

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 April 2024

DOCKET NUMBER: AR20230007724

APPLICANT REQUESTS: through counsel:

- removal of the DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW5) Officer Evaluation Report (OER)) covering the period 24 May 2018 through 11 January 2019 (hereafter referred to as the contested OER) from her 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)
- Counsel's Brief in Support of Application for Correction of Army Records, undated, with enclosures –
 - Enclosure 1 – Contested OER
 - Enclosures 2-8 – Character-Reference Letters
 - Enclosure 9 – Elimination Board Proceedings Documents
 - Enclosure 10 – DA Form 67-10-2 covering the period 8 May 2019 through 10 June 2020
 - Enclosures 11-18 – Character-Reference Letters and Letters of Support
 - Enclosure 19 – G-3 Fire Support Element, Headquarters and Headquarters Company, Eighth Army, Memorandum (Findings and Recommendations for Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) Investigation Regarding the 106th Medical Detachment (Veterinary Service Support) (MDVSS)-Preventive Health Activity-Korea (PHA-K) Command and Leadership Climate), 15 October 2018
 - Enclosure 20 – Memorandum (Rebuttal for Findings and Recommendations for Army Regulation 15-6 Investigation Regarding the 106th MDVSS/PHA-K's Command and Leadership Climate), 19 November 2018
 - Enclosure 21 – Headquarters, Eighth Army, Memorandum (General Officer Memorandum of Reprimand (GOMOR)), 14 December 2018
 - Enclosure 22 – Memorandum (Response to Memorandum of Reprimand, (Applicant)), 6 January 2019

FACTS:

1. The applicant defers to counsel.

2. Counsel states the applicant requests removal of her contested OER for reasons of propriety and equity. The OER should be removed in its entirety on the grounds that it is an unjust and inaccurate characterization of her performance during the rating period. She is an active-duty Army veterinarian who received a referred OER as the result of a command climate survey and Army Regulation 15-6 investigation that inaccurately represented her job performance by disregarding numerous first-hand accounts of her conduct. The investigation also failed to account for the systemic failures by her command to provide her with adequate guidance and support (see attachment for further details).

a. Background.

(1) On 14 December 21018, she received a GOMOR from the Commander, Eighth Army. The reprimand was for four things: fostering a negative command climate that had a significant adverse impact on her subordinates; being derelict in her duties as an Army leader for failing to treat subordinates with dignity and respect; for failing to sustain a positive equal opportunity climate within the command; and for engaging in toxic leadership by recklessly disregarding Soldiers' safety and welfare by waiving the Army Regulation and safety procedures. The reprimand was not officially filed but served as the basis for her referred OER.

(2) The applicant has served honorably in the Army for over 18 years. Most recently, she serves as the Acting Division Chief, Advanced and Emerging Threats, and as medical integrator for chemical and biological defense. In 2018, she had the privilege of serving as the battalion commander for the 106th MDVSS in Korea. She took command of the battalion in July 2017. In September 2018, a command climate survey was published regarding the 106th MDVSS. As a result of the findings of the command climate survey, the Deputy Commanding General, Eighth Army, initiated an Army Regulation 15-6 investigation into the command climate. She was temporarily suspended from command during the course of the investigation on 19 September 2018.

(3) On 15 October 2018, Colonel (COL) M____ M____, the investigating officer (IO), published his results. The results made findings about the applicant, First Sergeant (1SG) J____ L____, Staff Sergeant (SSG) R____ B____, and Sergeant First Class (SFC) B____ K____. Specific to the applicant, the findings were that she allegedly did the following:

(a) spoke to the executive officer, Major (MAJ) P____, in a manner using expletives, belittling her in front of other officers and noncommissioned officers;

(b) purposefully excluded PHA-K officers from seeking professional development and ostracizing them from their expertise and field of study;

(c) excluded all officers from a winter field training exercise (FTX) in which only enlisted Soldiers were participating, with temperatures of 9-13 degrees Fahrenheit; officers conducted officer professional development at the same time but slept inside the MDVSS clinic the entire week;

(d) denied a second extension of emergency leave for a Soldier who was attending a funeral and required the Soldier to return early; issued a bar to reenlistment for the same Soldier when he returned to Korea, which was thrown out by the brigade command sergeant major;

(e) asked an incoming officer (MAJ P____) to sell her house early because she wanted her to have 20 days of overlap with the outgoing officer; contacted North Carolina State University to see if she could be released from her residency program earlier in order to report earlier;

(f) invited specific officers to dinner at her home but not others;

(g) forced a junior enlisted soldier to attend motor pool activities while 19.5 weeks pregnant; observed the Soldier's limiting physical profile rating, but then put her back in the motor pool after stating that she was not to miss any motor pool time;

(h) set an expectation or impression which caused an officer under her command to require a Soldier to attend an FTX who had recently had wisdom teeth removed against the Soldier's limiting physical profile rating;

(i) asked a Soldier to join her on a run who had a limiting physical profile rating;

(j) explicitly stated (on an undetermined date) to MAJ C____ and 1SG L____ that she was targeting all Soldiers with limiting physical profile ratings for malingering;

(k) routinely overrode the safety of non-mission capable vehicles by "X"ing vehicles in order to make mission;

(l) circumvented the Army Driver's Training Program by allowing Soldiers to obtain licenses who had not completed the appropriate training;

(m) deliberately disregarded the Eighth Army Policy for In and Out-Processing by ignoring appointments and only allowing 3 days to clear the unit;

(n) failed to sign administrative paperwork in a timely manner;

(o) forced a Soldier and his officer in charge to assume the front leaning rest position because the Soldier was not wearing his advanced combat helmet;

(p) showed a lack of concern and neglect for military working dogs under her command;

(q) failed to properly promote Soldiers in a timely manner; and

(r) failed to properly track Soldiers' enlistment bonus requests.

(4) These findings were the basis of the removal from command, memorandum of reprimand and referred OER. What the investigation did was create a mountain out of a molehill, leaving her command to feel like they had no option but to reprimand her. Many of the incidents either did not occur the way they were stated, or occurred, but were not explained properly. When painted in an unflattering light, there was no other alternative than to view her actions as warranting reprimand. This appeal seeks to explain the individual allegations, and respectfully asks to view the allegations individually rather than collectively when determining if the consequences were warranted.

b. Legal Basis and Argument for Removal of the OER from the Applicant's AMHRR.

(1) The contested OER is a deeply flawed document that does not capture the applicant's performance during the rating period in question. Instead of being based upon her performance as observed by her superiors and peers, it is solely based upon a command climate survey and the Army Regulation 15-6 investigation that casts her in a disparaging light. The investigation focused only on her shortcomings as a leader and did not attempt to look at her performance as a whole. While some of the statements contained within the investigation are critical, there are just as many that are laudatory. She does not dispute that there were several instances where she could improve her leadership skills. However, it is grossly unfair to judge her based on these instances alone, as her performance overall was commendatory.

(2) Every single allegation in the Army Regulation 15-6 investigation has an explanation and mitigating factor. The problem is when looking at them all from the perspective of the IO, it seems to warrant corrective action. What occurred here was, in essence, a "piling on" of charges in order to make something stick. The veterinary command in Korea is one of the most challenging in all of the Army. They cover a dual

mission, which requires 138 people to do well, but only has 79 people assigned. Ninety-eight percent of officers are replaced every summer. Ninety percent show up without any Military Table of Organization and Equipment experience. These are not unique challenges in the Army, but placing them in the perspective of a neglected command that she was attempting to fix explains the challenges and shortcomings. (Refer to the attachment for further details as this section also discusses some of the findings in particular).

c. Show Cause Board Proceedings and Results. The reprimand and referred OER were the reasons an Officer Elimination Board was convened and held on 1 March 2021. The findings of the board, attached here, directly contradicted the findings in the applicant's OER and reprimand. The board found that the allegation that she "failed to ensure the Army Values and Warrior Ethos were observed in my command, constituting misconduct, moral or professional dereliction" was not supported by a preponderance of the evidence. In addition, the board found that she did not fail to sustain a positive command climate, and did not engage in conduct unbecoming an officer. Every allegation was proven to be not supported by the evidence. The board voted unanimously to retain her in the service, and also found unanimously that she did not commit the conduct as alleged (see attached elimination board proceedings).

d. The applicant's prior performance covering the first 11 months of her command speaks volumes for how shortsighted and misleading the Army Regulation 15-6 investigation truly was. The comments by her rater and senior rater described her as a brilliant leader and was operating at a COL level now. Her current performance also was exemplary and she was chosen for her position based on her demonstrated performance and leadership.

e. Numerous character-reference and support letters are provided from those who served with the applicant, attesting to her ability, character, military operations knowledge, and leadership, and support her efforts to be retained on active duty and to have the OER removed from her AMHRR.

3. The applicant was appointed as a Reserve commissioned officer in the U.S. Army Reserve in the Veterinary Corps in the rank/grade of first lieutenant/O-2 and executed an oath of office effective 12 February 2002.

4. The applicant was promoted to the rank/grade of captain/O-3 effective 10 August 2003 and executed a Regular Army oath of office on 10 August 2006. She was ultimately promoted to the rank/grade of lieutenant colonel/O-5 effective 1 February 2016.

5. The applicant became the subject of an Army Regulation 15-6 investigation on 18 September 2018 as the Commander, 106th MDVSS, PHA-K. An IO was appointed

on 18 September 2018 to determine the facts and circumstances regarding allegations concerning her and the unit's overall leadership and command climate identified from the unit's September 2018 Organizational Climate Survey.

6. On 15 October 2018, the IO completed the investigation and determined the following (see attachment with auxiliary documents/exhibits):

a. Bottom Line Up Front. An overwhelming amount of evidence supports a conclusion that beginning in or around January 2018, several key leaders within the 106th Medical Detachment, including the applicant (Battalion Commander), SFC B____ K____ (S-3 Noncommissioned Officer in Charge (NCOIC)), and SSG R____ B____ (Team 2 NCOIC) did violate Army Regulation 600-20 (Army Command Policy), paragraph 4-19, in that abusive and demeaning behavior and language was commonly used while failing to treat subordinates with dignity and respect. Additionally, he found several cases which also violated Army Regulation 600-100 (The Army Profession and Leadership Policy), wherein the commander recklessly disregarded Soldiers' safety and welfare, fostered a biased and extremely negative command and climate, and continuously displayed a leadership style that did not instill unity, cohesion, or trust. Instead, he found a lack of concern for the well-being of subordinates, divisive and abusive leadership behaviors in key leaders, and an acceptance to waive Army regulations and safety procedures to accomplish the mission, resulting in a toxic environment for all members in the unit.

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

(1) Does the applicant treat subordinates with dignity and respect in accordance with (IAW) Army Regulation 600-29, paragraph 4-19?

(a) It is his view that the applicant places the mission over the general concern for the safety and well-being for the officers and Soldiers in the unit. Her leadership style has fostered a biased and extremely negative command climate that tolerates bullying and hazing, accepts circumventing training and safety, discounts Soldiers with limiting physical profile ratings, disregards Eighth Army In and Out-Processing Policies, and ignores Soldier's promotion, leave, and financial issues. The applicant negated the role of the previous executive officer and relegated the 1SG's position while using the battalion S-3 NCOIC to enforce her intent. She has been in command for more than 1 year. Overwhelming evidence suggests that the unit's morale has eroded considerably over the course of her command while her leadership style has ostracized the 1SG and the majority of its members. She has directly created divisive, hostile, and intimidating situations, while in other instances, she has inadvertently created distrust, suspicion, and made herself unapproachable to her subordinates who fear reprisal for any decision not made by her.

(b) The applicant has set visible, unrealistic, and unsustainable priorities for short-term mission accomplishment without consideration of the safety and well-being of her troops. The unit's operating tempo, coupled with disparaging and differential treatment of subordinates, exacerbated by her abrasive and bullying leadership style has undermined the overall organizational health of the unit. The same behavior has permeated down to several key leaders and has been accepted as normal practice within the unit for several months. It is, therefore, his opinion that this type of leadership is the direct cause of multiple system failures within the unit.

(2) Does any member of the unit leadership engage in hazing or bullying IAW Army Regulation 600-20, paragraph 4-19?

(a) SSG B____ admitted to violating Army Regulation 600-20 by enforcing inappropriate behavior as forms of punishment and making inappropriate sexual remarks as jokes. Facts indicate that this type of behavior has been viewed and accepted by several members of the unit for months. His unacceptable behavior has aided in the erosion the unit's morale and command climate.

(b) SFC K____ was mistreating the Korean Augmentation to the U.S. Army (KATUSAs) in the unit and treating them with disdain and disrespect, while bullying Corporal U____ into wearing load-bearing equipment while in a surgical boot. SFC K____ admitted to this inappropriate and unacceptable behavior, which is in direct violation of Army Regulation 600-20.

(c) In addition to the behavior the applicant engaged in as described above, she knew or should have known of the actions of her subordinates. The 106th MDVSS is not a large unit, consisting of 74 military Soldiers and officers with many who witnessed or were recipients of the hazing and bullying carried out by her, SSG B____, and SFC K____, which occurred over a significant period of time, suggesting she condoned and in some cases enforced such behavior.

(d) 1SG L____ had little room to make decisions or his recommendations were completely ignored by the applicant. However, there was clearly immoral, unethical, and illegal behavior. The investigation indicates the 1SG tried to intervene by reporting the issues to his higher chain of command with no resolve until the new chain of command reported in the summer of 2018. However, the investigation also identified several month-long trends of hazing, bullying, and berating. Many Army regulations were ignored or blatantly circumvented. These trends were seen by everyone in the unit, thus, making the 1SG also culpable for not correcting this unacceptable behavior. Additionally, the 1SG should have recognized those Soldiers with pay issues, promotions, and other personal transactions. It is his opinion that the 1SG has mentally vacated himself from the current and future issues and is now preoccupied with less

than 60 days from retirement. His continued service and role as the 1SG have already been diminished and may be viewed as no change by many members in the unit.

(3) Does the applicant sustain a positive equal opportunity (EO) climate within 106th MDVSS, PHA-K IAW Army Regulation 600-20, paragraph 6-1? She does not sustain a positive EO climate within the unit. Many of the practices engaged in by her and her subordinates undermine teamwork, mutual respect, and loyalty while creating an image of disparate treatment among persons which is not based on merit.

(4) Does any member of the unit leadership violate EO regulations or engage in unfair treatment of military personnel IAW Army Regulation 600-20, paragraph 6-2? SSG B_____ has made several inappropriate sexual remarks using derogatory gender-biased terms as explicit jokes, clearly violating Army Regulation 600-20, paragraph 7-6b.

(5) Does the applicant engage in prevention of sexual harassment as outlined in Army Regulation 600-20, paragraph 7-2? The preponderance of evidence suggests that the applicant and members in the unit, except SSG B_____, support Sexual Harassment/ Assault Response and Prevention (SHARP) training and adhere to Army Regulation 600-20, paragraph 7-2.

(6) Does unit leadership as a whole enforce policies to prevent sexual harassment IAW Army Regulation 600-20, chapter 7? The unit does conduct SHARP training and no evidence suggests any violations by any members other than SSG B_____ making illegal, inappropriate jokes regarding sexual orientation. As a whole, the leadership appears to have enforced policies regarding the prevention of sexual harassment.

(7) Does the applicant engage in toxic leadership as defined in Army Regulation 600-100, paragraph 1-11? She violated Army Regulation 600-100 wherein she recklessly disregarded Soldiers' safety and welfare by waiving Army regulations and safety procedures to accomplish the mission. In addition, she violated Army Regulation 600-20, chapter 6, in that she made visibly distinct differences among officers, enlisted, and those assigned limiting physical profile ratings. These violations included: Violated Army Regulation 600-20, paragraph 4-19, under hazing and bullying by humiliating officers and Soldiers; overriding limiting physical profile ratings in violation of Army Regulation 40-501 (Standards of Medical Fitness); circumventing Army Regulation 600-55 (The Army Driver and Operator Standardization Program) by licensing military drivers in 1 hour of driver's training; circumventing in-and out processing times which violates Army Regulation 600-8-101 (In-, Out-, Soldier Readiness, and Deployment Cycle), paragraph 3-2f; excluded officers from January FTX while forcing the enlisted to remain in the field despite the extremely harsh conditions presented; invited individual officers to her place of residence while excluding others; targeted Soldiers with limiting

physical profile ratings with separation from the service and overrode medical authorization for alternate Army Physical Fitness Test events.

(8) Does 106th MDVSS, PHA-K leadership and personnel comply with Army Korea Regulation 600-2 (Management and Treatment of KATUSA) in their management and treatment of KATUSAs assigned to the unit? SFC K_____ addressed the KATUSAs within the unit as "F_____ing KATUSAs" and "F_____ing idiots," while displaying inappropriate bullying and hostile behavior toward KATUSAs in violation of Army Regulation 600-20, paragraph 4-19, under hazing and bullying. Additionally, he violated Army Korea Regulation 600-2. It is his observation that SFC K_____ was under a lot of stress from the applicant and performed the roles of the 1SG and Operations NCOIC for several months while the relationship between the 1SG and the applicant remained dysfunctional.

c. Recommendations (only pertinent to the applicant). In view of the above facts and findings, the applicant should receive appropriate disciplinary action to include, but not limited to: a GOMOR and permanent removal from battalion command for directly violating Army Regulation 600-20, Army Regulation 600-100, Army Regulation 40-501, Army Regulation 600-55, Army Regulation 600-8-101, while neglecting Department of the Army Pamphlet 710-2-1 (Command Supply Discipline) and Army Regulation 600-100 regarding the safety and well-being of her Soldiers. Based on the facts and findings of the investigation, placing her back in command of the 106th Medical Detachment will have serious negative repercussions and degrade the unit's overall readiness and mental well-being.

7. In her 19 November 2018 memorandum, the applicant submitted rebuttal matters to the Army Regulation 15-6 investigation findings and recommendations. She requested that the Eighth Army Commander set aside the IO's findings and recommendations and that she be reinstated to the command of her unit. She denies all the allegations against her, was not aware of any inappropriate comments by her senior noncommissioned officers regarding sexual harassment, and is standards-based and only enforced applicable Army standards (see attachment for further details).

8. She was issued a GOMOR by the Eighth Army Commanding General on 14 December 2018, wherein he stated:

You are hereby reprimanded. As Battalion Commander, from June 2017 through September 2018, you fostered a negative command climate that had a significant adverse impact on your subordinates. You were derelict in your duties as an Army leader under Army Regulation AR [sic] 600-20, Army Command Policy, paragraph 4-19, in that you failed to treat subordinates with dignity and respect, and paragraph 6-1, in that you failed to sustain a positive equal opportunity (EO) climate within the command. Furthermore, you engaged in toxic

leadership as defined in [Army Regulation] 600-100, Army Profession and Leadership Policy, paragraph 1-11, in that you recklessly disregarded Soldiers' safety and welfare by waiving Army [r]egulations and safety procedures to accomplish the mission, resulting in a toxic environment.

Through your conduct in command, you failed to demonstrate exemplary conduct, as required by [Title 10, U.S. Code, section 3583], in that you failed to take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted Soldiers under your command. Your conduct is unacceptable, and shows your considerable lack of judgment and the necessary degree of self-awareness for a senior leader and commander in our Army. I have significant doubts about your potential for future service in our Army.

This reprimand is administrative and not punishment pursuant to the Uniform Code of Military Justice. In accordance with [Army Regulation] 600-37 [Unfavorable Information], I am considering filing this reprimand in your Army Military Human Resource Record. You have ten duty days to submit any written matters in extenuation and mitigation. If you fail to respond within the time allowed, I will assume that you elect not to submit matters and will take final filing action without your input.

9. She acknowledged receipt of the GOMOR on 14 December 2018. Her memorandum for the Commander, Eighth Army (Response to Memorandum of Reprimand, (Applicant)), 6 January 2019, requested placement of the GOMOR in her local unit file. She explains certain circumstances in the Army Regulation 15-6 investigation and that she has spent time and reflection during her suspension thinking about the things that she could have done differently. In hindsight, she realizes that although she made mistakes, she felt she was doing the best that she could do for her troops, the mission, and the Army. Command is not easy or simple, especially in Korea. It has unique challenges that she was not completely prepared for (see attachment for further details).

10. The applicant's records do not contain and she does not provide the Eighth Army Commanding General's decision memorandum regarding filing of the GOMOR in her AMHRR.

11. A review of the applicant's AMHRR revealed the GOMOR and allied documents or any evidence of the Army Regulation 15-6 investigation documents are not filed in the performance folder. (Note: The applicant provided the Army Regulation 15-6 investigation documents and the GOMOR with allied documents.)

12. The applicant received the contested OER covering the period 24 May 2018 through 11 January 2019 (a 4-month period) addressing her duty performance as the Commander, Medical Detachment, Camp Humphreys, Korea. The reason for submission is shown as "Relief for Cause." Her rater is shown as the brigade commander and her senior rater is shown as the Eighth Army Commanding General. The rater and senior rater digitally signed the OER on 4 February 2019 and 24 February 2019, respectively. The applicant digitally signed the OER on 25 March 2019. The contested OER shows in:

a. Part II (Authentication), block d (This is a Referred Report, Do You Wish to Make Comments?), a checkmark was placed in the block signifying to the applicant that she was receiving a referred report and a checkmark was placed in the "Yes" block, indicating the applicant's comments were attached;

b. Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block d1 (Character), the rater commented: "[Applicant] failed to ensure the Army Values and Warrior Ethos were observed in her command. She failed to sustain a positive equal opportunity (EO) climate within the command IAW [Army Regulation] 600-20, para[graph] 6-1. She did ardently support the Army SHARP and [Equal Employment Opportunity] programs";

c. Part IV, block e (This Officer's Overall Performance is Rated as), the rater marked "UNSATISFACTORY" and commented: "I directed a relief for cause pursuant to the results of [Army Regulation] 15-6 investigation. I did not request [Applicant] provide a DA Form 67-10-1A, OER Support Form, due to the relief. I lost confidence in her ability to command due to misconduct and poor judgement. She failed to treat subordinates with dignity and respect IAW [Army Regulation] 600-20, failed to sustain a positive equal opportunity climate within the command IAW [Army Regulation] 600-20, and engaged in toxic leadership as defined in [Army Regulation] 600-100. The [Commanding General, Eighth Army] issued a [general officer] Memorandum of Reprimand to [Applicant]"; and

d. Part VI (Senior Rater), block a (Potential Compared with Officers Senior Rated in Same Grade), the senior rater marked "NOT QUALIFIED" and commented: "[Applicant] has no potential to continue to lead Soldiers. [Applicant] is a competent technician and has the potential to serve in staff positions with supervision. Retain [Applicant] at her current grade."

13. The applicant acknowledged receipt of the OER and submitted a memorandum for record (Response to Referred OER), 22 March 2019, in rebuttal to the contested OER's contents, wherein she stated:

I disagree with this OER and the investigation that preceded it. I intend to continue to refute both using the due process available to me.

My past OERs prove that my performance to the Service has been exemplary over my 16 years. In fact, this contested OER follows only four months after a double top block OER in which my leadership qualities were recorded from the same senior rater as "the most leader developed veterinarian I have met in 26 years of service." I contend that this double four block OER is based on an amorphous and insubstantial investigation against me. The investigation was launched by a command climate survey that was dubious at best considering it had an unheard of 138% response rate. The result consisted of zero counseling or guidance from my new Brigade commander in the four months prior to my suspension. I was not informed of any inadequacies or allowed any opportunity to correct them. I assert that the investigation was one-sided and incomplete, aimed only at finding evidence that could be used to support my removal and not fact finding for the truth. My assertion is supported by the facts that few of the officers that served with me for most of the period in question were interviewed, while over 50% of personnel who were interviewed had been in the unit less than 2 months.

Breaking down the results of this investigation, 25% of the case against me is patently false and refutable. This category includes the allegations of dereliction of duty over military working dog dispositions, holding an inadequate, unsafe drivers training program, and allegations of my instigation of hazing and bullying of personnel under my command. These allegations are particularly galling, as I have always taken pride in my dedication to both my duty and ensuring the safety and welfare of those I supervise. An additional 25% of the case is circumstantial and neither refutable nor demonstrable, such as accusations of disregard for the check in/out processing regulation, isolation of personnel, and that I lacked dignity and respect when interacting with personnel. As a leader, I have always taken great care to ensure I set an example for my personnel in following and executing regulations and ensuring the equal and fair treatment of those around me. Another 25% is attributable to circumstances universal to the environment in the Republic of Korea and not under my authority or control to change. Examples of this include the inordinate amount of time human resource, legal, and financial actions take, unhappiness with circumstances unique to the theater, as well as the isolation and over taxed [sic] state many people perceive from being neither deployed nor at home station working with only half the necessary staff to meet mission. As a commander, these issues were of great concern to me and I attempted to mitigate the circumstances to the best of my ability. I affirm that 20% of the case is due to actions of others, some of which I was able to manage (although not to the level deemed enough by the investigator). Unfortunately, the remainder of those actions (which were contrary to my policies, behavior, and personal beliefs) were only identified during the investigation, giving me no time to initiate corrections. I readily take personal accountability for those failures identified, roughly 5%, that are factual and within

my ability to affect. Of that 5%, none were illegal or immoral and I have begun and will continue to grow as an Army officer based on my reflection of my actions. However, to take the results of such an investigation when the facts do not corroborate the results and use it to judge me not only unfit to lead but in need of supervision to even perform as a staff officer is the epitome of lack of dignity and respect. While I recognize the regulatory requirement to submit a referred OER following a relief for cause, the harshness of this OER is beyond necessary and completely unwarranted.

14. A review of the applicant's AMHRR shows the contested OER is filed in the performance folder.

15. The applicant's records are void of documentation and she did not provide any evidence showing a Commander's Inquiry was requested or conducted.

16. On 3 July 2020, the applicant was notified by the Commanding General, U.S. Army Human Resources Command (HRC), of initiation of elimination action against her. She was required to show cause for retention on active duty under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharges), paragraphs 4-2b and 4-2c, because of misconduct, moral or professional dereliction, and derogatory information filed in her AMHRR. The commanding general's actions were based on the following specific reasons for elimination:

a. substantiated derogatory activity resulting in a referred OER covering the period 24 May 2018 through 11 January 2019, which was filed in her AMHRR. She received the referred OER for failing to ensure the Army Values and Warrior Ethos were observed in her command. She failed to sustain a positive EO climate within the command IAW Army Regulation 600-20, paragraph 6-1; and

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

17. She acknowledged receipt of the notification of initiation of elimination on 10 August 2020 and indicated she would submit a rebuttal.

18. The applicant's memorandum for the Commander, U.S. Army Military District of Washington (Rebuttal in Response to Initiation of Elimination Action), undated, with allied documents, disagreed with the action. She has worked hard to learn from her mistakes and continues to serve and lead in a manner consistent with her years of service and experience. She addresses the points in the Army Regulation 15-6 investigation which were the basis for her removal from command, the GOMOR, and the referred OER. She further provides character-reference letters and letters of support as evidence of her dedication, leadership, and abilities. She describes her prior and

subsequent OERs as being stellar and requests to be retained on active duty (see attachment for further details).

19. On 1 March 2021, a Board of Inquiry (BOI) convened and recommended her retention for further military service. The BOI found:

a. the allegation that the applicant received a referred OER covering the period 24 May 2018 through 11 January 2019, which was filed in her AMHRR, constituting substantiated derogatory activity under Army Regulation 600-8-24, paragraph 4-2c, as listed in the notification of proposed separation is supported by a preponderance of the evidence;

b. the allegation that the applicant failed to ensure the Army Values and Warrior Ethos were observed in her command, constituting misconduct, moral or professional dereliction under Army Regulation 600-8-24, paragraph 4-2b, as listed in the notification of proposed separation, is not supported by a preponderance of the evidence.

c. the allegation that the applicant failed to sustain a positive EO climate within the command IAW Army Regulation 600-20, paragraph 6-1, constituting misconduct, moral or professional dereliction under Army Regulation 600-8-24, paragraph 4-2b, as listed in the notification of proposed separation is not supported by a preponderance of the evidence;

d. the allegation of conduct unbecoming an officer, constituting misconduct, moral or professional dereliction under Army Regulation 600-8-24, paragraph 4-2b, as listed in the notification of proposed separation, is not supported by a preponderance of the evidence; and

e. the findings do not warrant separation with respect to the applicant.

20. The U.S. Army Military District of Washington memorandum from the Commanding General (Action on Report of Proceedings by Board of Officers – (Applicant)) for Commander, HRC, 4 June 2021, states the applicant was notified on 1 March 2021 of the findings, he approved the findings of the BOI, and forwarded the packet to HRC for final action.

21. On 30 July 2021, HRC concurred with the BOI's findings and the command's approval and closed the elimination action, thereby retaining the applicant on active duty.

22. The applicant provided, through counsel, 15 character-references and letters of support attesting to her leadership and dedication to duty, and requesting her retention

in the Army as well as supporting her request for removal of her referred OER from her AMHRR (see attachments for further details).

23. The applicant is currently serving in an LTC/O-5 position as the Medical Integration Program Manager, Defense Threat Reduction Agency, Fort Belvoir, VA.

BOARD DISCUSSION:

1. Counsel's contentions, the applicant's military records, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was warranted.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant and her counsel 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.
3. The Board was not moved, in this case, to believe the commander on the ground was correct in this instance. Several points concerned the Board: first, the evidence did not show the applicant received counseling, or any training on the matter, and second, the investigation was launched by a command climate survey that had an unheard of 138% response rate.
4. The applicant served with distinction before and after she received this referred OER. The OER should be removed from her record and replaced with a statement of nonrated time.

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 DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW5) Officer Evaluation Report (OER)) covering the period 24 May 2018 through 11 January 2019 from her Army Military Human Resource Record (AMHRR) and replacing it with a statement of nonrated time.

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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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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

3. Army Regulation 600-20 (Army Command Policy), effective 6 November 2014, prescribed the policies and responsibilities of command, which include the Army Ready and Resilient Campaign Plan, military discipline and conduct, the Army Military Equal Opportunity Program, the Army Harassment Prevention and Response Program, and the Army Sexual Harassment/Assault Response and Prevention Program.

a. Paragraph 4-19 (Treatment of Persons) stated the Army is a values-based organization where everyone is expected to do what is right by treating all persons as they should be treated – with dignity and respect. Hazing, bullying, and other behaviors that undermine dignity and respect are fundamentally in opposition to our values and are prohibited. This paragraph is punitive. Soldiers who violate this policy may be subject to punishment under the Uniform Code of Military Justice. Whether or not certain acts specifically violate the provisions of this paragraph, they may be inappropriate or violate relevant civilian personnel guidance. Commanders must seek the advice and counsel of their legal advisor when taking actions pursuant to this paragraph.

b. Paragraph 6-1 (The EO Program in the Army) states the EO Program formulates, directs, and sustains a comprehensive effort to maximize human potential and to ensure fair treatment for all persons based solely on merit, fitness, and capability in support of readiness. EO philosophy is based on fairness, justice, and equity. Commanders are

responsible for sustaining a positive EO climate within their units. Specifically, the goals of the EO program are to:

- (1) provide EO for military personnel and family members, both on and off post and within the limits of the laws of localities, states, and host nations; and

- (2) create and sustain effective units by eliminating discriminatory behaviors or practices that undermine teamwork, mutual respect, loyalty, and shared sacrifice of the men and women of America's Army.

c. Chapter 7 (Prevention of Sexual Harassment (POSH)) stated POSH is a commander's responsibility. The Equal Opportunity Advisor plays a pivotal role by assisting the commander with policy awareness, training, command climate assessments, complaints processing, and overall advisory assistance concerning the POSH. Paragraph 7-2 (Chain of Command Responsibilities) states commanders and supervisors will:

- (1) ensure that assigned personnel (to include Reserve Component personnel under their jurisdiction) are familiar with the Army policy on sexual harassment;

- (2) publish and post written command policy statements for the POSH. All statements will be consistent with Army policy. They will include the local command's commitment to the Army's policy against sexual harassment and will reaffirm that sexual harassment will not be tolerated. The statement will explain how and where to file complaints and will state that all complainants will be protected from acts or threats of reprisal. Each Army command, Army service component command, direct reporting unit, installation, separate unit, agency, and activity down to company, troop, or battery level will publish a sexual harassment command policy statement. Units should coordinate these policy statements with the servicing SJA or legal advisor before publishing them;

- (3) continually assess and be aware of the climate of command regarding sexual harassment. Identify problems or potential problems. Take prompt, decisive action to investigate all complaints of sexual harassment. Either resolve the problem at the lowest possible level or, if necessary, take formal disciplinary or administrative action. Do not allow Soldiers to be retaliated against for filing complaints. Continually monitor the unit and assess sexual harassment prevention policies and programs at all levels within area of responsibility. Ensure all leaders understand that if they witness or otherwise know of incidents of sexual harassment, they are obligated to act. If they do not, they themselves are also engaging in sexual harassment; and

- (4) set the standard.

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

a. Paragraph 1-11 provides that when it is brought to the attention of a commander that a report rendered by a subordinate or a subordinate command may be illegal, unjust, or otherwise in violation of this regulation, that commander will conduct an inquiry into the matter. The Commander's Inquiry will be confined to matters related to the clarity of the evaluation report, the facts contained in the report, the compliance of the evaluation with policy and procedures established by Headquarters, Department of the Army (HQDA), and the conduct of the rated Soldier and members of the rating chain.

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

c. Paragraph 3-28 provides that the referral process ensures the rated Soldier knows that his/her OER contains negative or derogatory information and affords him/her the opportunity to sign the evaluation report and submit comments, if desired.

(1) The senior rater will refer a copy of the completed OER (an OER that has been signed and dated by the rating officials) to the rated Soldier for acknowledgment and comment.

(2) Upon receipt of the rated officer's acknowledgment (e.g., receipt of a signed OER, email, signed certified mail document, signed acknowledgment statement accompanying memorandum, submission of signed comments, and so forth), the senior rater will enclose it, any written comments provided by the rated officer, and the referral memorandum, with the original OER for forwarding to the reviewer (if applicable).

(3) If the senior rater decides the comments provide significant new facts about the rated Soldier's performance that could affect the evaluation of the rated Soldier, he or she may refer the comments to the other rating officials, as appropriate. The rating officials, in turn, may reconsider their evaluations of the rated Soldier. The senior rater will not pressure or influence another rating official. Any rating official who elects to raise his or her evaluation as a result of this action may do so. However, the evaluation may not be lowered because of the rated Soldier's comments. If the OER is changed but still requires referral, the OER will again be referred to the rated Soldier for acknowledgment and the opportunity to provide new comments, if desired. Only the latest acknowledgment ("YES" or "NO" on OER signed by the rated Soldier) and the rated Soldier's comments, if submitted, will be forwarded to HQDA.

d. Paragraph 3-54 states a code 05, relief-for-cause OER, is required when an officer is relieved for cause, regardless of the rating period involved (e.g., information pertaining to a previous reporting period that did not come to light until a later rating period). "Relief for cause" is defined as an early release of an officer from a specific duty or assignment directed by superior authority and based on a decision that the officer has failed in his or her performance of duty. In this regard, duty performance will consist of the completion of assigned tasks in a competent manner and compliance at all times with the accepted professional officer standards consisting of attributes and competencies as part of the Leadership Requirements Model. These standards will apply to conduct both on and off duty.

e. Paragraph 4-7 provides that evaluation reports accepted for inclusion in the official record of an officer are presumed to be administratively correct, to have been prepared by the proper rating officials, and to represent the considered opinion and objective judgment of rating officials at the time of preparation. To justify deletion or amendment of a report, the appellant 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 is warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence must be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. The burden of proof rests with the appellant.

f. Paragraphs 4-11a and 4-11b state an evaluation report accepted for inclusion in the official record of a rated Soldier's Official Military Personnel File (OMPF) is presumed to be administratively correct, to have been prepared by the proper rating officials, and to represent the considered opinion and objective judgment of the rating officials at the time of preparation. The burden of proof rests with the applicant. Accordingly, to justify deletion or amendment of a 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 and action is warranted to correct a material error, inaccuracy, or injustice.

g. Paragraph 4-11d states for a claim of inaccuracy or injustice of a substantive type, evidence will include statements from third parties, rating officials, or other documents from official sources (see Department of the Army Pamphlet 623-3 (Evaluation Reporting System)). Third parties are persons other than the rated officer or rating officials who have knowledge of the appellant's performance during the rating period. Such statements are afforded more weight if they are from persons who served in positions allowing them a good opportunity to observe firsthand the appellant's performance as well as interactions with rating officials. Statements from rating officials are also acceptable if they relate to allegations of factual errors, erroneous perceptions, or claims of bias. To the extent practicable, such statements will include specific details

of events or circumstances leading to inaccuracies, misrepresentations, or injustice at the time the report was rendered.

h. Paragraph 4-13a(2) states limited support is provided by statements from people who observed the appellant's performance before or after the period in question (unless performing the same duty in the same unit under similar circumstances); letter of commendation or appreciation for specific but unrelated instances of outstanding performance; or citations for awards, inclusive of the same period.

5. Department of the Army Pamphlet 623-3 (Evaluation Reporting System) provides procedural guidance for completing and submitting evaluation reports and associated support forms to HQDA.

a. Paragraph 2-28 provides that:

(1) If a referred OER is required, the senior rater will place an "X" in the appropriate box in Part II, block d, of the completed OER. The OER will then be given to the rated officer for signature and placement of an "X" in the appropriate box in Part II, block d.

(2) The rated officer may comment if he or she believes the rating and/or remarks are incorrect. The comments must be factual, concise, and limited to matters directly related to the evaluation rendered in the OER; rating officials may not rebut rated officer's referral comments.

(3) The rated officer's comments do not constitute an appeal. Appeals are processed separately. Likewise, the rated officer's comments do not constitute a request for a Commander's Inquiry. Such a request must be submitted separately.

b. Paragraph 2-30 provides that a mandatory review of relief-for-cause OERs is required following referral to the rated officer.

(1) When an officer (commissioned or warrant) is officially relieved of duties and a relief-for-cause OER is subsequently prepared, the OER will be referred to the rated officer or warrant officer as described in the referral process in Army Regulation 623-3. Note: this referral must be completed before taking any of the actions in the following subparagraphs.

(2) If the rater or intermediate rater directed the relief, the senior rater will perform the review, provided he or she is an Army officer or Department of the Army civilian when other rating officials are uniformed Army rating officials. Otherwise, the first U.S. Army officer, designated as the Uniformed Army Advisor in the organization or

chain of supervision above the individual directing the relief, will perform a supplementary review of the OER.

(3) Changed relief-for-cause OERs will be referred again to the rated officer by the senior rater (or other reviewer) in accordance with the referral process in Army Regulation 623-3 so that the corrected OER may be acknowledged and comments can be provided, if desired. Only the final referral and acknowledgment are forwarded with the report to HQDA.

6. Army Regulation 600-8-104 (Army Military Human Resource Records Management) governs the composition of the OMPF and states the performance folder is used for filing performance, commendatory, and disciplinary data. Once placed in the OMPF, the document becomes a permanent part of that file. The document will not be removed from or moved to another part of the OMPF unless directed by certain agencies, to include this Board. Appendix B states the DA Form 67-9 and DA Form 67-10-2 are filed in the performance folder of the Soldier's OMPF.

//NOTHING FOLLOWS//