

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 April 2024

DOCKET NUMBER: AR20230007501

APPLICANT REQUESTS:

- removal of the DA Form 4037 (Officer Record Brief (ORB)), 26 November 2022, from his Army Military Human Resource Record (AMHRR)
- a personal appearance hearing before the Board

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)
- Self-authored Memorandum (Request Removal of an Erroneous DA Form 4037: Officer Record Brief, dated 26 November 2022, from the AMHRR Record), 1 June 2023, with Enclosures –
 - Enclosure 1 – Contested ORB
 - Enclosure 2 – DA Form 7279 (Equal Opportunity and Harassment Complaint Form), 16 March 2022
 - Enclosure 3 – Excerpt of Army Regulation 600-8-2 (Suspension of Favorable Personnel Actions (Flag))
 - Enclosure 4 – Email Correspondence from Commander, 194th Armored Brigade, 5 January 2023
 - Enclosure 5 –
 - Fort Benning Installation Clearing Documents
 - Headquarters, U.S. Army Maneuver Center of Excellence, Fort Benning, Orders 22073-16, 1 June 2022
 - Enclosure 6 – ORB, 28 August 2022
 - Enclosure 7 – Integrated Personnel and Pay System-Army (IPPS-A) Soldier Talent Profile, 28 April 2023
 - Enclosure 8 – Email Correspondence from U.S. Army Human Resources Command (HRC) (Problem Case Completed), 27 April 2023

- Enclosure 9 – DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW5) Officer Evaluation Report (OER)) covering the period 3 June 2021 through 2 June 2022
- Enclosure 10 – DA Form 67-10-2 covering the period 3 June 2022 through 31 December 2022

FACTS:

1. The applicant states his ORB, 26 November 2022, should be removed from his AMHRR due to erroneous information. Its retention in his records would unjustly reflect unfavorably on his character, service, and performance (see self-authored memorandum for further details).

a. Section 1 (Suspension of Favorable Personnel Actions (SFPA) (Flag)) of his DA Form 4037, 26 November 2022, indicates that he was flagged for an "L-Commander's Investigation" with a starting date of 17 March 2022. He had been flagged in accordance with regulatory guidance based on an Equal Opportunity complaint that was made by an officer under his command on 16 March 2022. The investigation concluded that the allegation was unsubstantiated on 3 May 2022 as indicated in block 10a (Results of Investigation) of the DD Form 7279 and the flag was lifted at that time in accordance with the regulatory guidance. He was not suspended from command while the investigation was ongoing. Accordingly, the obsolete flag should never have appeared on his ORB, 26 November 2022.

b. Section X (Remarks) of his ORB, 26 November 2022, contains an entry under the assignment consideration code stating: "P1 – Suspension of Favorable Personnel Action (Flagged)." In accordance with Army Regulation 600-8-2, Table 2-1, a "P" code represents "Not recommended for automatic promotion to PV1 [private one], PFC [private first class], or SPC [specialist]." As he was not at the time, nor has he ever been, enlisted, this code is clearly erroneous and should never have appeared on his ORB at any time.

c. When the erroneous ORB was discovered, he contacted his previous brigade commander, who noted in an email dated 5 January 2023 that "We had multiple people receive erroneous flags due to the brown out our S1 is fixing." The brownout refers to the transition to IPPS-A (see enclosure 4).

d. He cleared Fort Benning, GA, to execute a permanent change of station to Carlisle Barracks, PA, on 1 June 2022, after the 6-17 March 2022 dates on which the flag and investigation had been initiated, and after 3 May 2022 on which the investigation was concluded as unsubstantiated and the flag was removed (see enclosure 5). He would not have been able to clear the Fort Benning installation

personnel information station if he still had an active L-coded flag for an investigation, as this is a non-transferable flag (see enclosure 3).

e. He retained a copy of his Assignment Interactive Module ORB, 28 August 2022, for his records just before the Fiscal Year 2022 Colonel Promotion Selection Board. His ORB from that time does not contain any flag, nor was any flag indicated, to his knowledge, in his board file, which he certified (see enclosure 6).

f. His current IPPS-A Soldier Talent Profile, 28 April 2023, contains no reference to any flag. Flags are listed under the Readiness tab (see enclosure 7).

g. After attempting to rectify this matter administratively with HRC, HRC referred him to the Army Review Boards Agency for resolution on 27 April 2023 (see enclosure 8).

2. He was appointed as a Reserve commissioned officer and executed his oath of office on 26 April 2002. He was promoted to the rank/grade of lieutenant colonel/O-5 effective 1 May 2018.

3. He provided the following documents for consideration:

a. a DA Form 7279, 16 March 2022, showing Captain (CPT) [REDACTED] filed a complaint against him wherein CPT [REDACTED] believed he was being attacked and harassed based on his religious beliefs. The Equal Opportunity Office forwarded this complaint to the applicant's brigade commander who acknowledged the complaint and conducted an investigation. On 2 May 2022, COL [REDACTED] Commander, 194th Armored Brigade, concurred with the investigation findings that the allegations were unsubstantiated. CPT [REDACTED] acknowledged the findings and elected not to file an appeal on 3 May 2022;

b. email correspondence from COL [REDACTED] informing him of the results of the DA Form 7279. COL [REDACTED] noted the brigade had multiple personnel receive erroneous flags due to the brownout that the brigade S-1 is fixing. COL [REDACTED] stated he believed no one actually flagged him and it won't affect his promotion;

c. Fort Benning Installation clearing documents, 1 June 2022, with orders to proceed on a permanent change of station, showing no issues clearing the installation due to any flagging action; and

d. a copy of his Assignment Interactive Module ORB, 28 August 2022, wherein he noted he certified for his Fiscal Year 2022 Colonel Promotion Selection Board, containing no flagging information.

4. The contested ORB, 26 November 2022, shows the following in:

- Section I (SFPA), the entry, "L-Commander's Investigation" with a starting date of 17 March 2022
- Section X (Remarks), the entry under the assignment consideration code: "P1 – Suspension of Favorable Personnel Action (Flagged)"

5. A review of his records shows the contested ORB, 26 November 2022, is filed in the performance folder of his AMHRR, which contains the flagging information as shown above.

6. His AMHRR does not contain a DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)) showing he was flagged for any adverse action.

7. He additionally provided:

a. in enclosure 3, excerpts of Army Regulation 600-8-2, wherein he highlights the pertinent parts he considers appropriate to his situation (see attachment for further details);

b. in enclosure 7, his IPPS-A Soldier Talent Profile, 28 April 2023, under which the Readiness tab shows the category "SFPA Flags" that does not contain an entry;

c. in enclosure 8, email correspondence between his personnel office and an HRC official wherein HRC notified his personnel office that he would have to apply to the Army Review Boards Agency to correct any error or injustice in his military records; and

d. in enclosures 9 and 10, two OERs covering the periods 3 June 2021 through 2 June 2022 and 3 June 2022 through 31 December 2022, showing his performance/potential as "Proficient/Most Qualified" and "Excels/Most Qualified."

8. He is currently assigned in the rank of LTC as a Professor and Associate Dean at the U.S. Army War College, Carlisle Barracks, PA.

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 warranted.

2. The Board found the evidence confirms the entries on the contested ORB showing the applicant was flagged are erroneous. The Board determined the contested ORB should be removed from the applicant's AMHRR.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing the ORB with a brief date of 26 November 2022 from his AMHRR.

9/18/2024

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 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 600-8-2 (Suspension of Favorable Personnel Actions (Flag)) prescribes Army policy for the suspension of favorable personnel actions (Flag) function of the military personnel system. This regulation is linked to Army Regulation 600-8-104 (Army Military Human Resource Record Management) and provides principles of support, standards of service, and policies regarding the initiation, transfer, removal, and management of flags.

a. Paragraph 1-10 (Standards of Service) states:

(1) A DA Form 268 and Human Resource system input will be initiated within 3 working days when a Soldier's status changes from favorable to unfavorable.

(2) Active flag cases will be reviewed at least monthly. Unit-level commanders will review and validate flag reports monthly. Battalion-level commanders will review and validate all flags over 6 months old monthly.

(3) A flag will be removed within 3 working days after the Soldier's status changes from unfavorable to favorable.

b. Flags are classified into two categories depending on the specific action or investigation:

(1) Nontransferable. The flagged Soldier may not be voluntarily transferred to another unit, or transferred to or between, another Army component (except as provided for in paragraph 2-8); and

(2) Transferable. The flagged Soldier may be transferred to another unit.

c. Paragraph 2-2 (Circumstances Requiring a Nontransferable Flag) states a Soldier flagged under the provisions of this paragraph may not be voluntarily reassigned to another unit or component unless specifically authorized by this regulation. This restriction does not apply to reassignments required by law.

(1) Paragraph 2-2g (Flag Code L "Commander's Investigation") states commanders must flag Soldiers who are suspects or subjects of an investigation or are designated as respondents in a board. The term "investigation" is to be interpreted broadly to include any action that may result in disciplinary action or other loss to the Soldier's rank, pay, or privileges. Examples of investigations include, but are not limited to, Commander's Inquiries and both preliminary inquiries and administrative investigations under Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers). If the investigating officer finds reason to suspect a Soldier who was not originally identified as a suspect, subject, or respondent, the commander must be notified and must flag that Soldier as well. Examples triggering flag cod L include,

but are not limited to, a Soldier who is a witness in an investigation but later becomes a suspect, or when an investigation has no identified respondent, but later the investigating officer finds reason to suspect a Soldier may be subject to disciplinary action. The effective date of the flag is the earliest of the date of offense, the date the commander directs the investigation, the date the commander appoints an investigating officer, or the date the investigating officer suspects the Soldier may be subject to disciplinary action.

(2) Paragraph 2-2k (Flag Code P "Deny Automatic Promotion for Private through Specialist") states when a unit commander elects to deny a Soldier automatic promotion to private two (PV2), private first class (PFC), or specialist (SPC), he or she must flag the Soldier no later than the 20th day of the month preceding the month of automatic promotion in accordance with Army Regulation 600-8-19 (Enlisted Promotions and Reductions). Remove the flag no later than 3 working days following the date the Soldier would have been automatically promoted to PV2, PFC, or SPC.

(3) Table 2-1 (Reason Codes) shows the codes "L" and "P" are listed under the nontransferable flag category.

d. Paragraph 2-9(b)(9) (Removal of a Flag) for a commander's investigation states to remove the flag when one of the following conditions is met:

- (1) The investigation results in no adverse findings against the Soldier.
- (2) The Soldier is flagged pending court-martial or nonjudicial or administrative disciplinary action resulting from the adverse findings of the commander's investigation.
- (3) The commander decides to take no action against the Soldier.

3. Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes policies governing the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to, the Official Military Personnel File, finance-related documents, and non-service related documents deemed necessary to store by the Army. Paragraph 3-6 provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or other authorized agency.

//NOTHING FOLLOWS//