

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20230007534

APPLICANT REQUESTS:

- reconsideration of his previous requests to remove a DA Form 67-8 (U.S. Army Officer Evaluation Report (OER)) for the rating period 19921016 through 19930719 (hereinafter referred to as the contested OER)
- reconsideration of his request for retroactive promotion to chief warrant officer five (CW5)/W-5; in the alternative, change the applicant's retirement rank/grade from CW4 to major (MAJ)/O-4
- as a new issue, retroactive pay, based on an approved change in rank/grade
- a personal appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

- Tab A – 2006 DD Form 149
- Tab B – 2006 Army Board for Correction of Military Records (ABCMR) denial of relief
- Tab C – 2010 DD Form 149
- Tab D – 2010 ABCMR denial of relief
- Tab E – Denial of Request for Reconsideration
- Tab F – Applicant's Declaration
- Tab G – Contested OER
- Tab H – Sworn Statement of Lieutenant Colonel (Retired) (LTC (R)) S\_\_ S\_\_

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the ABCMR in the following Docket Numbers:

- AR20060002795, on 25 January 2007
- AR20100019879, on 23 September 2010
- AR20200007107, 28 October 2021

2. Counsel summarizes the applicant's previous requests for relief and argues the current application provides new evidence and arguments not previously considered by the Board. Specifically, the new evidence is the applicant's declaration at Tab F, and the new argument pertains to "the rating chain's use of the OER to retaliate against applicant, (which) in this way constitutes an act of reprisal in violation of the Military Whistleblower Protection Act (Title 10 (Armed Forces), section 1034 (Protected Communications; Prohibition of Retaliatory Personnel Actions)).

a. The Military Whistleblower Protection Act states, "No person may take (or threaten to take) an unfavorable personnel action or withhold (or threaten to withhold) a favorable personnel action as a reprisal against a member of the Armed Forces for making or preparing or being perceived as making or preparing...a communication...that is made (or prepared to be made) to...any person or organization in the chain of command...." The law defines a communication as occurring when "a member of the Armed Forces complains of or discloses information that the member reasonably believes constitutes evidence of...(a) violation of law or regulation."

(1) The applicant made a protected communication when he told his chain of command that he had found violations of policies and procedures in the acquisition of training funds and the oversight in his command's property books.

(2) Counsel argues, "The timeline clearly establishes that applicant made these protected communications before the (contested OER) ...was drafted and signed. Moreover, the facts set forth in applicant's declaration establish that the adverse nature of the OER was racially motivated, a clear violation of the Military Whistleblower Protection Act, and constitutes an impropriety and inequity for the purposes of this Board. It is impossible to separate the issue of these protected communications from the contents of the adverse OER that was issued following those communications."

b. Counsel also maintains that, but for the contested OER and his involuntarily taken "voluntary" retirement, the applicant would have been promoted to CW5. The applicant affirms he submitted his retirement request because he felt he had no choice, given the impact of the contested OER would have on his career. "The totality of applicant's circumstances at the time he submitted his retirement paperwork leaves little doubt that his decision was the product of both duress and coercion. He would never have retired at that time had he not been improperly induced and coerced into retiring by the actions of the service."

c. Counsel additionally presents reasons why the Board should retire the applicant in the rank/grade of MAJ. The applicant states that, when he learned of the requirement to serve on active duty for 6 months in the grade of MAJ in order to receive retirement pay at that grade, he asked to be recalled to active duty. The Army never granted that

request. "Applicant maintains that this deprivation of the opportunity to complete his remaining 6 months was due to the contested OER."

d. In conclusion, counsel declares the applicant has been carrying the burden of demonstrating he is entitled to his requested relief; accordingly, the principles of justice, fairness, and equity require that the Board grant his requests.

3. The applicant provides documents from his service record and his previous ABCMR considerations. At Tab F, the applicant offers his declaration, in which he states the following:

a. "As a Veteran who spent over thirty years on active duty committed to support and defend the Constitution of the United States, I write on behalf of those, like myself, who volunteered to serve but have not seen our loyal service supported and defended. Active or retired, racial minorities in the Army, Navy, Air Force and Marines are still subjected to mental and physical abuse. Why? Because we have no voice. This is particularly true for my fellow African Americans, as we find ourselves coarsely dismissed as hoodlums and baboons instead of being respected for our centuries of faithfulness to this Great Nation. How many of these white supremacists can boast, as our people rightfully do, of serving in the Revolutionary War, the War of 1812, the Civil War, the Spanish-American war, both World Wars, Korea, Vietnam, Iraq 1 and 2, Afghanistan and the forgotten ones in between?"

b. The applicant expresses his deep feelings about his service and the debt he feels is owed to African American Soldiers who served in the past. "So many Black soldiers, serving both before and after me, have had their aspirations crushed by the military's indulgence of white supremacy. That indulgence continues to cause great harm and contradicts our Founders' Grand Declaration that 'all men are created equal and endowed with inalienable rights.' No one deserves to be mistreated or have privileges over another simply because of the color of his or her skin. Unfortunately, the Army Review Boards Agency has been corrupted and made ineffective by racist leadership."

c. "In reviewing my case, one could honestly conclude that the Board was being run by the Ku Klux Klan! The Board received an Officer Evaluation Report (OER) which covered 9 months of rating time: 16 October 1992 through 19 July 1993 (Ref: Docket Number AR20200007107, Board Date: 28 October 2021). But the Board never asked, 'Why?' They never looked into my year(s)-long military history and thought, 'Something must be wrong here! This Soldier never had this type of action or comments written into his military files!' I will tell you why! I am convinced that Board consisted of Klansmen and white supremacists."

d. The applicant asserts his senior rater wanted him out of the Army because he (the applicant) followed Army regulations; by getting rid of the applicant, the senior

rater's system, as set up by the senior rater's clique, could continue what it had apparently been doing for years before the applicant's arrival. "Plainly put, they were spending millions of the taxpayer's monies every month for items that had absolutely nothing to do with the mission. Just nice-to-have items."

e. "So it was that my assignment to the United States Army Special Operations Command would not only be my last, it led to the destruction of my military career as well as my private life. Ironically, from shortly after I was stationed at Fort Bragg, NC (now renamed Fort Liberty) in 1992 until I was forced out in 1994, my white senior leaders had consistently showered me with praise. They said I had done more for that command than all of my predecessors. I was told many times: 'There will never be another Property Book Officer/Supply Maintenance Officer in this command as able at holding everyone accountable for waste and losses and at the same time maintain a perfect balance across the command. It would take another 100 years for someone to replace you!'"

f. The applicant discloses he knew he was up to the task because, in the 1970s, he had been assigned to the 5th Special Forces Group at Fort Bragg, and, during that period, he became highly versed in the unit's MTOE (Modified Tables of Organization and Equipment). As a result, immediately upon his assignment to the Special Operations Command, he "hit the ground running." The applicant went through all of the property assigned to the post and identified the 60-plus warrant officers who served as team chiefs in control unit property. He then called them to a meeting and asked them to state the biggest problem they faced. All said they had a problem with the G-4 (logistics), in that the G-4 was letting commanders purchase anything they wanted.

(1) The next day, the applicant contacted the G-4 and requested orders; a few days later, he received orders signed by the G-4 (the officer who would later be his senior rater, Colonel (COL) J\_\_ P. D\_\_).

(a) The applicant returned the orders, citing Army Regulation (AR) 710-2 (Supply Policy Below the Wholesale Level), paragraph 2-5 (The Property Book System), and he told COL D\_\_ that, as the G-4, he was not authorized to sign appointment orders for making the applicant the Property Book Officer (PBO). "That was my first mistake with COL D\_\_." COL D\_\_ called the applicant and said, "Who the f\_\_ do you think you are? You come in here and tell me I'm wrong! We've been doing this for over 15 years! You s\_\_-of-a-b\_\_, I am sending this to JAG (legal office), and if you're wrong, I am going to fire your m\_\_f\_\_ing a\_\_ on the spot!" When asked who would be the correct person to sign, the applicant replied that it was the commanding general (CG).

(b) About a week later, JAG confirmed the applicant was correct, and the orders had to be signed by the Special Operations Command CG. "So instructed, Colonel D\_\_ wrote the request for the orders, copies were distributed throughout the command and

the phones started ringing off the hook! Commanders were jumping off the ship because the CG was guarding the bank door. No more waste of funds! All purchases must now be justified and authorized by MTOE/TDA (Tables of Distribution and Allowances)/JTA (Joint Tables of Allowances)/CTA (Common Tables of Allowances)."

(2) The applicant's second incident with COL D\_\_ started with a phone call from the Pentagon; the caller said he had tried, without success, to reach COL D\_\_ and LTC S\_\_ S\_\_ (rater on the contested OER), and he was told the applicant was the next senior person.

(a) The person went on to explain that there had been a shortfall in funds, and they would not be able to pay for some training operations. The person asked the applicant to submit a form requesting the cancellation of the training funds, with the understanding that the requests could be resubmitted at a later date. The applicant did as requested, and sent copies to the Pentagon, COL D\_\_ and LTC S\_\_ S\_\_.

(b) A week later, LTC S\_\_ S\_\_ showed up in the applicant's office and said COL D\_\_ wanted to see him. On the way to COL D\_\_'s office, LTC S\_\_ said, "[Applicant], you are an expert at your job, but one day, you're going to make a mistake." When the applicant asked what he meant, LTC S\_\_ just replied, "Nothing." Once in the office, COL D\_\_ said, "You smart-a\_\_ s\_\_-of-a-b\_\_! You don't cancel my m\_\_f\_\_ing training requirements!. Who the f\_\_ do you think you are?" When the applicant tried to clarify, COL D\_\_ stopped him and proceeded to curse at the applicant, calling him "every dirty name in the book. He talked about my race and how sorry we were as a people! He said, 'Y'all are nothing but lazy thugs!'"

(c) COL D\_\_ continued his rantings for almost an hour; all the applicant could do was stand there. "(COL D\_\_) was so accustomed to his commanders getting whatever they requested, he was ready to court-martial me simply because I had followed Army regulations and put everything under the control of the property team leaders." When COL D\_\_ finally finished, he asked if the applicant had anything to say, and the applicant replied, "Sir, with all due respect, I have all the regard in the world for your rank and position. On the other hand, for you as a man, I think you're a sorry SOB." With that, the applicant saluted and left the office.

(d) "The next day I received a call. The person never identified himself, but said something like, "Colonel D\_\_ told the General you'd cursed him out. When the General asked what he'd done to you he said, 'I cursed him out!' The General told Colonel D\_\_ to get out of his office and said he had better not bother [applicant's] OER.' Before I could respond the phone went dead!"

(3) A few months later, the applicant's phone rang and an unknown caller told him to report for meeting at 1400; looking at his watch, the applicant realized he was already late, so he grabbed his hat and ran.

(a) Upon arriving at the location, he saw about a dozen people seated at tables, but the applicant could not tell who was in charge. "As I sat in the last free chair, I grew anxious, realizing that everyone there was white! They were all dressed in fatigues but searching for a familiar face my heart sank. I recognized not a single one. Still, no one had said a word, and to my surprise, no one had brought any writing material. That's when I spotted Colonel D\_\_! He looked at me and dropped his head just as my blood pressure shot through the roof. A JAG officer was there among them!"

(b) "All at once, a COL, who looked about six-foot-four and, at least two hundred and fifty pounds, stood and started talking as he crossed to the center of the room. His name tag had no name on it. When he loomed over me and abruptly demanded, 'Who the f\_\_ do you think you are?'"

(c) The COL continued, demeaning the applicant's race and promising to kick the applicant out of the service. "You black m\_\_f\_\_! You come in here making changes to the COL's operation like you are somebody? F\_\_ the Army's regulation! If a white man wants to change a rule, he can! A black fool like yourself is not authorized to make changes in a white man's Army. You and your sorry black a\_\_ people! We try to keep you out of Special Ops, but every now and then one or two of you slip through. When they're ready to leave, they never come back! We make sure of that!"

(d) The COL continued degrading the applicant while the JAG officer and others sat silent. The COL brought up Dr. Martin Luther King and other civil rights leaders and sneered, "You see where they are today?" At that point, the applicant passed out, and when he regained consciousness, everyone had left. The applicant went back to his office and tried to wrap his mind around what had happened; he thought if he reported it without proof, people would think he was crazy. "In fact, I never saw COL D\_\_ or any of the others ever again!"

g. Weeks after the abovementioned gut-wrenching experience, LTC S\_\_ appeared at the applicant's office and announced he was clearing and would be returning to his U.S. Army Reserve (USAR) unit; LTC S\_\_ disclosed, "I'm not getting involved in the actions between you and COL D\_\_. Whatever the COL wants from me I'll do." Months later the applicant reviewed his OER, endorsed by both LTC S\_\_ and COL D\_\_; the document looked routine until he read the word, "dogmatic." At that moment, he filled with emotion, placed the OER back on the secretary's desk, and walked out, never to return.

h. The applicant's branch sent the contested OER back to COL D\_\_ several times, saying the report was not right and that COL D\_\_ should re-think the evaluation; however, each time, COL D\_\_ refused to make any changes. At that point, the applicant knew his career was over.

(1) In its previous considerations, "The Board never asked why, during 28 years of service consistently judged as exemplary, this officer had never been described as a dogmatic leader or had it said that his overbearing nature diminished his relationships with others and his overall effectiveness....Instead, the Board seized on my medical records and searched for negative information...Absolutely no doctor ever informed me that I was diagnosed with Paranoid Schizophrenia. The first time I heard it was through the Army Review Boards Agency. I view their action as a serious offense. Even if the record claimed I had committed a felony, that information should have never been released, much less requested."

(2) "I inquired at Veterans Affairs (VA) and was told absolutely no one is authorized to pull my medical records and publish that information. These are the kind of dirty, low-down tactics white supremacists conspire to use to debase and intimidate Black service members and will continue to use until they are held responsible! That information had nothing to do with my OER and worse, it was not true. I have never abused alcohol! I got drunk just once in my life and that was when I was 19 years old, and my younger brother drowned trying to save the life of a friend. When a VA doctor asked me years later, 'do you consume alcohol?' I told him yes, but a very small amount. He asked, 'what do you mean a very small amount?' After supper I'll pour some vodka into a 30ml cup (around the size of the cap on a cough syrup bottle) and mix it with the same amount of milk to have before bed each night. I have NEVER ever been drunk again since the death of my brother! There is not a living person on EARTH who can honestly say they have seen me drunk, smoking, or caught in a lie."

i. "It depresses me to this day that a Vile Lie ended my career...During my thirty years of active duty, I followed the Army's regulations to the letter! I worked extremely hard, and I worked my people hard, but I took care of them. Not one will ever say that I mistreated them. Ask them!. They'll tell you I was hard, but I was fair!...To see my good name smeared for not bowing to corruption is hard to take."

j. The applicant continues by detailing the racism and discrimination he faced while in Officer Candidate School and states, "My experience is in line with the no-win position my Black brothers and sisters-in-arms are experiencing to this day...a white man with my accomplishments and 30 years exemplary service would have had a better than even chance of retiring a COL. Instead, my position was deleted, my SOP that was widely praised, discarded, and I never saw the grade of W-5 or the rank of LTC."

k. "The white supremacist officer, if he discovers the battalion to which he's assigned has a Black commander, will tell the assignment branch that he does not wish to serve in that battalion and, in most cases, get away with it." "Contrast that with the injury done to be by those who concocted the report in my OER. It was a fake!" "But it was not enough to slander me while on active duty, the ABCMR decided to publish my medical history after I left the military." "I believe both the Secretary of the Army and the Secretary of Veterans Affairs committed a serious offense releasing my medical records to the ABCMR. Nothing in my medical history or marital status had any bearing on my OER. Picture a Black COL doing the same thing to a white officer. You can bet the ABCMR, with its all-white members, would have changed the results, and those records would not have seen the light of day."

l. "After much thought and wrestling with my experiences in the Army I would like to propose some actions leadership could take to help remedy the ongoing problem of white supremacy in the Armed Forces."

(1) The applicant's suggestions for Soldiers include prohibiting anyone from joining or associating with a hate group; leaders found rating their troops differently due to ethnicity must be discharged under dishonorable conditions with no possibility of upgrade; no leaders can be allowed to write a "stealth evaluation report" without the express approval of a CG; and the use of profanity must not be allowed while in uniform.

(2) Regarding the ABCMR, the applicant recommends the Board's disbanding; if it remains in place, the Assistant Secretary of the Army should appoint an African American and other minority Board members in sufficient numbers so that at least one member of a Board (preferably two) are African American or other minority.

(a) In addition, computers should replace the Board, write military awards, and compose and implement the Uniform Code of Military Justice (UCMJ). The use of detailed statistical data, showing race, sex, and grade, would tell a commander when they are mistreating Soldiers, and it would prevent commanders from punishing African American Soldiers more harshly than white Soldiers.

(b) The applicant continues, stating, assignments should be made by computer; a Soldier should never have to walk into an office, classroom, or unit and find all are of the same race, and there should never be a command that is exclusively white. Also, the military needs to close the racial gender gap; females, especially white females, have "jumped over Black males by a very wide margin...The Black military males have been stuck in the basement of opportunities since the Revolutionary War. There have been some advancements, but it's nothing to brag about; we are still far behind."



(c) "The Department of Defense should have its lawyers create a robust set of guidelines for protecting Black males within the military. Even though the courts are unwilling to make the military obey the Civil Rights Statutes, that does not mean honest men should be compelled to accept racial abuse. No United States soldier should ever again be referred to as a monkey or a baboon. We are human beings just like our white comrades." (After the enactment of Title VII (Protections against Discrimination based on Race, Color, Religion, Sex, or National Origin) of the 1964 Civil Rights Act, courts have ruled that Title VII did not apply to the U.S. Armed Forces because suits under the statute could undermine military discipline).

(3) With respect to the applicant's military record, "I request that the ABCMR members that reviewed Docket Number AR20200019879 (sic) be removed from serving on any future boards and reprimanded for taking my medical records and using information regarding my health to assassinate my character. This MUST be corrected and those who are responsible must be punished."

(4) As for his current application, if the Board denies his request, he intends to file a petition against the Commander-in-Chief of the United States Armed Forces and the Secretary of Defense. "I want to make it clear to all those that are concerned that this is NOT a threat against the Secretary of the Army. It's the only means for me to receive justice!...It's a Constitutional Right, Equal Rights and equal treatment in ALL areas and protection throughout the military. If I cannot get the support of the ABCMR, I will request the support of the NAACP (National Association for the Advancement of Colored People) and all Black Newspapers and magazines within this country for their support."

(5) "The ABCMR should have removed the OER as soon as it read the unprofessional (Profanity, Article 134 (General Article, UCMJ)) behavior of COL D\_\_\_. Instead, the Board referred to me as (having) schizophrenia. What the ABCMR was telling the world (was) that I had a mental disorder, so do not believe anything he says." This implies that, even though the applicant may deserve promotions, back pay, and other benefits, "we are NOT going to give it to him. We may wait until he dies and promotion his to LTC, without any monetary gain to his family."

n. The applicant expresses his belief that racists at the ABCMR are trying to protect their "brother-in-arms" (his senior rater (COL D\_\_\_)), "because if the ABCMR were professionals after they read how COL D\_\_\_ cursed me twice...it would have removed the OER from my records immediately."

(1) The applicant feels mistreated by the Board and compares what he has experienced to the "raised welts and strafe marks crisscrossed (on) 'Whipped Peter's back' (referring to an 1863 picture of an escaped enslaved man whose back was

scarred from whippings received from his former overseer)...words can cause the same scars and damage as a whip."

(2) "I am also requesting that full investigation be conducted of all black military men and women that you have destroyed their life because of hate. I want it controlled and commanded by a retired Four Star Black General Officer with 75 percent of his support staff black."

o. The applicant concludes by thanking the Board for considering what he has written, "which is something I care very deeply about. Your cooperation and support will certainly be appreciated."

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

a. On 5 June 1964, after serving over a year in the USAR and earning military occupational specialty (MOS) 768.10 (General Supply Specialist), the applicant enlisted into the Regular Army for 3 years.

b. On 4 August 1967, following the completion of airborne training and an 11-month tour in Vietnam, the Army honorably discharged the applicant. On 5 August 1967, he immediately reenlisted for 4 years; his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 3 years and 2 months of net active duty.

c. Effective 31 August 1967, the applicant's leadership promoted him to staff sergeant (SSG)/E-6. In May 1969, the applicant entered officer candidate school (OCS); in September 1969, he departed OCS (in his subsequent warrant officer application, the applicant stated he left OCS due to an "honor code violation"). On 29 September 1971, the Army honorably discharged the applicant; on 30 September 1971, he immediately reenlisted for 6 years. His DD Form 214 indicates he completed 4 years, 10 months, and 25 days of net active duty during the period of the report.

d. On 3 January 1972, the applicant applied for warrant officer; in support of his application, the applicant wrote the following:

(1) "If accepted as a warrant officer, I feel certain I can shoulder the many responsibilities, having fulfilled numerous obligations as a child. My 'duties' began at age seven. I was reared in a very poor rural section of North Carolina where our only source of income was cotton, tobacco, and log wood. I spent most of my time in the cotton and tobacco fields and went to school whenever possible. When all the crops were gone, I became a log man." "Our home was so bad that you could stand (back) fifty feet and throw a cat through the cracks."

(2) "This is just a brief description of my past to illustrate that there is no job in the U.S. Army that is too great or complicated for me." "Because I possess an unusually high degree of initiative and sound judgment, I can be relied upon to satisfactorily complete all assigned tasks and mission." "When dealing with people, I always endeavor to demonstrate utmost respect and, as a result, I am held in the highest esteem." "All this may depict me as a very self-centered individual, but I know that I am one of the most outstanding Soldiers the U.S. Army has today."

e. On 16 November 1972, the Army approved the applicant's warrant officer application; on 20 December 1972, orders directed the applicant to attend a January 1973 Warrant Officer Orientation Course; and, on 9 January 1973, the applicant executed his oath of office as a USAR warrant officer. Following a tour in Korea, orders reassigned the applicant to the 5th Special Forces Group at Fort Bragg; he arrived, on or about 2 February 1974 and remained until his transfer back to Korea, in or around March 1977.

f. In June 1978, the applicant returned to the 5th Special Forces Group at Fort Bragg. In September 1978, the applicant transferred to the 7th Special Forces Group, also at Fort Bragg; he remained assigned until 9 May 1980, when he entered a civilian university to complete an Associate's degree. On 16 January 1981, the applicant executed his oath of office as a dual component USAR commissioned officer in the rank of captain; (the Dual Component Program allowed the Army to quickly meet mobilization demands through the procurement of trained commissioned officers from the ranks of Regular Army enlisted and warrant officers). Effective 1 December 1986, the Army promoted him to CW4 in the Army of the United States.

g. The applicant continued his service and, effective 9 January 1988, the Army promoted him to CW4 in the Regular Army; additionally, effective 15 January 1988, the Army promoted the applicant to MAJ in the USAR (Dual Component). In or around September 1988, the applicant returned to Fort Bragg and served as a Property Book Officer for the XVIII Airborne Corps headquarters. During the first quarter of Fiscal Year (FY) 1991, the applicant completed the Master Warrant Course and earned the designation of Master Warrant Four (MW4). In October 1991, orders reassigned the applicant to the Combined Field Army (CFA) in Korea, where he served as a Consolidated Supply Officer.

h. On or about 4 August 1992, the applicant's CFA rating chain issued him a DA Form 67-8, for the rating period 19920116 through 19920804.

(1) In Part IVa (Performance Evaluation – Professional Competence), the applicant's rater (MAJ L\_\_ R\_\_) reflected ratings of "1" (High Degree) for all items except item number 8 (Displays Sound Judgment), where the rater entered "2." The rater did not include a comment explaining why item 8 did not warrant a "1" rating.

(2) Under Part V (Performance and Potential), the rater checked the block for "Always Exceeded Requirements," but under "This Officer's Potential for Promotion to the Next Higher Grade), the rater reflected the second highest rating: "Promote with Contemporaries."

(3) In Part VII (Senior Rater), the senior rater (COL A\_\_ B. C\_\_) placed the applicant in the second from the top block in "Potential Evaluation"; of the three officers rated by the senior rater, two were in the top block, and the applicant was the only officer in the second block. The senior rater stated, "Rater's assessment is accurate. [Applicant] has the professional skills and experience to contribute much more with less guidance and supervision. While performance in this difficult period of unit disestablishment may not be indicative of his overall performance capabilities, his efforts to maintain accountability of organizational property (were) noteworthy."

i. On 6 October 1992, the 501st Corps Support Group issued the results of its audit of CFA's property books; the report concluded, "it has been determined that the accuracy and completeness of the Property Books and supporting documents were in superb condition." Under "Recommendations," the report stated, "[Applicant] (should) be highly awarded for superior performance for his efforts in the inactivation of both the CFA and STCFA (Special Troops CFA) HQ (headquarters)...."

j. On 9 October 1992, the applicant submitted an appeal for the OER he received for rating period 19920116 through 19920804.

(1) The applicant stated, "I request that Part IV,...a8 be changed from a '2' to a '1,' due to the fact that my rater never explained his reason for the '2.' I can only assume that I was given the '2' because I authorized my NCOIC (noncommissioned officer in charge) to drive a military vehicle to Kimpo airport in Seoul, Korea, to pick up a Soldier coming off of ordinary leave."

(2) Regarding the senior rater's rating, the applicant wrote, "[Senior rater] counseled me and made it clear that I would be in his center mass (referring to the potential evaluation block). [Senior rater] had rated CW4s as an LTC...I later found out from my branch that I was below center of mass...Since [senior rater] has been an O-6 (COL), he has only done 3 ratings for CW4s. In two of those ratings, a '1' was given...I was given a '2.' For me to be center of mass, I would also need to be a '1.' As it was [senior rater's] intent for me to be at the center of mass of his profile rating, I request that block VIIa be changed to a '1.' If this cannot be done, I respectfully request that the OER be removed from my official file."

k. On 12 November 1992, the Officer Special Review Board (OSRB) considered the applicant's appeal. The report summary included the following:

(1) "The OSRB deemed it necessary to contact the rater...The rater remembered the appellant and recalled the (disputed) OER. The OSRB asked the rater the following questions:"

(a) "The appellant states that you never explained why you gave him a '2' in Part IV, a8. He assumed it was because he authorized the use of a government vehicle to pick up a Soldier coming off of leave." The rater responded, "He had authorized the use of government vehicles for unauthorized business on other occasions. I had discussed this with him and told him not to do it, but he continued. I confronted him after the fact, and he told me he hadn't authorized its use...he flat-out lied."

(b) "In one of the applicant's supporting statements (not available for review), there is an accusation that the SR (senior rater) was prejudiced toward the appellant. What is your opinion on this matter?" The rater stated, "That is a lot of bull...I am black myself, and I can tell you the SR was extremely sensitive in this area."

(c) "Was the OER a fair appraisal of the appellant's performance and potential?" The rater replied, "Yes, more than fair."

(2) The OSRB stated that paragraph 9-7a (Burden of Proof and Type of Evidence) placed the burden of proof on the applicant to submit "clear and convincing evidence to justify deletion or amendment of the OER." The OSRB did not find the evidence sufficient to warrant the OER's deletion or amendment and denied the applicant's appeal.

(3) On 16 November 1992, the U.S. Total Army Personnel Command (PERSCOM) advised the applicant, via memorandum, that the OSRB had denied his appeal. PERSCOM additionally noted that correspondence submitted in support of the applicant's appeal would be filed in the restricted folder of his official military personnel file (OMPF) (not available for promotion boards' review), but this notification memorandum would go in the applicant's performance folder (which could be seen by a promotion board).

I. On 6 April 1993, the applicant wrote a memorandum addressed to the Chief of Staff of the Army, wherein he stated he was filing an official complaint against the senior rater and others in regard to the disputed OER (rating period 19920116 through 19920804).

(1) The applicant alleged his senior rater (COL A\_\_ B. C\_\_) grossly mistreated him, in that, in January 1992, the COL refused to send a person to the airport to pick up the applicant. Additionally, the COL refused to issue the same O-6 level quarters offered to the applicant's MW4 predecessor, and the COL placed the applicant in a smaller office than his MW4 predecessor. The COL also authorized special privileges for the

prior MW4, which were not afforded to the applicant (e.g., allowing the prior MW4 (who was married) to house a Korean female in his bachelor officer quarters).

(2) On 30 April 1993, the Department of the Army Office of the Inspector General responded by advising the applicant could request a Commander's Inquiry into his disputed OER; alternatively, the applicant could apply for relief to the ABCMR.

m. On 27 May 1993, the applicant wrote to the President of the FY1993 CW3, CW4, and CW5 Promotion Selection Board (PSB) and addressed his disputed OER (rating period 19920116 through 19920804).

(1) The applicant stated he wanted to make it perfectly clear that he assumed "full responsibility for my actions in regard to the facts and circumstances surrounding the results of OER, dated (19)920116 to (19)1920804. However, I feel that my rater and senior rater were unfair in rating me for such a minor offense."

(2) The applicant went on to explain that he had apologized "at least three or four times" for directing his NCOIC to drive a military vehicle to the airport, and he offered context for the board's consideration, stating that during the CFA deactivation, he had vehicles continually going to Seoul and would regularly authorize the use of a vehicle to drop off and pick up Soldiers (officers and enlisted) from the airport. He did so as a way of helping Soldiers.

(3) The applicant ended the memorandum with, "if I am denied promotion due to the aforementioned OER, I shall not hold any animosity toward anyone, but I'll still be the best CW4 in the U.S. Army."

n. On 28 June 1993, the applicant petitioned the ABCMR, requesting the removal of the OER for rating period 19920116 through 19920804. The applicant contended the OER resulted from mistreatment due to double standards. He added, "If I am denied promotion to CW5 by the Promotion Board, which convened on 8 June 1993, I request that the (ABCMR) reevaluate my official files and consider me for promotion to CW5 with my peers. Also, request that I be awarded the Legion of Merit for my performance in the preparation and deactivation of the CFA, just as my predecessor, MW4 J\_\_ Z\_\_."

o. In or around August 1993, the applicant's rating chain issued him the (currently) contested OER, rating period 19921016 through 19930719.

(1) Under Part IV, the applicant's rater (LTC S\_\_ S\_\_) reflected ratings of "1" (High Degree) for all items except number 8 (Displays Sound Judgment), where the rater entered "2." The rater did not include a comment to explain why item 8 did not warrant a "1" rating.

(2) In Part V, the rater checked the block for "Always Exceeded Requirements." Under comments, the rater wrote, "[Applicant] is a dogmatic officer, who has not only responded to the relentless operational demands of SOF (Special Operations Forces) units committed in the low intensive conflict spectrum but also find time to mentor and assist Soldiers in need...[Applicant's] overbearing nature has diminished his relationship with people and overall effectiveness."

(3) Under "This Officer's Potential for Promotion to the Next Higher Grade), the rater reflected the second highest rating: "Promote with Contemporaries."

(4) The senior rater (COL J\_\_ P. D\_\_) rated the applicant in the top block for potential, with the applicant being the only warrant officer rated. In comments, the senior rater wrote, "[Applicant] has supported this command to the utmost...He is a demanding leader who knows how to obtain excellence in everything he does and everything his section does. Select for soonest promotion opportunity to MW5."

p. On 18 October 1993, the applicant's senior rater referred the OER to the applicant for acknowledgement and comment. The applicant submitted a three page response, which included the following:

(1) "The referred OER, dated (19)921016-(19)930719, it's simply an unprofessional act on the part of my rater, LTC S\_\_ E. S\_\_. The negative comments are retaliation for a visit that I had with (the Lieutenant General Special Operations Command CG). I briefed the CG on property accountability problems within his command. I also prebriefed LTC S\_\_ before I went into see the general and LTC S\_\_ encouraged me to be straightforward with (the CG). He (LTC S\_\_) also stated that (the CG) may force these commanders to comply with the regulations."

(2) "After my visit, on 14 May 1993, I came directly back and briefed LTC S\_\_ of my conversation with the general. His comments to me were, 'That's very good...maybe something will come out of this.' Well, something did come out of my visit...(CG, Special Operations Command) confronted Major General (MG) (CG of U.S. Army Special Forces Command). Apparently, this information disappointed (the MG), wherein he called in his G-4 (LTC D\_\_) and questioned him about accountability problems within (the) command. LTC D\_\_ and LTC S\_\_ (rater) are very good friends; so, LTC D\_\_ requested LTC S\_\_ go in and explain to (the MG) the problem concerning the status of property accountability within the Special Forces Command."

(3) "LTC S\_\_ met with (the MG), on or about 1600 hours, 24 June 1993. About 28 June 1993, I received a copy of a memorandum marked for the DCSLOG (Deputy Chief of Staff, Logistics) (COL D\_\_). When I read the memorandum, I knew that it was a 'set-up,' and that my visit to (the LTG's) office would reflect on my OER...LTC S\_\_ and my working relationship went sour from this point."

(4) On 28 June 1993, the applicant called LTC S\_\_ and asked why he had written the memorandum to the DCSLOG; LTC S\_\_ responded that he was keeping his boss informed. "With that I told LTC S\_\_ that the DCSLOG was aware of my visit to (the LTG's) office and that he (COL D\_\_, DCSLOG) was also aware of the excess property within (the Special Operations Command)." The applicant explained that, for 7 or 8 months, he had been telling everyone in the command about accountability problems but was told to "back off" and not to "rock the boat." "I kept putting up the 'red flag,' which caused anger amongst my superiors. Yet the Army Audit Agency (AAA) came in and found the exact same deficiencies that I had been trying to get people to correct." After going back and forth with LTC S\_\_ about how to talk with general officer, the conversation ended "because LTC S\_\_ kept referring back to the MG and LTC D\_\_ being 'pissed off.'"

(5) The applicant finished by maintaining that his rater, who had promised to support him, went back on his word. "When things got hot, LTC S\_\_ ran off and left me hanging by myself. He wrote that false comment on my OER and gave me a '2' for poor judgment (for telling (the LTG) the truth, which was confirmed by the 'AAA' team."

q. On 12 January 1994, the ABCMR addressed the applicant's request to remove the disputed OER, rating period 19920116 through 19920804, and voted to deny relief.

(1) The Board discussed the results of the OSRB. With regard to the applicant's request for the Legion of Merit, the Board learned the applicant's rater had recommended him for a Meritorious Service Medal and that recommendation was supported by the applicant's chain of command; however, the CG downgraded the award to an Army Commendation Medal.

(2) After evaluating all evidence, the Board determined the disputed OER represented a fair, objective, and valid appraisal of the applicant's demonstrated performance and potential during the rated period. As such, the Board did not find sufficient basis to remove the OER from the applicant's OMPF.

(3) Concerning the applicant's allegations of a double standard and racial bias, the Board noted the applicant had provided no supporting proof and observed that he had not charged his senior rated with discrimination or double standards during either the OER appellate process or in his letter to the PSB president.

r. On or about 22 February 1994, the applicant received an OER for rating period 19930720 through 19940128 (last OER prior to retirement). His rater was LTC R\_\_ E. S\_\_ and senior rater was COL J\_\_ P. D\_\_ (same senior rater as in the contested OER). All items with Part IV showed a "1" rating and the raters indicated the applicant "always exceeded requirements" and should be promoted ahead of his contemporaries. The senior rater placed the applicant in the second block for potential and stated,



"[Applicant] has performed very well as the Command Property Book Officer...Should the need arise for [applicant] to return to active duty after his pending retirement, he would be best suited for a training environment."

s. On 30 June 1994, the Army honorably retired the applicant; his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 21 Years, 5 months, and 22 days of net active duty service, with 9 years, 1 month, and 4 days of prior active service (combined 30 years, 6 months, and 26 days). Items 4a (Grade, Rate, or Rank) and 4b (Pay Grade) reflect the applicant's rank/grade as MW4/W-4.

t. On 17 February 2006, the applicant petitioned the ABCMR, requesting his retired pay grade change from MW4 to MAJ.

(1) The applicant argued that he learned from the U.S. Army Human Resources Command (HRC) that he needed 6 months of active duty service in the rank/grade of MAJ to receive MAJ retired pay. As a result, he took the required physical, completed a security clearance application, and forwarded all documents to HRC. When he did not hear back, he called and was told his name was on the list, and that, if he was needed, he would be called. The applicant asked the Board to waive the 6-month requirement.

(2) On 4 December 2006, the Defense Finance and Accounting Service (DFAS) provided an advisory opinion; DFAS stated the applicant was placed on the retired list, effective 1 July 1994, after completing 30 years and 6 months of active service; the grade determination established the applicant's retired grade as CW4. DFAS found no evidence the applicant completed the 6 months, required by Title 10, U.S. Code, section 1370 (Commissioned Officers: General Rule; Exceptions), for placement on the retired list as a MAJ/O-4.

(3) On 25 January 2007, the Board voted to deny relief, stating, while the evidence of record showed he served and retired as a chief warrant officer, and the USAR promoted him to MAJ in 1988, the record did not indicate the applicant completed at least 6 months of active duty service as a MAJ. As such, he was authorized to be identified as a MAJ, but he was not entitled to MAJ retired pay and allowances.

u. On 16 July 2010, the applicant requested the Board remove the contested OER from his service record, arguing his senior rater (COL J\_\_ P. D\_\_) had pressured his rater (LTC S\_\_ S\_\_) to write an adverse report.

(1) In support, he provided a sworn statement from now retired LTC S\_\_ S\_\_. LTC (R) S\_\_ stated, after reviewing the contested OER, he could affirm the report was

"out-of-balance"; he additionally suggested changes the Board could make to the OER and strongly recommended the applicant's promotion to CW5.

(2) On 23 September 2010, after considering the applicant's arguments, evidence, and the sworn statement by LTC (R) S\_\_ S\_\_, the Board voted to deny relief. The Board stated:

(a) "Although the applicant provides a statement from his former rater, that statement alone is not sufficient to overcome the burden of proof that the contested OER is inaccurate or unjust. (The rater's statement) was prepared more than 15 years after the OER was prepared and appears to be based on retrospective thinking."

(b) "As a result, there is an insufficient evidentiary basis to support a conclusion that the evaluation rendered in the OER in question did not simply represent the considered opinion and objective judgment of the rating officials at the time of preparation."

v. On 20 July 2020, the applicant requested reconsideration; on his application, the applicant checked blocks indicating that PTSD (post-traumatic stress disorder) and TBI (traumatic brain injury) were related to his request.

(1) Through counsel, the applicant argued the OER was inaccurate and unjust, and, if the report had correctly stated his performance and potential, he would have been promoted to CW5. With his application, the applicant included a second statement from his rater:

(a) LTC (R) S\_\_ S\_\_ wrote that he disagreed with the Board's 2010 conclusions and acknowledged that, at the moment he wrote the OER comments, he was unfairly judging the applicant. He affirmed that he was motivated by bias, and he failed to be objective.

(b) "From what I remember, [applicant] made one comment during the time that I rated him that I believed to be disrespect of another officer. I did not counsel [applicant] in writing but instead spoke with him about it. He immediately responded with positivity and respect. In essence, [applicant] made one negative comment in the heat of a moment and immediately corrected his behavior. I should not have rated his entire year negatively based on this one incident, especially when he fixed it immediately and had otherwise superior behavior."

(2) Because the applicant indicated he suffered from PTSD and TBI, and prior to the Board's review of the applicant's case, the Army Review Boards Agency Medical Advisor provided a medical review. The Medical Advisor stated:

(a) "This advisory cannot speak to whether or not the applicant's OER should be amended or retired rank be changed. What can be stated is the applicant reported experiencing chronic headaches in-service; however, indicated they were not 'bothersome' until 2013. Moreover, when the applicant was service connected for headaches, the VA only backdated the condition to 2001. Of note, the applicant is no longer service connected for mTBI (mild TBI) or related residuals such as headaches. In terms of PTSD, the applicant's records notate PTSD once in 2012 without proper documentation to substantiate the diagnosis. Moreover, all the applicant's Compensation and Pension (C&P) exams and other treatment encounters do not diagnose PTSD. At this time, documentation does not support the applicant's assertion migraines and PTSD led to an incident resulting in the unfavorable comment within his OER."

(b) The medical review additionally detailed reports, taken from the applicant's VA medical records, which discussed marital issues and noted that, "In January 2013, the applicant saw psychiatry and (was) prescribed medication with (a) diagnosis of Depressive Disorder, NOS (not otherwise specified) and Alcohol Abuse....In September, psychiatry listed a diagnosis of Paranoid Schizophrenia; however, substantiation is void."

(3) On 28 October 2021, the Board evaluated the applicant's arguments and evidence and voted to deny relief. The Board stated:

(a) "After reviewing the application and all supporting documents, the Board determined relief was not warranted. Although the applicant provided a statement from his former rater stating in his opinion, the OER was inaccurate and unjust, the OER is an evaluation of an individual at the time of the writing and retroactive thoughts on behalf of the rater does not by itself invalidate the evaluation completed at the time. Without corroboration to the rater's comments, as well as the findings of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the contested OER of the applicant."

(b) "Additionally, because there was no change to the applicant's OER and because the applicant was never selected for promotion to CW5, the Board concluded there was insufficient evidence to promote the applicant and/or to refer his military record to a Special Selection Board (SSB) for reconsideration for promotion to CW5."

5. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

**BOARD DISCUSSION:**

1. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and military records, the Board determined that the applicant did not demonstrate by a preponderance of evidence that procedural error occurred prejudicial to the applicant and by a preponderance of evidence that the contents of the DA Form 67-8 U.S. Army Officer Evaluation Report (OER) for the rating period 19921016 through 19930719 are substantially incorrect and support removal. Therefore, the Board denied relief.
2. The Board next considered the applicant's request for reconsideration for retroactive promotion to chief warrant officer five (CW5) or alternatively amending his retirement rank/grade from chief warrant officer four (CW4) to major (MAJ). The evidence of record shows he was promoted to CW4 and retired as a CW4 on 30 June 1994 after completing 21 years, 5 months, and 22 days of active service, with 9 years, 1 month, and 4 days of prior active duty service. There is no evidence to support the applicant was recommended for promotion to CW5 or promoted to CW5. The Board noted the applicant was promoted to MAJ in the U.S. Army Reserve in 1988; however, he did not complete the required 6 months pursuant to Title 10, U.S. Code, section 1370 for placement on the retired list as a MAJ. Therefore, the Board denied relief of his request for reconsideration for retroactive promotion to CW5 or amending his retirement rank/grade to MAJ and therefore not entitled to retroactive pay.
3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

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

REFERENCES:

1. Army Regulation (AR) 623-105 (Personnel Evaluation Reports – Officer Evaluation Reporting System), in effect at the time, prescribed policies and procedures for the Officer Evaluation Reporting System.

a. Paragraph 1-6 (Officer Evaluation Reporting System (OERS) stated the primary function of OERS was to provide information to Department of the Army for use in making personnel management decisions. The information taken from the OER, combined with the Army's needs and an individual officer's qualifications, was used as a basis for personnel actions, including assignments and promotions. In order to ensure sound personnel management decisions could be made, reports needed to be as accurate and complete as possible.

b. Paragraph 4-2 (Role of the Rating Official). Rating officials were responsible for balancing their obligations to the rated officer with their obligations to the Army. Rating officials needed to make honest and fair evaluations; on one hand, the evaluation needed to give full credit to the officer for his/her achievements and potential. On the other hand, rating officials were obligated to the Army to be discriminating in the assessments so that selection boards and career managers could make intelligent decisions.

d. Paragraph 4-27 (Referred Reports). Reports were to be referred to the officer when they contained negative remarks about the rated officer's professional ethics, in Part IVb (Professional Ethics) or in the rating official's narrative evaluations.

e. Paragraph 9-2 (Policies and Standards). An evaluation report accepted for inclusion in the officer's official record was presumed to be administratively correct, prepared by the proper rating officials, and representing the considered opinions and objective judgments of the rating officials at the time of preparation.

f. Paragraph 9-7 (Burden of Proof and Type of Evidence).

(1) The appellant had the burden of proving the report should be deleted or amended, and the evidence had to establish clearly and convincingly that:

- The presumption of regularity should not be applied
- Action was warranted to correct a material error, inaccuracy, or injustice
- The evidence provided was of a strong and compelling nature, not mere proof of an administrative error or factual inaccuracy

(2) The evidence required to support a claim of inaccuracy or injustice had to include statements from third parties, rating officials, or other official documents. By

"third parties," the regulation meant individuals, other than the rated officer or rating officials, who had knowledge of the appellant's performance during the rating period. Statements from rating officials were also acceptable if they related to allegations of erroneous perceptions or claims of bias.

g. Appendix N (Constructing an Evaluation Report Appeal), paragraph N-2 (Preparing an Appeal) stated an appeal's success depended on the care with which the appellate case was prepared, the line of argument presented, and the strength of the evidence submitted.

(1) For third party statements, more weight was normally given to those made by individuals whose vantage points closely approximated the those of the rating officials. An example could include a battalion executive officer who had knowledge of circumstances within a subordinate company.

(2) "Statements from rating officials often reflect retrospective thinking, or second thoughts, prompted by an appellant's non selection or other unfavorable personnel action claim to be the sole result of the contested report. As a result, claims by rating officials that they did not intend to evaluate as they did will not, alone, serve as the basis for altering or withdrawing an evaluation report. Rating officials may, however, provide statements of support contending the discovery of new information that would have resulted in an improved evaluation, had it been known at the time of the report's preparation.

2. Title 10 (Armed Forces), section 1034 (Protected Communications; Prohibition of Retaliatory Personnel Actions). In 1988, Congress enacted the Military Whistleblower Protection Act to prohibit anyone from retaliating or taking reprisals against servicemembers who disclose information concerning government fraud, waste, and abuse to designated persons.

a. Specifically, the law sought to assist those military service members who:

- Made a protected disclosure by communicating with or preparing a communication to certain designated officials (i.e., a Member of Congress, an Inspector General (IG), or a member of the chain of command)
- Disclosed information that they reasonably believed constituted a violation of law or regulation, mismanagement, a gross waste of funds, or a danger to public health or safety; and
- Had an unfavorable personnel action taken or threatened to be taken or have a favorable action withheld, or threatened to be withheld, as a result of the disclosure

b. The act required the Department of Defense (DOD) IG to expeditiously investigate a whistleblower's allegations of reprisal that it receives within 60 days of the service member's initial awareness of the adverse action. If an investigation could not be completed within 90 days of the date of receipt of the allegation, the IG was to notify the Secretary of Defense and the member concerning the reason and the expected date of the report.

c. In 1989, DOD issued DOD Directive (DODD) 7050.06 (Military Whistleblower Protection). In December 1991, provisions within the National Defense Authorization Acts of Fiscal Years 1992 and 1993 required DOD to prescribe regulations prohibiting members of the armed forces from retaliating against whistleblowers who made disclosures to specified individuals. In September 1992, DOD reissued DODD 7050.06 and added the requirement for the services to develop regulations implementing the Military Whistleblower Act. In March 1994, the Army incorporated provisions of the Military Whistleblower Act into its IG regulations. In 1999, Military Whistleblower Act provisions were added to AR 600-20 (Army Command Policy).

d. The current version of AR 600-20 addresses the Military Whistleblower Protection Act in paragraph 5-12. It states:

(1) Department of the Army personnel are prohibited from restricting a Soldier's lawful communication with a Member of Congress or an IG, and from taking acts of reprisal against a Soldier for making, preparing to make, or being perceived as making a protected communication. This paragraph's provisions are punitive, under Article 92 (Violation of a General Regulation), Uniform Code of Military Justice).

(2) No person will take an unfavorable personnel action, or withhold or threaten to withhold a favorable personnel action, as a reprisal against a member of the Armed Forces for making or preparing or being perceived as making or preparing to make a protected communication. A protected communication includes:

- Any lawful communication with a Member of Congress or an IG
- A communication involving a violation or law or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or substantial and specific danger to public health when made to a Member of Congress, an IG, any person in the chain of command, or law enforcement
- A communication does not lose its protected status because it was made to a person who participated in an activity the member reasonably believed to be covered; the communication revealed information previously disclosed; and the communication was not made in writing;

(3) The Soldier subject to reprisal (the complainant) must make a first person complaint to an IG within 1 year of becoming aware of the personnel action taken or



threatened that they believe to have been in reprisal, or the complaint may be dismissed as untimely.

3. AR 600-8-29 (Officer Promotions), currently in effect, includes guidance on special selection boards (SSB) in chapter 6 (SSB).

a. SSBs may be convened under Title 10 (Armed Forces), U.S. Code, section 628 (SSB) to consider or reconsider commissioned or warrant officers for promotion when HQDA determines that one or more of the following circumstances exist: administrative error or material unfairness.

b. An SSB will consider the record of the officer as it should have been considered by the original board. The record will be compared with a sampling of those officers of the same competitive category, who were recommended and not recommended for promotion by the original selection board.

c. Officers selected for promotion by an SSB will, as soon as practicable, be appointed to that grade. When appointed to the next higher grade as the result of the recommendation of an SSB, the officer will have the same date of grade, the same effective date for the pay and allowances of that grade, and the same position on the ADL as the officer would have had if he or she had been recommended for promotion to that grade by the board which should have considered, or which did initially consider, him or her.

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

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

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses

or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

5. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions).

(1) When an applicant has suffered reprisal under Title 10, U.S. Code, section 1034 and DODD 7050.6, the ABCMR may recommend to the Secretary of the Army that disciplinary or administrative action be taken against any Army official who committed an act of reprisal against the applicant.

(2) The ABCMR will decide cases on the evidence of record. It is not an investigative body.

b. Paragraph 2-11 (ABCMR Hearings) states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

c. Paragraph 3-1 (Claims/Expenses Authority). The Army, by law, may pay claims for amounts due to applicants as a result of correction of military records.

d. Paragraph 3-2 (Settlement of Claims). The ABCMR will furnish the Defense Finance and Accounting Service (DFAS) copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant, settle the claims on the basis of the corrected military record, and compute the amount due, if any. The applicant's acceptance of a settlement fully satisfies the claim concerned.

//NOTHING FOLLOWS//