

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: Casso, Arlette E.

BOARD DATE: 22 November 2024

DOCKET NUMBER: [REDACTED]

APPLICANT REQUESTS:

- removal of the DA Form 2166-9-2 (Noncommissioned Officer Evaluation Report (Staff Sergeant (SSG) – First Sergeant (1SG)/Master Sergeant (MSG) (NCOER)) covering the period 1 October 2017 to 30 September 2018 from her Army Military Human Resource Record (AMHRR)
- promotion to MSG/E-8, with an effective date of rank 1 July 2019 and back pay and allowances
- 21 months of constructive service credit with back pay and allowances
- leave restoration for her 21 months of constructive service credit
- amendment of her basic active service date (BASD) to reflect 19 December 2001
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Two U.S. Army Human Resources Command (HRC) Memoranda, subject: Evaluation Report Appeal (20171001-20180930), 19 February 2019 and 14 March 2019 with enclosures
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 12 December 2019
- HRC, U.S. Army Senior Enlisted Review Board (USASERB) Correspondence, 14 October 2021, including applicant's request fit for duty determination, and orders to active duty
- Army Board for Correction of Military Records (ABCMR) Correspondence, 24 August 2022

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the ABCMR conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states she was pushed into a medical board by her leaders. She was not an unfit Soldier. Her NCOER was intentionally marked with untrue derogatory remarks and due to those remarks triggered a qualitative management program (QMP) board. After proving her case to both boards, she was retained by the QMP board and after a disability discharge on 12 December 2019, she had to wait 21 months to engage due to the COVID-19 pandemic, but she was found fit for duty and returned to service.

a. Upon returning to service on 8 September 2021, she engaged the USASERB to request her rank back and was told she needed the NCOER in question removed by the Army Review Boards Agency (ARBA) first. Following that guidance, she submitted the request to ARBA and after waiting a year was told she had to go to HRC after she appealed to HRC three times.

b. The documentation provided not only shows a timeline of events while assigned to her unit that show the injustices she endured, but a clear picture on why she should have never received any derogatory information on her NCOER in question. It was clear in the documents that she had a family care plan and that her leaders were doing everything in their power to find justification to give her a derogatory remark by denying her to complete it.

3. The applicant provides:

a. Her evaluation report appeal to HRC, which shows, in pertinent part, on 19 February 2019, the appeals and corrections section of HRC returned her request without action as having not proven any substantive inaccuracies or lack of a qualified rated position or rater. She had not established clearly and convincingly removing her NCOER from her AMHRR is warranted. In support of her appeal, *available in its entirety for the Board's review*, the applicant provides:

- family care plan letter of understanding, counseling checklist, family care plan, e-mail correspondence concerning her family care plan, counseling concerning her family care plan, letter of instruction, certificate of acceptance as guardian or escort, order for custody/parenting time/visitation granted
- Memorandum, subject: Update on Clinical Condition of Dependent of [Applicant], which shows the applicant's son has been diagnosed with bipolar and requires intensive treatment
- leave forms and recommendation for convalescent leave
- NCOER support form
- whistleblower reprisal investigation correspondence, which shows her complaint was forwarded to the Secretary of the Army for further action
- authorization to start, stop or change allotment
- application for identification card/DEERs enrollment

- statement in support of appeal from First Sergeant GMW, which states her family care plan was approved
- her personal statement in support of her appeal, which states, in pertinent part, the NCOER does not reflect an honest and fair picture of the type of Soldier and leader she is; lacks subjectivity; expressed personal dislike with the brigade command sergeant major
- the referred NCOER
- a timeline of events of her time assigned to the unit and with her family care plan summary
- attachment orders
- assumption of command orders
- prior NCOERs
- active duty orders

b. Notification e-mail correspondence from the representative at HRC, USASERB instructing the applicant to apply to ARBA for consideration of her NCOER declared invalid. In support of her appeal, *available in its entirety for the Board's review*, the applicant provides:

- her personal statement requesting consideration of a USASERB based on the QMP selection board for Fiscal Year (FY) 2019 USAR Active Guard Reserve (AGR) MSG promotion board
- a memorandum of support from Lieutenant Colonel (LTC) BRK, battalion commander, recommending the applicant's request for a USASERB based on being retained for continued service
- a memorandum from HRC, Chief, Transition Branch, notifying the applicant of her recommendation for being retained under the QMP and the approval of the recommendation by the Director of Military Personnel Management
- fit for duty orders
- orders to active duty, effective 9 September 2021

c. ABCMR correspondence notifying the applicant she had not failed to exhaust all administrative measures for consideration of her application by the ABCMR for removal of her NCOER and consideration by a Standby Advisory Board (STAB) (now USASERB).

4. Having prior service in the Regular Army (RA), Army National Guard (ARNG), and U.S. Army Reserve (USAR), the applicant enlisted in the RA on 1 August 2011.

5. On 1 May 2013, she was promoted to sergeant first class (SFC)/E-7.

6. The applicant's record contains an NCOER for the period covering 1 October 2017 through 30 September 2018. The NCOER shows in:

- a. Part I (administrative Data); block i (Reason for Submission): 02 | Annual
  - b. Part II – Authentication); block a1 (Name of Rater): D--, R--, M.
  - c. block a4 (Date): 6 November 2018
  - d. block a5 (Duty Assignment): Senior Human Resources Sergeant
  - e. block b1 (Name of Senior Rater): C--, L--,
  - f. block b4 (Date): 11 December 2018
  - g. block b5 (Duty Assignment): S1
  - h. Part III (Duty Description); a (Principal Duty Title): Senior Human Resources Sergeant
  - i. Part V – Senior Rater Overall Potential
    - block a: not qualified
    - block b: Comments:
      - (1) NCO refuses to sign. As a bridge human resources sergeant [Applicant] is not able to complete a family care plan and is currently flagged as such she is unable to attend her NCO education system.
      - (2) She should not be promoted and placed into positions of increased responsibility. She should not be retained on the AGR program.
7. On 12 December 2019, she was honorably retired for temporary disability. Her DD Form 214 shows she completed 8 years, 4 months, and 12 days of active service with 8 years, 11 months, and 23 days of prior active service.
8. On 8 September 2021, she was found fit for duty and removed from the Temporary Disability Retired List.
9. On 9 September 2021, she was ordered to active duty in an AGR status from the USAR in the rank of SFC.
10. On 30 June 2024, she was honorably retired for sufficient service. Her DD Form 214 shows she completed 2 years, 9 months, and 22 days with 17 years, 2 months, and

29 days of prior active service. Her rank/grade was shown as SFC/E-7 with an effective date of pay grade as 1 May 2013.

11. Her record is void of documentation showing she was recommended for promotion to MSG/E-8 or promoted to MSG/E-8. Additionally, there is no evidence she served on active duty between 12 December 2019 and 9 September 2021.

12. By regulation, to justify deletion or amendment of a report (NCOER), the applicant must produce evidence that establishes 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 strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. The burden of proof rests with the applicant.

#### BOARD DISCUSSION:

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.

a. Removal of the DA Form 2166-9-2 from her AMHRR. Deny. 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 2166-9-2 (Noncommissioned Officer (NCO) Evaluation Report (Staff Sergeant (SSG)-First Sergeant (1SG)/Master Sergeant (MSG)) for the rated period 1 October 2017 to 30 September 2018 are substantially incorrect and support removal. Therefore, the Board denied relief.

b. Promotion to MSG/E-8. Deny. Upon review of the applicant's petition and available military records, the Board determined her record is absent evidence that shows she was promoted to sergeant MSG/E-8. Therefore, the Board denied relief.

c. Constructive Service Credit, Backpay, and Leave Restoration. Deny. Upon review of the applicant's petition and available military records, the Board found no evidence to support the applicant served on active duty from her date of discharge on 12 December 2019 to the date she was returned to duty on 8 September 2021. The Board concluded the applicant did not serve the 21 months of requested constructive service credit and denied relief as well as back pay and allowances and leave restoration based on the denial.

d. BASD Amendment. Deny. Upon review of the applicant's petition and available military records, the Board determined there is no error in the applicant's annotated BASD in her records. Therefore, the Board denied relief.

2. 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.

■

■

■

---

■

■

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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 623-3 (Evaluation Reporting System) prescribes the policy and tasks for the Army's Evaluation Reporting System, including officer, noncommissioned officer, and academic evaluation reports focused on the assessment of performance and potential.

a. Chapter 4 (Evaluation Report Redress Program) states the Evaluation Report Redress Program consists of several elements at various levels of command. The program is both preventive and corrective, in that it is based upon principles structured to prevent, and provide a remedy for, alleged injustices or regulatory violations, as well as to correct them once they have occurred.

b. Paragraph 4-7 (Policies) states:

(1) An evaluation report submitted and accepted for inclusion in the rated Soldier's Army Military Human Resource Record (AMHRR) is presumed to:

- be administratively correct
- have been prepared by the proper rating officials
- represent the considered opinion and objective judgment of the rating officials at the time of preparation

(2) The rated Soldier or other interested parties who know the circumstances of a rating may appeal any evaluation report they believe is incorrect, inaccurate, or in violation of the intent of the regulation.

(3) 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 will be made by U.S. Army Human Resources Command, Evaluation Appeals Branch.

(4) 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.

c. Paragraph 4-11 (Burden of Proof and Type of Evidence) states to justify deletion or amendment of an evaluation report, the applicant must produce evidence that establishes 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 applicant.

3. 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.

a. Paragraph 3-20 (Relief for Cause Noncommissioned Officer Evaluation Report (NCOER) Instructions) states:

(1) If a rated NCO is officially relieved, the following specific instructions apply to completing a relief for cause NCOER:

- the rating official directing the relief will clearly explain the reason for relief and indicate they directed the relief
- when the rater directs the relief, this information will be entered in the following location (1) for raters of NCOs on DA Form 2166-9-3, entry will be in part IV, block f

(2) Regardless of who directs the relief, the rater will enter the comment, "The rated NCO has been notified of the reason for the relief" within the reference location annotated above.

b. Paragraph 3-21 (Mandatory Review of NCO Relief for Cause Reports) states an additional review of relief for cause NCOERs is required when an NCO is officially relieved of duties and a relief for cause NCOER is subsequently prepared. If the rater directed the relief, the senior rater will perform the review. Reviewers of relief for cause NCOERs will:

- ensure that the narrative portions of the NCOER contain factual information that fully explain and justify the reason for the relief
- verify that any derogatory information has been accurately reflected
- ensure that the NCOER has been prepared as prescribed in AR 623-3 and this pamphlet

4. Army Regulation 635-8 (Separation Processing and Documents) prescribes policy and procedural guidance relating to transition management, to include the preparation



and issuance of the DD Form 214 (Certificate of Release or Discharge from Active Duty).

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty and provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge.

b. The rules for completing the DD Form 214 state for item 4 (Grade, Rate, or Rank), verify that active duty grade or rank and pay grade are accurate at time of separation.

5. Army Regulation 600-8-19 (Enlisted Promotion and Reductions) in effect at the time, prescribes the enlisted promotions and reductions function of the military personnel system.

a. Paragraph 1-29 (Noncommissioned Officer Professional Development System requirement for promotion and conditional promotion), Soldiers (all components) must complete the following professional military education (PME) courses: completion of SSD/DLC 4 is an eligibility requirement for promotion consideration to MSG. Completion of the Master Leaders Course (MLC) is a promotion requirement to MSG (effective with the FY18 MSG promotion selection board results) for RA and USAR (AGR) Soldiers. Completion of MLC is a promotion pin-on requirement to the rank of MSG/1SG effective 1 January 2019 for ARNG Soldiers.

b. Chapter 7 (Enlisted Promotion of Army National Guard Personnel), the DARNG has responsibility and exception authority (not contrary to controlling laws and regulations) for the policies provided in this chapter and as such, will provide guidance and interpretation of the policies set forth.

c. Paragraph 7-4 (Non-promotable status), commanders and leaders at all levels will notify the promotion authority when Soldiers whose name appears on a list are non-promotable. Soldiers may be advanced or promoted only while in a promotable status. Soldiers in a non-promotable status may not be selected from the promotion list until they have regained a promotable status. A Soldier is in a non-promotable status and will not be selected, promoted, advanced, appointed to a higher rank, or laterally appointed to CPL, 1SG, or CSM when a Soldier has a voluntary retirement application that has been approved.

d. Paragraph 7-28 (Promotion process), once considered and selected for promotion and assigned to a valid position, Soldiers are promotable provided they meet the PME requirement with the effective date and date of rank on the date they are assigned to the valid higher graded position. Soldiers who are not PME qualified will not

be promoted any earlier than the date they graduate from the required PME course. AGR promotions to MSG will be promoted effective the date assigned to a valid position, date an AGR controlled grade is authorized, or if applicable, the date graduated from the PME course, whichever is later. AGR Soldiers selected and assigned to higher graded positions before the list expires but are not promoted because a controlled grade is not available, will remain assigned pending availability of a controlled grade resource. AGR Soldiers selected from the promotion list, pending a control grade are no longer required to compete for the position for which selected.

e. Paragraph 7-40 (Selecting Soldiers from the promotion list), Soldiers on the promotion list who are fully eligible and available to include completion of the required PME for pin-on, will be offered the position. Upon exhausting the promotion list with all PME qualified Soldiers by CPMOS, Soldiers will be offered assignment to available vacancies for which they are eligible and available without the required PME for promotion. Soldiers selected for assignments when they are fully qualified will be promoted concurrently with the assignment provided, they meet the PME requirements. They may not be assigned to positions or promoted in the position until the incumbent is reassigned or separated. In the case of AGR personnel, States are authorized to fill the incumbent's position in accordance with NGR 600–5. However, States cannot exceed their AGR controlled grade authorization. AGR SFC and MSG selected and assigned to funded positions, but for whom there are no available controlled grade allocations to promote, will remain assigned pending availability of a control grade resource. State leadership and DARNG decides which positions and Soldiers are allocated to the limited number of controlled grades, and the method through which this is done, providing that the method does not violate other articles or the spirit of this chapter or NGR 600–200.

f. Paragraph 7-44 (Removal of Soldiers from the promotion lists), Soldiers will be notified of removal action, in writing. Once a Soldier is removed the action is final. CDRs will promptly notify the AG (MPMO), or DARNG for Title 10 AGR Soldiers, and forward supporting documents to remove from a promotion list a Soldier who has an approved retirement.

6. Army Regulation (AR) 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//