

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 April 2024

DOCKET NUMBER: AR20230010789

APPLICANT REQUESTS:

- removal of two DA Forms 67-10-1 (Company Grade Plate (O1-O3; WO1-CW2) Officer Evaluation Report (OER)) covering the periods 1 November 2019 through 22 October 2020 and 23 October 2020 through 21 February 2021 from his Army Military Human Resource Record (AMHRR)
- a personal appearance hearing before the Board

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Counsel's Letter, 26 June 2023
- Counsel's Brief in Support of Application (Summary of Grounds for Relief), 26 June 2023
- Enclosure 1 – DA Form 67-10-1 covering the period 1 November 2019 through 22 October 2020
- Enclosure 2 – DA Form 67-10-1 covering the period 23 October 2020 through 21 February 2021
- Enclosure 3 –
 - 431st Medical Battalion (Multifunctional) Memorandum (Officer Evaluations Reports Appeal), 18 January 2022
 - U.S. Army Human Resources Command (HRC) Memorandum (Evaluation Report Appeal), 10 February 2022
- Enclosure 4 –
 - DA Form 67-10-1 covering the period 23 February 2022 through 19 February 2023
 - DA Form 67-10-1 covering the period 22 February 2021 through 21 February 2022
 - DA Form 67-10-1 covering the period 1 November 2018 through 31 October 2019

- DA Form 67-10-1 covering the period 1 May 2018 through 31 October 2018
- DA Form 67-10-1 covering the period 1 May 2017 through 30 April 2018
- DA Form 67-10-1 covering the period 31 August 2016 through 15 May 2017
- Enclosure 5 – Memorandum for Record (Letter of Support for (Applicant)), 1 June 2022
- Enclosure 6 – Memorandum (Observations of Lieutenant Colonel (LTC) C____ A____ and (Applicant)), 17 May 2022
- Enclosure 7 –
 - Memorandum for Record ((Applicant) – Memorandum of Support), 30 November 2021
 - Memorandum (Observations of LTC C____ A____ and (Applicant)), 20 May 2022
- Enclosure 8 – Memorandum for Record ((Applicant) – Memorandum of Support), 7 December 2021
- Enclosure 9 – Memorandum for Record ((Applicant) – Memorandum of Support), 30 November 2021
- Enclosure 10 – Memorandum for Record ((Applicant) – Memorandum of Support), 29 November 2021
- Enclosure 11 – Memorandum (Statement of Support for (Applicant)) 13 June 2022
- Enclosure 12 – Statement for the Record Regarding: (Applicant) and LTC C____ A____), 12 June 2023
- Enclosure 13 – Statement of Support in Case of (Applicant), 14 June 2023
- Enclosure 14 – Statement with Regard to (Applicant) and LTC C____ A____), 18 June 2023
- Enclosure 15 – DA Form 1559 (Inspector General Action Request), 13 December 2020
- Enclosure 16 – DA Form 638 (Recommendation for Award), 11 May 2020

FACTS:

1. The applicant defers to counsel.

2. Counsel states:

a. The applicant has had his career unjustly damaged by a senior officer acting out of personal animosity and bias. His OERs covering the periods 1 November 2019 through 22 October 2020 (OER-1) and 23 October 2020 through 21 October 2021 (OER-2) were neither fair nor unbiased evaluations of the applicant's actual performance and conduct while assigned to the 18th Field Hospital at Fort Story, VA.

The OERs are a product of personal animosity and bias against the applicant by LTC A____, who took advantage of temporarily being placed in a position of command when the commanding officer of their unit was relieved. Before the applicant could adequately address the deficiencies in each of the two OERs, LTC A____ left the Army, leaving the applicant with insufficient avenues of recourse. The applicant has exhausted all other avenues of redress, including a Commander's Inquiry and appeals and petitions to the Army Review Boards Agency, HRC, and Army Special Review Board.

b. The applicant's OER-1 and OER-2 should be removed his from AMHRR for the following reasons:

(1) LTC A____, who acted as the applicant's senior rater for OER-1 and subsequently as his rater for OER-2, demonstrated clear animosity, hostility, and bias toward the applicant and used his temporary elevation to a position of power and authority to unjustly destroy the applicant's promising career;

(2) LTC A____ failed to provide any of the required counseling to the applicant prior to issuing the two referred OERs;

(3) LTC A____ served in a position as a co-worker to the applicant during much of their time together at the 18th Field Hospital, rather than in a position as one of the applicant's supervisors, and therefore was not able to accurately assess the applicant's true performance; and

(4) LTC A____ acted as the senior rater for OER-1, despite being the same rank as LTC B____ who acted as the rater, which was contrary to Army Regulation 623-3 (Evaluation Reporting System), and an exception to policy was neither requested nor granted.

c. Although the applicant reported directly to the commanding officer at the 18th Field Hospital, he unofficially reported to, and worked directly for, Major (MAJ) B____ P____ on an ongoing and daily basis. MAJ P____ was the S4 (supply officer) for the applicant's higher headquarters, the 410th Hospital Center. MAJ P____ observed that the working relationship between the applicant and LTC A____ quickly deteriorated beyond repair after LTC A____ assumed command. MAJ P____ states that LTC A____'s comments in OER-1 about the applicant's lack of sound judgment or leadership skills are inaccurate and without merit. In the same OER, the rater noted no such deficiencies in the applicant's performance. MAJ P____ had significantly more interaction with the applicant than did LTC A____, and was in a far better position to evaluate his true performance. MAJ P____ states the applicant's performance during the reporting periods was superior to that of the other captains whom MAJ P____ has led and rated during his 15 years of service, and that LTC A____'s characterization of the applicant as "NOT QUALIFIED" in OER-1 is not supported by the applicant's

performance. MAJ P_____ further opines that LTC A_____ 's rating of the applicant reflects LTC A_____ 's own poor leadership rather than a fair and accurate assessment of the applicant.

3. Following prior enlisted service in the U.S. Army Reserve, the applicant was appointed as a Reserve commissioned officer of the Army on 14 December 2011.

4. HRC Orders R-02-808314, 27 February 2018, ordered the applicant to active duty in an Active Guard Reserve status for a period of 3 years and directed him to report to the 18th Field Hospital, Fort Story, VA, with a reporting date of 30 April 2018.

5. The applicant's OER-1 covering the period 1 November 2019 through 22 October 2020 (12 months) shows he received a change-of-rater OER on or about 13 December 2020 that addressed his duty performance as a Health Services Material Officer, 18th Field Hospital, Fort Story, VA. His rater is shown as LTC L_____ C. B_____, Executive Officer, 18th Field Hospital, and his senior rater is shown as LTC C_____ A_____, Commander, 18th Field Hospital. His rater and senior rater digitally signed the OER on 11 December 2020 and 19 January 2021, respectively. The applicant did not sign the OER. The OER shows in:

a. Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block b (This Officer's Overall Performance is Rated as), his rater rated his performance as "PROFICIENT" and entered the following comments: "[Applicant] is tactically and technically proficient in his job."

b. Part IV, block c1 (Character), his rater entered the following comments: "[Applicant] participates in the Army SHARP [Sexual Harassment/Assault Response and Prevention Program], EO [Equal Opportunity], EEO [Equal Employment Opportunity], and MRT [Master Resilience Training] programs. He is dedicated to the mission";

c. Part IV, block c2 (Presence), his rater entered the following comments: "Maintains a high state of readiness and military bearing. [Applicant] exhibits impeccable physical health and meets HT/WT [height/weight] standards IAW 600-9 [in Accordance with Army Regulation 600-9 (Army Body Composition Program)]";

d. Part IV, block c3 (Intellect), his rater entered the following comments: "[Applicant] exhibited dedication to improving equipment fulfillment for the 18th FH [Field Hospital] by requesting 131 lateral transfers to fill shortages, of which 28 LTs [lateral transfers] were received and approved. He executed 40 TIs [technical inspections] and 20 LTs to minimize excess of obsolete equipment. [Applicant] successfully completed quarterly CII [Critical Infrastructure Information], monthly SII [Systemic Immune Inflammation] reports, and annual CDI [Clinical Documentation Improvement] reports."

e. Part IV, block c4 (Leads), his rater entered the following comments: "[Applicant] served as facility Military Funeral Honors Officer coordinating with units in the facility to provide support personnel for funeral detailed missions. He was essential in restoring CSDP [Command Small Discipline Program] and CMDP [Command Maintenance Discipline Program] across the 18TH FH";

f. Part IV, block c5 (Develops), his rater entered the following comments: "[Applicant] responded to COVID-19 [Coronavirus Disease 2019] pandemic in a deliberate manner identifying limitations and coordinating logistical assets to overcome limitations and prepare unit for mobilization of USAR [U.S. Army Reserve] Urban Augmentation Medical Task Force, TF 338-1. He sought out non-traditional avenues to support the mission";

g. Part IV, block c6 (Achieves), his rater entered the following comments: "[Applicant] achieved excellent results in planning and coordinating logistics for 18TH FH Urban Augmentation Medical Task Force, TF 338-1 resulting in a successful mission. He implemented processes that drastically improve property accountability posture resulting in zero FLIPL's [Financial Liability Investigations of Property Loss], and a 100% pass rate on USARC [U.S. Army Reserve Command] Audits";

h. Part VI (Senior Rater), block a (Potential Compared with Officers Senior Rated in Same Grade), his senior rater rated his potential as "NOT QUALIFIED"; and

i. Part VI, block c (Comments on Potential), his senior rater entered the following comments: "Rated Soldier refuses to sign. [Applicant] has not demonstrated sound judgement and has not exhibited the leadership skills required to become a Field Grade Officer during this rating period. [Applicant], although technically proficient, does not have the potential to becomes [sic] an efficient leader and should not be considered for positions of higher leadership responsibility."

6. The applicant's OER-2 covering the period 23 October 2020 through 21 February 2021 (4 months) shows he received a change-of-rater OER that addressed his duty performance as a Health Services Material Officer, 18th Field Hospital, Fort Story, VA. His rater is shown as LTC C____ A____, Commander, 18th Field Hospital, and his senior rater is shown as Colonel M____ K. M____, Commander, 410th Hospital Center. His rater and senior rater digitally signed the OER on 13 April 2021 and 15 April 2021, respectively. The applicant signed the OER on 7 May 2021. The OER shows in:

a. Part IV (Performance Evaluation – Professionalism, Competencies, and Attributes), block b (This Officer's Overall Performance is Rated as), his rater rated his performance as "PROFICIENT" and entered the following comments: "[Applicant] was proficient in completing all of his administrative duties and responsibilities during the rated time period";

b. Part IV, block c1 (Character), his rater entered the following comments: "[Applicant] participated in SHARP & EO programs. However, when completing DA31 forms [DA Form 31 (Request and Authority for Leave)] for leave 21-30DEC20 [21-30 December 2020], he would not document his actual leave location unless directed by the 18th FH. When inquiries were made by two different officers to his stated leave location, the hotel front desk stated that [Applicant] was not registered during the period of 21-30DEC20";

c. Part IV, block c2 (Presence), his rater entered the following comments: "[Applicant] was unable to work/communicate with the other personnel in his section on a face to face basis. Almost all communication between himself and personnel in the S4 [Supply] section was via email at his request due to his inability to personally interact with his peers and subordinates";

d. Part IV, block c3 (Intellect), his rater entered the following comments: "[Applicant] responded to CSTX [Combat Support Training Exercise] preparation in a deliberate manner; identified limitations and coordinated logistical assets to overcome limitations and prepare unit for CSTX. He coordinated logistical support for CSTX as well as other missions as directed. He also sought out nonstandard avenues to support missions in an efficient manner";

e. Part IV, block c4 (Leads), his rater entered the following comments: "[Applicant] served as the Facility Military Funeral Honors Officer and coordinated with all the units in the facility to provide support personnel for any or further funeral detailed missions. Although he developed a continuity plan for his PCS [permanent change of station], he did not inform or train his team on the plan prior to or after his PCS";

f. Part IV, block c5 (Develops), his rater entered the following comments: "[Applicant] provided his team and subordinates time to attend professional development courses";

g. Part IV, block c6 (Achieves), his rater entered the following comments: "[Applicant] requested 150 lateral transfers consisting of almost 550 pcs [pieces] of equipment worth \$22mil [\$22 million] to fill shortages, of which 40 LTs (78 pcs, \$2mil) were received and approved/pending receipt. Executed 50 TIs (375 pcs, \$8.25mil) and 25 LTs (40 pcs, \$600,250) to minimize excess/obsolete equipment & fill RFX [Ready Force X] units. Completed quarterly CIs [Controlled Inventory Items], monthly SII [Systemic Immune Inflammation] reports and annual 100% CDI [Covered Defense Information] reports on time";

h. Part VI (Senior Rater), block a (Potential Compared with Officers Senior Rated in Same Grade), his senior rater rated his potential as "QUALIFIED"; and

i. Part VI, block c (Comments on Potential), his senior rater entered the following comments: "[Applicant] has a high level of technical knowledge and has diligent work habits ensuring all assigned tasks are completed on time and to standard. However, [Applicant's] inability to communicate and coordinate effectively with subordinates, peers and superiors will make it difficult for [Applicant] to perform at the Field Grade Level. Retain as Captain."

7. The applicant's memorandum for the Army Special Review Board (OERs Appeal (Applicant) 1 November 2019 through 22 October 2020; 23 October 2020 through 21 February 2021)), 18 January 2022, appealed OER-1 and OER-2, and requested the following changes:

a. OER-1:

(1). Part II, block d, removal of referred block check;

(2) Part VI, block a, removal of the senior rater rating of "NOT QUALIFIED" and replacement with "HIGHLY QUALIFIED";

(3) Part VI, block c, removal of all senior rater comments on potential and replacement with the following comments: "[Applicant] demonstrates the leadership skills and technical proficiency of a Field Grade Officer. He should be given opportunities to excel. Promote to Major and send to Resident ILE [Intermediate Level Education]";

(4) Part VI, block d, addition of three future successive assignments, including Brigade Support Operations Officer, Battalion Executive Officer, and Detachment Commander; and

(5) removal of all enclosures.

b. OER-2:

(1) Part 11, block d, removal of the referred block check and block check "Yes," comments are attached;

(2) Part IV, block c1, removal of the language: "However, when completing DA31 forms [DA Forms 31] for leave 21-30DEC20 [21-30 December 2020], he would not document his actual leave location unless directed by the 18th FH Commander. When inquired by two different officers to his stated leave location, the hotel front desk stated that [Applicant] was not registered during the period of 21-30DEC20" and replacement with the following comments: "He is dedicated to the mission and his Soldiers, always striving to put others before himself";

(3) Part IV, block c2, removal of the language: "[Applicant] was unable to work/communicate with the other personnel in his section on a face to face basis. Almost all communication between himself and personnel in the S4 section was via email at his request due to his inability to personally interact with his peers and subordinates" and replacement with the following comments: "[Applicant] led his team during the difficulties of the COVID-19 pandemic, using alternative technologies to ensure the unit's missions were completed successfully";

(4) Part IV, block c4, removal of the language: "Although he developed a continuity plan for his PCS, he did not inform or train his team on the plan prior to or after his PCS," and replacement with the following comments: "He led Funeral Detail training across the Fort Story installation and created SOPs [Standing Operating Procedures] for the success of the installation's funeral teams";

(5) Part VI, block a, removal of the senior rater rating of "QUALIFIED"; and replacement with "HIGHLY QUALIFIED";

(6) Part VI, block c, removal of the following senior rater comments on potential: "However, [Applicant's] inability to communicate and coordinate effectively with subordinates, peers and superiors will make it difficult for [Applicant] to perform at the Field Grade Level. Retain as Captain" and replacement with the following comments: "[Applicant] has the potential to function as a Major now. Promote as soon as possible and send him to ILE Immediately"; and

(7) Part VI, block d, removal of the following senior rater list of successive assignments: "Assistant", "Asst", and "Special Projects Officer," and replacement with the third successive assignment of "BN XO."

8. The HRC memorandum (Evaluation Report Appeal), 10 February 2022, notified the applicant that his request for removal of OER-1 and OER-2 from his AMHRR did not establish clearly and convincingly that the presumption of regularity was not applied to the reports under consideration or that action was warranted to correct material error, inaccuracy, or injustice.

9. On 17 January 2023 in Docket Number AR20220009723, the Army Special Review Board denied the applicant's request for removal of OER-1 and OER-2 from his AMHRR. The board determined the evidence presented did not establish clearly and convincingly that the presumption of regularity should not be applied to the reports under consideration or that action was warranted to correct material error, inaccuracy, or injustice. The board determined the overall merits of the case did not warrant the requested relief.

10. A review of the applicant's AMHRR shows OER-1 and OER-2 are filed in the performance folder of his Official Military Personnel File (OMPF).

11. Counsel additionally provided:

a. six OERs covering the periods 31 August 2016 through 19 February 2023 showing the applicant's senior raters rated his overall potential as "MOST QUALIFIED" or "HIGHLY QUALIFIED";

b. 11 letters of support from uniformed military members who commended the applicant's performance and noted that his treatment during the contested rating periods were both unfair and unjust;

c. the applicant's DA Form 1559 (Inspector General Action Request), 13 December 2020, detailing his concerns with his rating officials; and

d. the applicant's DA Form 638 (Recommendation for Award), 11 May 2020, showing he was awarded the Army Achievement Medal with 2nd Oak Leaf Cluster for meritorious service during the period 28 March 2020 to 10 April 2020 while assigned to the 18th Field Hospital, Fort Story, 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 relief was warranted.
2. Counsel'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 his 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 felt the first evaluation was off; there was no record of counseling on the front of the form, the senior rater seems to have a problem with the applicant, and the evaluation does not line up because of the disagreement in the rating chain. The second evaluation was rendered by the same rating chain as the first. The rating chain seems to have a problem with the applicant.
4. The Board determined the applicant's OERs for the rated periods 1 November 2019 through 22 October 2020 and 23 October 2020 through 21 February 2021 should be removed from his AMHRR and replaced with statements of nonrated time.
5. The Board further determined the applicant's record should be sent before the next Special Selection Board **if he is eligible**. Eligibility is contingent upon his meeting the below three factors.
 - a. First, the applicant must have been previously eligible for and his records must have been seen by a promotion Board for MAJ.
 - b. Second, at the time his records were reviewed by said promotion Board, the two OERs under review were in his record and were seen by the Board.
 - c. Third, he was not selected for promotion by the Board.

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 ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. 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 members will direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. 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 623-3 (Evaluation Reporting System) prescribes the policies for completing evaluation reports that support the Evaluation Reporting System. It also provides guidance regarding redress programs, including Commander's Inquiries and appeals. The regulation provides that:

a. Evaluation reports are assessments of how well the rated Soldier met duty requirements and adhered to the professional standards of the Army Officer or Noncommissioned Officer Corps. Performance will be evaluated by observing action, demonstrated behavior, and results from the point of view of the values, leadership framework and responsibilities identified on the evaluation forms, counseling forms, and as explained in Department of the Army Pamphlet 623-3 (Evaluation Reporting System). Consideration will be given to the relative experience of the rated officer, the efforts made by the rated officer, and the results that could be reasonably expected given the time and resources available. Potential evaluations will be performance-based assessments of the rated officers of the same grade to perform in positions of greater responsibility and/or higher grades. Assessment of potential will apply to all officers, regardless of their opportunity to be selected for higher positions or grades.

b. The senior rater is the senior rating official in the military rating chain or as officially designated by the academic institution. Senior raters use their positions and experience to evaluate the rated Soldier from a broad organizational perspective, military program of instruction, or civilian academic course standards. Senior raters will ensure support forms are provided to all rated Soldiers they senior rate at the beginning of and throughout the respective rating periods; use all reasonable means to become familiar with a rated Soldier's performance; assess the ability of the rated Soldier; ensure that rating officials counsel the rated Soldier individually and throughout the rating period on meeting their objectives and complying with the professional standards

of the Army; consider the information on the applicable support forms when evaluating the rated individual; evaluate the rated Soldier's potential relative to their contemporaries; and ensure that all reports, which the senior rater and subordinates write, are complete and provide a realistic evaluation in compliance with procedures established in Department of the Army Pamphlet 623-3.

c. Each report will be an independent evaluation of the rated Soldier for a specific rating period. It will not refer to prior or subsequent reports. It will not remark on performance or incidents occurring before or after the period covered.

d. The burden of proof rests with the appellant.

(1) Accordingly, to justify deletion or amendment of an evaluation report, the appellant will produce evidence that establishes clearly and convincingly that:

(2) the presumption of regularity will not be applied to the report under consideration; and

(3) action is warranted to correct a material error, inaccuracy, or injustice.

(4) 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. 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 evaluation report was rendered. The results of a Commander's or Commandant's Inquiry may provide support for an appeal request.

e. Paragraph 4-7 states an evaluation report accepted for inclusion in the rated Soldier's AMHRR is presumed to be administratively correct, have been prepared by the proper rating officials, and represent the considered opinion and objective judgment of the rating officials at the time of preparation. 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.

3. Army Regulation 600-37 (Unfavorable Information) provides 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. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.

4. 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, a 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 the ABCMR. Appendix B states the DA Form 67-9 and DA Form 67-10-1 are filed in the performance folder of the Soldier's OMPF.

//NOTHING FOLLOWS//