.

3. The member in the minority found insufficient evidence of a clear and convincing nature that the GOMOR is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from his record, noting that the decision to drop an assault charge against the applicant does not necessarily support a conclusion that he did nothing that

warranted a reprimand. The member in the minority found the conduct described in the GOMOR would still warrant a reprimand regardless of the resolution of any civilian charges against the applicant. Based on a preponderance of the evidence, the member in the minority determined the GOMOR and the related referred OER should remain in the applicant's record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing from his AMHRR the GOMOR, 27 May 2021, and all allied documents and by removing from his AMHRR the OER for the period ending 17 June 2021 and replacing the OER with a statement of non-rated time.

1/9/2024

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 ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity; it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of evidence.

2. 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 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.

d. 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.

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

a. Paragraph 3-6 (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 another authorized agency.

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

4. Army Regulation 623-3 (Evaluation Reporting System) prescribes the policy for completing evaluations reports and associated support forms that are the basis for the Army's Evaluation Reporting System.

a. Paragraph 2-12 (Rater) states the rater will provide an objective and comprehensive evaluation of the rated Soldier's performance and potential, as applicable, on the evaluation report.

b. Paragraph 3-20(d) (Unproven Derogatory Information) provides any mention of unproven derogatory information in an evaluation report can become an appealable matter if the derogatory information is shown to be unfounded.

c. Paragraph 3-26 (Referred Evaluation Reports) provides that any report with negative remarks about the rated officer's values or leader attributes/skills/actions in the rating official's narrative evaluations will be referred to the rated officer by the senior rater for acknowledgment and comment before being forwarded to HQDA.

d. Paragraph 4-7 (Policies) states evaluation reports accepted for inclusion in the official record of a Soldier are presumed to be administratively correct, to have been prepared by the proper rating officials, and to represent the considered opinion and objective judgment of rating officials at the time of preparation. An appeal will be supported by substantiated evidence. An appeal that alleges an evaluation report is incorrect, inaccurate, or unjust without usable supporting evidence will not be considered. The determination regarding adequacy of evidence may be made by the HQDA Evaluation Appeals Branch. Appeals based on administrative error only will be adjudicated by the HQDA Evaluation Appeals Branch. Alleged bias, prejudice, inaccurate or unjust ratings, or any matter other than administrative error are

substantive in nature and will be adjudicated by the Army Special Review Board. These are generally claims of an inaccurate or an unjust evaluation of performance or potential or claims of bias on the part of the rating officials.

e. Paragraph 4-8 (Timeliness) states substantive appeals will be submitted within 3 years of an evaluation report "THRU" date. Failure to submit an appeal within this time would require the appellant to submit his or her appeal to the ABCMR. The Army Special Review Board will not accept appeals over 3 years old or appeals from Soldiers who are no longer serving on active duty or as part of the U.S. Army Reserve or Army National Guard.

f. Paragraph 4-11 (Burden of Proof and Type of Evidence) states to justify deletion or amendment of a report, the applicant must produce evidence that established clearly and convincingly that the presumption of regularity should not be applied to the report under consideration or that action was warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence must be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. The burden of proof rests with the appellant.

5. Department of the Army Pamphlet 623-3 (Evaluation Reporting System) provides procedural guidance for completing and submitting evaluation reports and associated support forms to HQDA that are the basis for the Army's Evaluation Reporting System. Paragraph 6-1 (Deciding to Appeal) states an appellant who perceives that an evaluation report is inaccurate in some way has the right to appeal for redress to the appropriate agency. However, before actually preparing an appeal, an objective analysis of the evaluation report in question should be made.

//NOTHING FOLLOWS//