

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20230010700

APPLICANT REQUESTS: removal of the general officer memorandum of reprimand (GOMOR), 11 January 2017, from his Army Military Human Resource Record (AMHRR).

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)
- Headquarters, Fort Bliss, Memorandum (Officer Elimination Action for (Applicant), 2 November 2017
- Sikorsky Aircraft Rescue Award, 8 April 2019
- U.S. Army Human Resources Command (HRC) Memorandum (Closing of Elimination Action), 2 May 2019
- Air Medal (AM) with "C" Device Certificate, 21 June 2019
- Army Commendation Medal (ARCOM) Certificate, 7 February 2020
- Department of the Army Suitability Evaluation Board (DASEB) Docket Number AR20200002034, 26 March 2020
- Blackhawk Helicopter (UH-60M) Instructor Pilot Diploma, 2 September 2020
- Headquarters, 5th Battalion, 101st Combat Aviation Brigade, Memorandum (Letter of Recommendation for (Applicant)), 27 January 2021
- Army Achievement Medal (AAM) Certificate, 7 March 2021
- Headquarters, 5th Battalion, 101st Aviation Brigade, Memorandum (Letter of Recommendation for (Applicant)), 10 February 2022
- 25th Combat Aviation Brigade Memorandum (Letter of Recommendation for (Applicant)), 14 February 2022
- Meritorious Service Medal (MSM) Certificate, 5 September 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 5 September 2022

FACTS:

1. The applicant states that early in the process, defense lawyers were in other parts of Germany and his access to legal representation from Trial Defense Services was unavailable. The GOMOR alludes to elements of harassment but does not address it.

Harassment was the basis of the Army Regulation 15-6 (Procedures for Investigating Officers and Boards of Officers) investigation. All the documents from the investigating officer's (IO) findings and the recommendations from senior officers used the word "harassment," but he was not charged with harassment.

a. The IO's facts section is missing any mention of harassment. The IO erroneously tried to calculate intoxication levels. The IO recorded statements and then wrote sworn statements for witnesses before having them sign them. The IO was less than impartial in his duties as reflected through his narrative and in violation of Army Regulation 15-6. The IO was supposed to be a fact-gathering entity, not a prosecutor for the imposing authority.

b. The DASEB noted that he did not have letters of recommendation and he had not been awarded anything new or completed any military or civilian classes, none of which is a requirement in Army Regulation 600-37 (Unfavorable Information).

c. Since the reprimand, he was awarded the MSM, ARCOM, AAM, Senior Army Aviator Badge, AM with "C" Device, and Sikorsky Rescue Award for actions in combat. He graduated from the UH-60 Instructor Pilot Course and was designated as an Air Mission Commander. He never received a negative officer evaluation report (OER) and was honorably discharged years after the incident. He has been hired as an instructor pilot by the Tennessee Army National Guard (TNARNG). He believes the injustice was due to a rush to punish him for harassment while no evidence led to charges.

2. Following prior enlisted service in the U.S. Marine Corps, he enlisted in the Regular Army in pay grade E-5 on 21 August 2013. He was appointed as a U.S. Army Reserve warrant officer effective 5 December 2013. On 5 December 2015 upon completion of the Warrant Officer Basic Course, he was promoted to chief warrant officer 2 and commissioned in the Regular Army.

3. He became the subject of an Army Regulation 15-6 investigation on 27 October 2016. An IO was appointed on 26 October 2016 to investigate the facts and circumstances surrounding the applicant's actions and statements toward U.S. Air Force Senior Airman (SrA) A____ G____-T____ on 23 October 2016 between 0000-0100. The general instructions for the investigation state: "If, at any time in the conduct of your investigation, something happens that could cause me to consider enlarging, restricting, or terminating your investigation, or otherwise modifying any instruction in this memorandum of appointment, immediately report this situation to me, together with your recommendation as to the action I should take in response." The IO was directed to address the following questions at a minimum:

a. the facts and circumstances surrounding the allegation;

b. whether the applicant sexually harassed the complainant as defined by Army Regulation 600-20 (Army Command Policy), paragraph 7-3 (Sexual Harassment/ Assault Response and Prevention (SHARP) Program; and

c. whether the applicant's actions amounted to any other violations of regulations and/or the Uniform Code of Military Justice (UCMJ).

4. On 31 October 2016, the IO completed the investigation and determined:

a. Based upon the preponderance of the evidence standard, the informal complaint of sexual harassment was substantiated according to Army Regulation 600-20, paragraph 8-4, and the definition of fraternization was met according to Army Regulation 600-20, paragraph 4-14.

(1) The Facts section provides the following details:

(a) The Task Force 3d Battalion, 501st Aviation Regiment, Oktoberfest party occurred from 1600 until 2142 in the 3d Battalion, 501st Aviation Regiment, hangar.

(b) A game of "beer pong" was played in Room 419 of Building 6704 from around 2130 until 2315 and was mostly attended by junior enlisted personnel.

(c) The applicant and SrA G____-T____ left the hangar together and walked alone to the barracks area at around 2100 to 2130.

(d) An officer, noncommissioned officer, and two warrant officers were not comfortable with the applicant and SrA G____-T____ leaving together and attempted to intervene.

(e) The applicant hung out in a gazebo area in between his and SrA G____-T____'s barracks with her and several other people afterward.

(f) The applicant decided to attend the "beer pong" game around 2200 after saying he would not do so and returning to his room.

(g) The applicant stated he was locked out of his room at some point during the "beer pong" party.

(h) The applicant went with SrA G____-T____ to her building after the party.

(i) The applicant arrived at his room with SrA G____-T____ at approximately 2330 and they had a conversation that was partially overheard by his roommate.

(j) The applicant sent apology messages on Facebook to U.S. Air Force Technical Sergeant S_____ at 0840 and SrA G_____-T_____ at 0918 the next morning.

(2) Investigation Findings: Based upon the preponderance of the evidence standard, with recorded evidence, interviews, sworn statements, and social media messages, the following findings are made: The applicant sexually harassed SrA G_____-T_____ by inviting her to his bedroom under pretext, coaxing her toward his bedroom and asking her for a kiss after she stated she was not interested, with the effect of degrading trust between junior enlisted members and their parent organization and not wanting to participate in further social functions. The IO mentions intoxication levels on page 2, item 4a.3.

(3) Other Findings: Although not listed as specific allegations for investigation, the applicant was fraternizing with junior enlisted members. The applicant's conduct was inappropriate for a commissioned officer and concerning. It was more likely than not that the applicant remembered most of what he said and did and does not want to be truthful about it. The applicant chose to drink and to place himself in situations where perceptions of his actions would have a negative impact upon himself and the unit. He would not trust him in a position of leadership within any unit, or to be alone with any junior enlisted personnel of the opposite gender, especially when alcohol is involved.

b. The IO recommended the applicant receive a written letter of reprimand for his actions or any other punishment the commander deemed appropriate. He also recommended counseling the applicant regarding his actions and choices throughout the evening and making him aware that he was not the victim in this situation, and enrolling him in the Army Substance Abuse Program, as this was his second alcohol-related incident within 3 months.

5. The Seventh Army Training Command memorandum (Legal Review – Army Regulation 15-6 Administrative Investigation – Allegation of Sexual Harassment against (Applicant)), 9 November 2016, found the investigation legally sufficient and noted:

a. The IO substantiated the allegation of sexual harassment against the applicant based on his findings that the applicant made several unwelcome sexual advances, and his conduct had the purpose or effect of unreasonably interfering with the complainant's work by creating an intimidating, hostile, or offensive work environment. The IO also found the applicant's conduct violated the Army's fraternization policy.

b. The investigation complied with all legal requirements and there were no procedural or substantive errors in the investigation. Sufficient evidence supported the IO's findings and his recommendations were consistent with the findings. The evidence did not support any additional relevant findings, nor was further investigation needed to address any related issues.

c. The legal advisor recommended approval of the findings and recommendations.

6. The Headquarters, 12th Combat Aviation Brigade, memorandum (Army Regulation 15-6 Investigation, Supplement to Section VII of DA Form 1574-1 (Report of Proceedings by Investigating Officer) (SHARP Formal Investigation – (Applicant)), 5 December 2016, approved the IO's determination that the applicant's allegation of sexual harassment and fraternizing with junior enlisted members was substantiated. The following IO's recommendations were also approved:

- issuance of a written letter of reprimand
- counseling regarding the applicant's actions/choices throughout the evening
- enrollment in the Army Substance Abuse Program
- annotating his OER to reflect that he did not support the Army's SHARP Program in accordance with Army Regulation 623-3 (Evaluating Reporting System), chapter 3

7. The Commanding General, Seventh Army Training Command, reprimanded the applicant in writing on 11 January 2017, wherein he stated:

You are hereby reprimanded for fraternization and conduct unbecoming an officer. On 21 October 2016, you spent the evening drinking and socializing with enlisted Soldiers and Airmen. At a minimum, your interactions with some of those Soldiers and Airmen created the perception of undue familiarity with them, which affects good order and discipline in the unit. Later that evening and into the early morning hours of 22 October 2016, your conduct towards SrA A____ G. G____-T____ was unbecoming. Specifically, as a married man, you lured SrA G____-T____ to your bedroom under the pretext that you needed her help because you were locked out of your room. You then solicited a kiss from her. She refused your advance and left the room uncomfortable and angry. Your entire conduct that night was unbecoming.

The conduct of officers must always be above reproach as it is necessary for the maintenance of good order and discipline in the Army. Officers quickly lose the respect and trust of their subordinates when they compromise their integrity or adherence to the law. As an officer, you are charged with the responsibility of setting the example for subordinates to emulate. Clearly, your actions fell below the standards expected of an officer in the United States Army. You have completely discredited yourself and the United States Army. I seriously question your judgment and potential for further military service. Your actions have embarrassed and disappointed your chain of command.

This reprimand is imposed as an administrative measure under the provisions of AR [Army Regulation] 600-37 and not as punishment under Article 15, UCMJ. I am considering filing this reprimand in your Official Military Personnel File (OMPF) but

will make a final determination only after considering any matters you provide as well as the recommendations of your chain of command. Additionally, a suspension of favorable personnel actions will be initiated against you by your commanding officer in accordance with AR [Army Regulation] 600-8-2 [Suspension of Favorable Personnel Actions (Flag)].

You will acknowledge this reprimand by signing the attached memorandum, and returning it to me within 10 calendar days, together with any statements or rebuttal on your behalf.

8. On 13 January 2017, the applicant acknowledged receipt of the GOMOR and elected to submit written matters within 10 days.

9. His memorandum ((Applicant's) Reply to Letter of Reprimand), 21 January 2017, states he willingly admits and takes responsibility for inadvisably socializing with enlisted personnel after a unit-sponsored function and disputes the Army Regulation 15-6 investigation findings. He requested removal of all language regarding sexual harassment.

10. The Headquarters, 12th Combat Aviation Brigade, memorandum from the commander (Recommendations for GOMOR Filing Determination (Applicant)), 6 March 2017, states:

I have reviewed the above subject GOMOR, supporting documentation as well as the rebuttal matters submitted by [Applicant].

Despite the matters submitted by [Applicant] as well as recommendations from his chain of command, I recommend that the above subject GOMOR is filled in his Official Military Personnel File (OMPF), for the following reasons:

a. Foremost, if we intend to eradicate sexual harassment/sexual assault from the ranks, this type of senior - subordinate behavior, particularly from a commissioned officer, is unacceptable. Although I don't believe [Applicant] is a habitual predator, his actions were predatory.

b. Additionally, despite [Applicant] being advised by his peers to discontinue his actions on the evening in question, he continued his fraternizing behavior. [Applicant] has failed to take responsibility for his actions, and even in rebuttal makes himself out to be the victim.

c. Not least his actions leave an indelible negative impression on the Airman, her team, and the Air Force, and they pointedly disrupted the good order and discipline of Task Force 3-501 [3d Battalion, 501st Aviation Regiment].

11. On 9 March 2017 after carefully considering the circumstances of the misconduct; the recommendations made by the applicant's chain of command; and all matters submitted by the applicant in defense, extenuation, or mitigation; the commanding general directed permanently placing the GOMOR in the applicant's AMHRR. He further directed that all enclosures would be forwarded with the reprimand for filing as appropriate.

12. On 10 March 2017, he acknowledged receipt of the GOMOR filing determination and its enclosures.

13. On 31 August 2017, a Board of Inquiry (BOI) was appointed to determine whether the applicant should be retained in the Army under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharges), paragraph 4-2b (Acts of Personal Misconduct) and paragraph 4-2c (Derogatory Information).

14. On 10 October 2017, he requested termination of the elimination proceedings.

15. On 2 November 2017 after reviewing his rebuttal, entire file, and request for retention, the commanding general terminated the elimination action and directed his retention on active duty.

16. He was presented the Sikorsky Rescue Award on 8 April 2019.

17. The HRC memorandum (Closing of Elimination Action), 2 May 2019, states:

The U.S. Army Human Resources Command's (HRC) memorandum dated 7 September 2018, directed you to show cause for retention on active duty because of misconduct, moral or professional dereliction and derogatory information. On 25 January 2019, the Commanding General, Fort Bliss, directed that a Field Board of Inquiry (FBOI) be conducted. The FBOI that was conducted on 12 March 2019, and approved on 12 April 2019, determined that you will be retained on active duty. The elimination action is therefore closed. The Department of the Army Form 268 [Report to Suspend Favorable Personnel Actions (Flag)], initiated at the U.S. Army HRC, has been closed.

Documents contained in your AMHRR which were the basis for directing you to show cause for retention on active duty may only be removed through an appeal to the Department of the Army Suitability Evaluation Board (DASEB). I recommend you take action through the DASEB in accordance with AR [Army Regulation] 600-37, chapter 7.

18. He was awarded the AM with "C" Device on 21 June 2019 and the ARCOM on 7 February 2020.

19. On 2 March 2020 in Docket Number AR20200002034, the DASEB determined the evidence presented did not establish clearly and convincingly that the GOMOR was untrue or unjust and the overall merits of the case did not warrant removal of the GOMOR from his AMHRR. The DASEB noted:

a. The applicant requests transfer of a GOMOR to the restricted section of his AMHRR. In order to transfer a GOMOR to the restricted section of the official record, the burden of proof rested with the applicant to provide substantial evidence that it had served its intended purpose and that its transfer would be in the best interest of the Army.

b. The applicant contended that the GOMOR had a profound impact on his career since its imposition. He was prohibited from flying and consequently fell behind his peers in flight hours and experience. Furthermore, a BOI and a general officer confirmed his service to the Army was still valuable.

c. In accordance with Army Regulation 600-37, paragraph 7-2b(1), the applicant met the conditions to request transfer of the GOMOR because he had received one non-academic evaluation report since its imposition. There were no provisions in governing regulations to automatically transfer the GOMOR based on elapsed time.

d. The Army has a prevailing interest in protecting the rights of individual Soldiers and, at the same time, permitting the Army to consider all available relevant information when choosing Soldiers for positions of leadership, trust, and responsibility. Therefore, the determination on whether a Soldier has provided substantial evidence that the intent of the GOMOR has been met must be weighed objectively and fairly with the best interests of the Army. The factors considered in reaching a conclusion in the applicant's case are fully discussed below:

(1) The applicant received the GOMOR a little over 3 years ago and there was no other derogatory information in his AMHRR.

(2) The applicant received a successful OER since the incident.

(3) The misconduct was not reflected on the OER covering the period of the incident.

(4) Since the incident, the applicant was awarded the Combat Action Badge.

(5) The applicant had not completed any military courses or civilian classes.

(6) The applicant provided a memorandum from Brigadier General L_____ recommending his retention on active duty in 2017 and a memorandum from HRC closing the elimination action in 2019.

e. A BOI is limited to making a determination on whether to retain (with or without reassignment) an officer on active duty or to eliminate an officer. Neither the imposing authority nor the DASEB is bound by the BOI's findings or recommendations. The purpose of the BOI was to give the applicant a fair and impartial hearing determining if he would be retained in the Army. Therefore, the BOI's decision or recommendations do not impact the GOMOR or any other derogatory information in the applicant's AMHRR.

f. Careful consideration was given to lack of letters of support from the imposing authority or the applicant's chain of command during or after the incident and the two retention memoranda. Careful consideration was also given to the time period that has elapsed, the applicant's rank at the time of the misconduct, the seriousness of the misconduct, and the OER during the period of the misconduct. The DASEB determined that the appellant had not provided sufficient evidence to show the GOMOR had served its intended purpose and that it was in the best interest of the Army to transfer it at this time.

20. The applicant provided the following documents for consideration:

- a. his UH-60M Instructor Pilot Course Diploma, 2 September 2020;
- b. the memorandum (Letter of Recommendation for (Applicant), 27 January 2021, in support of his request to join the TNARNG;
- c. his AAM Certificate, 7 March 2021;
- d. two memoranda (Letter of Recommendation for (Applicant), 10 and 14 February 2022, in support of his request to join the TNARNG;
- e. his MSM Certificate on 5 September 2022; and
- f. his DD Form 214 for the period ending 5 September 2022, showing he was honorably discharged from active duty by reason of miscellaneous/general reasons under the provisions of Army Regulation 600-8-24. He completed 8 years, 9 months, and 1 day of net active service during this period with 7 years and 6 months prior active service.

21. He was appointed as a chief warrant officer 2 in the TNARNG on 10 February 2023 and he executed his oath of office on 1 March 2023. He is currently serving as an aviation instructor pilot.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered.

a. The evidence shows, based upon the preponderance of the evidence, an AR 15-6 investigation substantiated a finding that the applicant sexually harassed SrA GT by inviting her to his bedroom under pretext, coaxing her toward his bedroom and asking her for a kiss after she stated she was not interested, with the effect of degrading trust between junior enlisted members and their parent organization and not wanting to participate in further social functions. Additionally, although not related to the issue being investigated, the investigation also found the applicant was fraternizing with junior enlisted members. As a result, the applicant received a GOMOR for fraternization and conduct unbecoming an officer. The applicant acknowledged receipt, admitted to his mistake, and took responsibility for inadvisably socializing with enlisted personnel after a unit-sponsored function. He disputed the AR 15-6 investigation findings and requested removal of all language regarding sexual harassment.

b. The evidence also shows the applicant resigned his commission from the Army. His DD Form 214 for the period ending 5 September 2022, shows he was honorably discharged from active duty by reason of miscellaneous/general reasons under the provisions of Army Regulation 600-8-24. In February 2023, he was appointed as a chief warrant officer two. He is currently serving as an aviation instructor pilot.

c. Among the purposes of filing unfavorable information is protection, not just for the Soldier's interests but for the Army's as well. There is a reluctance to remove or transfer adverse information when it places an applicant on par with others with no blemishes for promotions, assignments, and other favorable actions. The GOMOR is an administrative tool used by the imposing officer to train and rehabilitate. Once the GOMOR was filed in his AMHRR, it became a permanent record and will not be removed from or moved to another part of the AMHRR unless directed by certain agencies, to include this Board. The GOMOR is properly filed, and the applicant has not proven this GOMOR to be either untrue or unjust, and therefore, its removal is unjustified.

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 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.
2. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by

authorizing unfavorable information to be placed in, transferred within, or removed from an individual's AMHRR.

a. An administrative memorandum of reprimand may be issued by an individual's commander, by superiors in the chain of command, and by any general officer or officer exercising general court-martial jurisdiction over the Soldier. The memorandum must be referred to the recipient and the referral must include and list applicable portions of investigations, reports, or other documents that serve as a basis for the reprimand. Statements or other evidence furnished by the recipient must be reviewed and considered before a filing determination is made.

b. A memorandum of reprimand may be filed in a Soldier's OMPF only upon the order of a general officer-level authority and is to be filed in the performance folder. The direction for filing is to be contained in an endorsement or addendum to the memorandum. If the reprimand is to be filed in the OMPF, the recipient's submissions are to be attached. Once filed in the OMPF, the reprimand and associated documents are permanent unless removed in accordance with chapter 7 (Appeals).

c. Paragraph 7-2 (Policies and Standards) states that once an official document has been properly filed in the OMPF, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF.

d. Paragraph 7-3c (Filing Authority to Redress Actions) states an officer who directed filing an administrative memorandum of reprimand, admonition, or censure in the AMHRR may request its revision, alteration, or removal, if evidence or information indicates the basis for the adverse action was untrue or unjust, in whole or in part. An officer who directed such a filing must provide a copy of the new evidence or information to the DASEB to justify the request.

3. Army Regulation 600-8-24 (Officer Transfers and Discharges) prescribes the officer transfers from active duty to the Reserve Component and discharge functions for all officers on active duty for 30 days or more. It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required to support officer transfers and discharges.

a. Paragraph 4-6 states the BOI's purpose is to give the officer a fair and impartial hearing, determining if the officer will be retained in the Army. Through a formal administrative investigation conducted under Army Regulation 15-6 and this regulation, the BOI establishes and records the facts of the respondent's alleged misconduct, substandard performance of duty, or conduct incompatible with military service. Based

upon the findings of fact established by its investigation and recorded in its report, the board then makes a recommendation for the officer's disposition, consistent with this regulation. The Government is responsible to establish by a preponderance of the evidence that the officer has failed to maintain the standards desired for their grade and branch or that the officer's Secret-level security clearance has been permanently denied or revoked by appropriate authorities acting pursuant to Department of Defense Directive 5200.2-R (Department of Defense Personnel Security Program) and Army Regulation 380-67 (The Personnel Security Program). In the absence of such a showing by the Government, the board will retain the officer. However, the respondent is entitled to produce evidence to show cause for his retention and to refute the allegations against him. The Respondent's complete AMHRR will be entered into evidence by the Government and considered by the BOI.

b. Paragraph 4-15b(3) states the board may not recommend removal of documents such as OERs, DA Forms 2627 (Record of Proceedings under Article 15, UCMJ), and memoranda of reprimand from an officer's AMHRR. The board recommendations are limited to either retention (with or without reassignment) or elimination.

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

a. Paragraph 3-6 (Authority for Filing or Removing Documents in the AMHRR Folders) provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the Army Board for Correction of Military Records or other authorized agency.

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

//NOTHING FOLLOWS//