

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20230010824

APPLICANT REQUESTS: in effect,

- removal of his first DA Form 67-9 Officer Evaluation Report (OER)) for the rating period 10 May 2007 through 22 December 2007 from his Official Military Personnel File (OMPF)
- appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Three Statements of Support

FACTS:

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

2. The applicant states:

a. He requests that the Board remove his first OER from his files due to its unintended and far-reaching effects in order to ensure he is competitive for command selection and future promotions. He also asks the Board to prioritize action on this request. He will be considered for command selection in the late fall of 2023. In 2007 as a second lieutenant/2LT serving as a scout platoon leader in Iraq during the surge, he made a grave error in judgment. He drank one beer and allowed three of his noncommissioned officers (NCOs) to drink a beer with him. This was in violation of General Order Number 1. He acted immaturely at the time, choosing to try and be popular with his men by allowing them to "blow some steam" in an improper manner. While he ensured that consumption was very limited and that no one got intoxicated, he was very much in the wrong. He confessed his error to his troop commander. He took the resulting action he felt was appropriate, which was to temporarily remove him from the platoon until his squadron commander officially removed him. Other than his father

dying, this was the worst feeling of his life. He was devastated, and what truly humbled him was that he had no one to blame but myself.

b. He put his commanders in this situation, not the other way around. He let his men down. He embarrassed his family. He broke trust with his leaders and his Soldiers. He vowed he would never repeat something like this again and he has kept that vow. His commanders did not take Uniform Code of Military Justice (UCMJ) action against him, and he did not receive a general officer memorandum of record (GOMOR). He received a Relief for Cause (RFC) OER. The commander moved him to another battalion for a fresh start. He was determined to earn back trust and prove himself worthy of the awesome responsibility of serving Soldiers through leadership.

c. He served in his new battalion for the remainder of that deployment as well as throughout their next deployment to Afghanistan. Serving in a variety of staff roles and as platoon leader and company executive officer (XO), he earned the trust of everyone in the unit. He would then go on to command three different troops/companies, serve as a squadron XO, and serve as brigade S3 and deputy commander. He is now serving as a special assistant to a four-star general.

d. While he fully acknowledges he deserved the RFC OER, he respectfully maintains it has more than served its intended purpose and has since caused unintended, irreparable damage. While his service since has been exemplary, his first OER has had a demonstrably negative impact on my career. He maintains a very real concern it will continue to limit his opportunities as he approaches perhaps the most important selection board of his career, the command selection board. This is obviously to his detriment, but he humbly suggests it is also contrary to the best interests of the Army. In 2015, the RFC OER cost him his regular look for promotion to Major a year's worth of experience at that grade, shame, and least important but still important, salary. The branch manager at the time informed his squadron commander unequivocally the RFC OER was why he was passed over. And while he did get promoted on his Above Zone look, he is in a different year group.

e. This cost him precious time and opportunities. He understands his actions that led to the OER are the real reason for this. However, he also knows it was not the intent of the original leadership that his career suffers in the long run past his time as a lieutenant. Their intent was to correct his course so that he could effectively lead from there forward. He learned his lesson long ago in 2007 when his actions cost him his platoon. He learned it again as he had to explain the story over and over and then when the story followed him to his next division. He has performed with integrity and at high levels since that time early in his career. He strives to always put the Army and Soldiers before self and to consistently act in the best interest of the team. As a result, he was recently selected merit based for promotion to lieutenant colonel/LTC.

f. He respectfully requests the Board remove his first OER so that he may be considered in future command select and promotion boards based alone on his potential to continue to serve. He included three statements of support that he believes help illustrate the merit and importance of this request. His three statements of support are from officers he serviced with previously.

3. The applicant provides three statements of support from former officers he has worked for and with to include:

(1) The officer that gave him the RFC OER that attest to the applicant's character, humility, integrity, and sound judgment. The applicant was well-known for his team building talent, teamwork ethic, and measured judgement.

(2) LTC C__ states in 2006, it was U.S. Army policy to mask all Lieutenant OERs once an officer reached captain/CPT. Commanders used RFC OERs as a correctional tool. LTC C__ only intend the RFC OER as a correctional tool and not intended for viewing by any promotion or command select board after the applicant CPT. The applicant became an informal mentor to the other young officers in the Battalion, sharing experiences and coaching them through their leadership journey with a wisdom that belied his relative lack of experience.

(3) COL RJB__ states the applicant has built his reputation on grooming young leaders to avoid the pitfalls that he fell into. He cares more for our young officers and NCOs than any field grade he has ever served with, and it is this empathy coupled with the applicant's technical and tactical acumen that will make him a remarkable battalion commander.

4. The applicant's service record shows the following information:

a. DD Forms 4 (Enlistment/Reenlistment Document Armed Forces of the United States) reflects he enlisted in the Army National Guard (ARNG) 27 August 2003 with multiple reenlistments.

b. NGB Form 22 (Report of Separation and Record of Service) 11 May 2006 shows he was honorably discharged. He completed 1 year, 9 months, and 16 days net service this period.

c. The applicant was appointed and executed an Oath of Office as a Reserve Commissioned Officer in the rank of 2LT on 12 May 2006.

d. His OER for the period of 10 May 2007 through 22 December 2007 shows he received an evaluation due to a "Relief for Cause" submission. The Relief for Cause

was directed by the squadron commander as the result of the applicant not following and failing to report violations of General Order Number 1 in his platoon to his chain of command. The OER further shows:

(1) The applicant has excellent potential as an Army Officer and should be further developed on decision making and moral reasoning before promoting him to Captain. The applicant received outstanding performance, must promote, and best qualified.

(2) His performance overall was acceptable and sufficient, and at times exceeded standards. Unfortunately, he chose the easier wrong instead of the harder right when it came to time to make a judgment about general order number 1 during a deployment. Despite this misjudgment, his senior rater found the applicant possessed the attributes, skills, and character necessary to lead in the future.

e. The applicant's record was void of documentation to show he received any nonjudicial punishments, GOMOR's, or FLAG's.

f. The applicant is currently serving in the Regular Army on active duty with the U. S. Army Training and Doctrine Command (TRADOC) Headquarters, Joint Base Langley Eustis, VA in the rank of Major (MAJ)/O4.

5. By regulation, (AR 15-185), the ABCMR may, in its discretion, hold a 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.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to grant relief based upon the letter of support provided by the officer who wrote the contested OER. However, based upon the justification provided for removing the OER by the applicant and it failing to involve any inappropriate action taken at the time of the document being generated, the Board concluded there was insufficient evidence of an error or injustice warranting removal of the contested OER.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:	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.

//SIGNED//
X

CHAIRPERSON

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent

evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 623-3 (Evaluation Reporting System) prescribes the policy for completing the DA Form 67-9, and DA Form 67-10-1, that are the basis for the Army's Evaluation Reporting System.

a. Paragraph 1-9 states, in relevant part, Army evaluation reports are independent assessments of how well the rated Soldier met duty requirements and adhered to the professional standards of the Army's Officer Corps or NCO Corps within the period covered by the report. Performance will be evaluated by observing actions, demonstrated behavior, and results from the point of view of the Army Values, the Army's leadership framework, and responsibilities identified on evaluation report forms and counseling forms. Potential evaluations will be performance-based assessments of rated officers' or NCOs' ability to perform in positions of greater responsibility and/or higher grades/ranks compared to others of the same rank. These assessments will apply to all officers and NCOs, regardless of their opportunity to be selected for higher positions or grades and will ignore such factors as impending retirement or release from active duty; potential evaluations continually change and are ultimately reserved for Headquarters Department of the Army (HQDA).

b. Paragraph 1-11 states when it is brought to the attention of a commander or commandant that a report rendered by a subordinate or a subordinate command may be illegal, unjust, or otherwise in violation of this regulation, that commander or commandant will conduct an inquiry into the matter. The commander's or Commandant's Inquiry (CI) 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 HQDA, and the conduct of the rated Soldier and members of the rating chain. The official does not have the authority to direct that an evaluation report be changed; command influence may not be used to alter the honest evaluation of a rated Soldier by a rating official.

c. Part IV, block b (DA Form 67-10-1) will be an assessment of the rated officer's overall performance when compared with all other officers of the same rank the rater has previously rated or currently has in their population.

d. Paragraph 3-33k states the rated Soldier will always be the last individual to sign the evaluation report. The rated Soldier's signature will verify the accuracy of the

administrative data in Part I, including the accuracy of the name and SSN on the evaluation report, rank and date of rank, branch or military occupational specialty data, period covered and nonrated time; the rating officials in part II; Army physical fitness test and height and weight entries. This procedure ensures that the rated Soldier has seen the completed report. It also increases the administrative accuracy of the report and will normally preclude an appeal by the rated Soldier based on inaccurate administrative data.

e. Paragraph 3-33e states CDRs should exercise due diligence in maintaining rating schemes and ensuring the rendering of reports that are due. As a result, requests for issuance of nonrated time statements should be minimized. Requests for the issuance of nonrated time statements will be submitted only for periods when an evaluation report should have been rendered but was not, and all efforts by the rated Soldier and his or her unit to obtain a report have been exhausted. Such requests will be reviewed on a case-by-case basis and may or may not be approved by Headquarters Department of the Army.

f. Paragraph 4-1 states the Evaluation Report Redress Program consists of several elements at various command levels. The program is both preventive and corrective in that it is based upon principles structured to prevent, and provide a remedy for, alleged injustices or regulatory violations, as well as to correct them once they have occurred.

g. Paragraph 4-2 states an OER may have administrative errors or may not accurately record the rated Soldier's potential or the manner in which he or she performed his or her duties. The Redress Program protects the Army's interests and ensures fairness to the evaluated officer. At the same time, it avoids impugning the integrity or judgment of the rating officials without sufficient cause. A commander's inquiry (CI) and an evaluation report appeal are separate and distinct actions. Rated Soldiers may seek an initial means of redress through a CI; however, a CI is not a prerequisite for the submission of an appeal.

h. Paragraph 4-11 states evaluation reports accepted for inclusion in the Soldier's official record 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 establishing 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.

4. Army Regulation (AR) 600-8-104 (Army Military Human Resource Records (AMHRR) Management) prescribes the policies governing the Official Military Personnel File, the Military Personnel Records Jacket (MPRJ), states:

a. That the performance section is used for filing performance, commendatory, and disciplinary data. Once placed in the AMHRR, the document becomes a permanent part of that file. The document will not be removed from or moved to another part of the file (AMHRR) unless directed by the proper authorities listed in the regulation.

b. The AMHRR is a permanent record remaining under Army control for 62 years from a Soldier's final separation date to include retirement, separation, and death. Only documents pertaining to a Soldier's military career and listed in this regulation will be filed in the AMHRR. No more than one copy of a document will be uploaded into the AMHRR. The document will not be removed from or moved to another part of the AMHRR unless directed by certain agencies, to include this Board.

5. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to authorize placement of unfavorable information about Army members in individual official personnel files. The intent of this regulation is to ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and, to ensure that the best interests of both the Army and the Soldiers are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

a. Chapter 1 stipulates 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. Chapter 7 states a memorandum of reprimand may be filed in a Soldier's OMPF only upon the order of a general officer-level authority General Court-Martial Convening Authority and is to be filed in the performance section. 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 of AR 600-37.

c. Paragraph 7-2 (Policies and Standards) 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 the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF.

6. Title 10, USC, section 1552 states The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

//NOTHING FOLLOWS//