

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 January 2025

DOCKET NUMBER: AR20230010954

APPLICANT REQUESTS:

- DA Form 67-10-1 (Officer Evaluation Report (OER)) from 11 February 2022 through 23 September 2022 be removed from his Army Human Resource Record (AMHRR)
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Attorney's Brief
- Enclosure 1 - DA Form 67-10-1 (OER) Appeal with Enclosures
- Enclosure 2 - Memorandum Evaluation Report Appeal from U.S. Army Human Resources Command (AHRC)
- Enclosure 3 - DA Form 67-10-1 (OER)

FACTS:

1. The applicant defers to his counsel.
2. The applicant's counsel states, on behalf of the applicant, in pertinent part:
 - a. The applicant requests his OER with the dates 11 February 2022 through 23 September 2022 be removed from his AMHRR. The basis of the request is that the OER contains untrue and unjust comments. His due process afforded to him was violated by his command and AHRC. The only proper remedy for said due process violation is to remove the OER from his AMHRR.
 - b. The attorney provides a timeline of events, which include showing that an Army Regulation 15-6 Investigation was conducted, the applicant received a General Officer Memorandum of Record (GOMOR), he was removed from command, and the OER was completed. The entire timeline is available for the Board's review.

c. The due process violations include that there was not a commander's inquiry completed in accordance with Army Regulation 623-3 (Evaluation Reporting System), which was requested by the applicant. The regulation requires commander's to look into alleged errors, injustices, and illegalities in evaluation reports, if timely raised. The applicant properly submitted a request for a commander's inquiry in a timely fashion. His command refused to conduct an inquiry citing that the OER had already been filed in his AMHRR.

d. His command was wrong. The applicant was presented his OER to sign, and refused to do so because he did not agree that his rater and senior rater were correct. He then used the time allotted to him to submit a thorough request for a commander's inquiry, in accordance with Army Regulation 623-3.

e. Nowhere in Army Regulation 623-3 does it state the commander's inquiries will not, or even may not, be completed if an OER is already filed in an officer's AMHRR. This was a violation of the applicant's due process afforded to him by the regulation. This due process violation should result in the OER in question being removed from his AMHRR.

f. The regulation states "alleged bias, prejudice or unjust ratings, or any other matter other than administrative error are substantive in nature and will be adjudicated by the Army Special Review Board." The applicant alleged inaccurate and unjust ratings on his OER. Therefore, according to the regulation, the Army Special Review Board should have adjudicated his appeal. Instead, AHRC denied his appeal without forwarding it to the Army Special Review Board. This is, yet again, another violation of his due process rights. Considering the other violation, this should also result in the OER in question being removed from his AMHRR. AHRC should be sent a message that this practice is improper.

g. The applicant asks the Board to decide his OER appeal on its merits. Up to this point, the Army has refused to do so by not conducting a commander's inquiry and not properly adjudicating his OER appeal.

h. Board members should be alarmed by the blatant violations and misinterpretations of Army Regulation 623-3 by the applicant's command and AHRC. They ask the Board to please fix this and send a message by removing this OER from the applicant's AMHRR. Even if the Board disagrees regarding his due process, please decide his OER appeal on its merits, which the Army has refused to properly do up until this point.

i. The entire attorney brief is available for the Board's review.

3. The applicant provides the following documents:

a. The applicant's OER appeal, with enclosures, 11 May 2023, states in pertinent part:

(1) He is requesting his OER with the dates of 11 February 2022 through 23 September 2022 be removed from his AMHRR because of substantive inaccuracy and injustice. In the alternative, he is requesting comments be deleted from the OER.

(2) He provides a "factual background" concerning the Army Regulation 15-6 investigation, his rebuttal to the findings and recommendations, receipt of a GOMOR, his rebuttal to the GOMOR, and his removal from command.

(3) He provides information regarding Army Regulation 623-3, and the provisions within the regulation regarding an OER appeal.

(4) It is clear that a commander's inquiry must be conducted if requested in a timely manner. He requested a commander's inquiry in a timely manner; however, his command refused to comply with Army Regulation 623-3. His request being denied is not only a violation of his due process, but it hinders his ability to collect additional information to appeal the OER in question.

(5) The investigating officer (IO) for the Army Regulation 15-6 investigation used the wrong standard in his investigation relating to sexual harassment, which is detailed in his rebuttals for the Army Regulation 15-6 investigation and GOMOR by his attorney, a former Judge Advocate General officer. The attorney details how the sexual harassment standard contained in Article 134 of the Uniform Code of Military Justice (UCMJ) should have been used instead of the provisions in Army Regulation 600-20 (Army Command Policy). If the proper standard was applied, the applicant did not sexually harass Staff Sergeant (SSG) D- or Specialist (SPC) N. Therefore, the comments on his OER are untrue and unjust.

(6) His rater had three days to evaluate his performance and his senior rater never had an opportunity to evaluate his performance. This is not in accordance with Army Regulation 623-3 and justifies the removal of the OER in question.

(7) The IO of the Army Regulation 15-6 investigation obtained and considered the results of a Command Climate Survey. The applicant contends the IO violated the confidentiality provisions of Army Regulation 600-20 by doing so.

(8) The OER does not list the applicant's numerous accomplishments, during the rating period and inaccurately assessed his performance likely because his rater and senior rater had no knowledge of his performance. He detailed comments that

accurately reflect his performance, which are available for the Board's review. He should have received a "Proficient" and "Highly Qualified" rating.

(9) The OER makes statements regarding his lack of promotion potential and that he should not be retained in the Army. However, after considering his GOMOR rebuttal, the Commanding General (CG) suspended his GOMOR filing decision, which will ultimately result in a local filing. Clearly the CG believes he has potential to keep serving; otherwise he would have filed the GOMOR in his AMHRR. This contradiction supports removal of the OER from his AMHRR.

(10) The Army Regulation 15-6 Investigation IO expanded the investigation by asking several individuals questions that were unrelated to the alleged sexual harassment and by collecting and considering the applicant's Command Climate Survey. The IO ultimately made an adverse finding that he failed to build trust within his unit. His rater and senior rater's assessments of his performance are tainted by this unlawful extension of the investigation.

(11) For all the reasons stated, the applicant respectfully requests that the OER in question be removed from his AMHRR. The entire memorandum is available for the Board's review.

b. Memorandum Army Regulation 15-6 Investigation Findings and Recommendations, 6 July 2022, states in pertinent part, the preponderance of the evidence shows the applicant sexually harassed the SSG and SPC and created a hostile work environment. He had not built a culture of trust, while in command. He was in violation of conduct unbecoming an officer. The IO recommended the applicant be removed from command and he receive a GOMOR filed in his AMHRR. The entire Army Regulation 15-6 Investigation to include the evidence, the applicant's rebuttal, and character reference letters are available for the Board's review.

c. On 18 September 2022, the applicant received a GOMOR reprimanding him for sexual harassment and creating a hostile work environment. He sexually harassed a junior Soldier and touched a female noncommissioned officer (NCO) in an unprofessional manner. On 27 September 2022, the applicant acknowledged receipt of the GOMOR.

d. On 23 September 2022, the applicant was relieved from command, due to his own misconduct and poor judgement. On 27 September 2022, he acknowledged notification of his relief from command.

e. On 6 October 2022, the applicant's attorney rebutted the GOMOR on behalf of the applicant and requested the GOMOR be withdrawn or in the alternative it be filed locally. The rebuttal states, in pertinent part:

(1) The applicant understands he needs to adjust the way he interacts with Soldiers to ensure that there are no misperceptions about his intentions and that all Soldiers' personal space is respected. The evidence in the Army Regulation 15-6 Investigation does not support findings that he sexually harassed a junior enlisted Soldier and touched a female NCO. Anything other than a local filing of the GOMOR would be a disproportionate result, when the conduct at issue is weighed with the applicant's more than 16 years of superior service in the Army.

(2) The applicant understands his interaction with these two Soldiers, could have been better. He realizes his actions can create perceptions that differ from his true intentions. While he never intended to sexually harass anyone, or even knew his actions might be interpreted in such a way, he understands that these two Soldiers perceived his actions in a different light.

(3) Although he has gained valuable self-awareness as a result of the investigation and has committed himself to improve his interactions with others, the fact of the matter is he did not sexually harass either Soldier. Sexual harassment requires very specific criteria, as detailed in both the UCMJ and Army Regulation 600-20, the most important of which is the perpetrator made "sexual advances" or "engaged in conduct of a sexual nature." He never intended to make sexual comments and none of his actions are of a sexual nature. The evidence collected by the IO fails to establish any sexual component in the applicant's actions and are not supported by a preponderance of the evidence.

(4) The IO's findings are flawed in many ways, to include (1) use of the wrong standards in finding sexual harassment, (2) a lack of evidence to support findings the applicant made sexual advances or that his conduct was of a sexual nature, (3) a lack of proof he knew he was making sexual advances or engaging in conduct of a sexual nature, or harbored any other culpable state of mind, (4) a lack of evidence to show his actions were so severe, repetitive, or pervasive as to create a hostile work environment, and (5) the improper consideration of evidence by the IO beyond the scope of the issues under investigation.

(5) Filing the GOMOR in his AMHRR would be a disproportionate response to his underlying conduct. This is especially true, when the conduct is viewed against his otherwise remarkable service in the Army. Neither Soldier ever complained to the applicant about his behavior prior to filing their complaints. If they had, he could have and would have corrected his behavior and the perceptions about it. An officer of his rank and time in service at least deserves the opportunity to reflect on his behavior and correct it prior to effectively ending his career with an officially-filed GOMOR.

(6) They asked the CG to consider all of the applicant's career and accomplishments in making a decision with respect to the GOMOR. Never before in his 16 year military career has he been accused of sexually harassing or mistreating anyone. This unfortunate incident occurred, during the first few months of his command, further exacerbated by the stress of an immediate National Training Center rotation. It would be an excess penalty to end his career, as a result of the very first negative incident following so many years of superb service.

(7) The rebuttal to the GOMOR includes the applicant's personal statement, his appeal to the Army Regulation 15-6 Investigation, 2022 Amendments to the Manual for Courts-Martial, his OERs, and letters of character, which are available for the Board's review.

f. On 13 December 2022, the CG completed his filing determination placing the GOMOR permanently in the applicant's AMHRR, suspended for six months.

g. On 3 March 2023, an email was sent to the applicant's next higher commander in regards to his request for a commander's inquiry regarding his OER. On 9 March 2023, an email was sent to the applicant's attorney regarding the request for a commander's inquiry, which states based upon their review and coordination with AHRC, since the applicant's OER was accepted and filed in his AMHRR, an appeal to AHRC is the appropriate method for seeking redress. On 10 March 2023, the attorney responded stating he understood the OER had already been filed; however this is not a factor in whether to conduct a commander's inquiry. He persisted in their request for a commander's inquiry.

h. A memorandum from AHRC, 22 May 2023, subject Evaluation Report appeal, states in pertinent part AHRC reviewed his appeal request and was returning it without action. The applicant bears the burden of proof, through presentation of clear and convincing evidence to support his contentions. He has not provided sufficient evidence that supports the contested evaluation contains substantive inaccuracies or is unjust. He has not established clearly and convincingly amending his OER from his AMHRR is warranted. The entire memorandum is available for the Board's review.

4. The applicant's service record contains the following documents:

a. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant enlisted in the Army on 4 October 2006 and was honorably discharged, in the rank of SSG, to accept a commission or warrant in the Army on 1 August 2016. He had 9 years, 9 months, and 28 days of active service.

b. Order 82-31-A-2690, published by AHRC, 10 August 2016 state the applicant was a graduate from Officer Candidate School and was appointed and commissioned as a second lieutenant in the Regular Army of the United States.

c. The applicant received OERs in the rank of CPT, which show he was rated as:

(1) From 2 June 2020 through 10 February 2022, a change of rater OER. His rater rated him as proficient; he is 2 of 11 officers rated by the rater and is within the top 10 percent of logistic officers the rater ever worked with. His senior rater rated him highly qualified stating, he is an outstanding officer and ranks in the top 15 percent of captains the senior rater rates. He is one of the finest officers the senior rater served with in his 18 years of service. Promote to major (MAJ).

(2) From 11 February 2022 through 23 September 2022, a relief for cause OER (the OER in question). His rater rated him as unsatisfactory; he does not demonstrate the attributes of a senior leader and he did not live up to the Army Values. He does not abide by or promote the Army Values and Warrior Ethos. He does not carry himself with the utmost in military and professional bearing. His senior rater rated him as not qualified stating, he refuses to sign. His senior rater directed the relief of the applicant from his position as company commander for violating the Army's Sexual Harassment/Assault Response and Prevention policy. Do not promote, do not retain. He lacks potential for continued service. The applicant was notified of the referred OER, and on 22 January 2023, a memorandum states, in effect, the applicant did not provide comments regarding the referred OER.

(3) From 24 September 2022 through 24 February 2023, a change of rater OER. His rater rated him as proficient; he is a highly intelligent officer and a consistent high performer. In the top 15 percent of CPTs the rater has served with throughout his Army career. His senior rater rated him highly qualified stating, number 3 of 19 CPTs the senior rater rated. Promote to MAJ now.

(4) From 25 February 2023 through 30 January 2024, a change of rater OER. His rater rated him as excels; he is number 2 of the 6 CPTs the rater rates and easily in the top 10 percent of officers the rater has served with. His senior rater rated him most qualified stating, he is number 2 of the 7 CPTs the senior rater rates. Select for promotion to MAJ.

(5) From 31 January 2024 through 6 June 2024, a senior rater option OER. His rater rated him as excels; outstanding performance by the number two company commander in the battalion. His senior rater rated him highly qualified stating, unlimited potential. Promote to MAJ.

d. The applicant's service record is void of the Army Regulation 15-6 investigation and the GOMOR he received.

5. 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board through counsel carefully considered the applicant's record of service, documents submitted in support of the request and executed a comprehensive and standard review based on law, policy and regulation. One potential outcome was to grant relief, finding it unjust based on the senior rater only have three (3) days and insufficient evaluation time. However, upon further review through counsel of the applicant's request and available military records, the Board determined there is insufficient evidence to support the applicant's contentions for removal of his officer evaluation report (OER) from his Army Human Resource Record (AMHRR).

2. The Board carefully considered the applicant's character letters of support, attesting to the character, his leadership attributes and his passion for taking care of Soldiers. The Board noted the applicant's contentions stating the applicant properly submitted a request for a commander's inquiry in a timely fashion. Noting the applicant's command refused to conduct an inquiry citing that the OER had already been filed in his AMHRR, The Board found no evidence provided to support the applicant had requested a commander's inquiry. The applicant nor his counsel demonstrated that a procedural error occurred that was prejudicial to the applicant and by a preponderance of evidence that the contents of the OER are substantially incorrect and support removal. The Board found no error or injustice based on regulatory guidance and denied relief.

3. The purpose of maintaining the Army Military Human Resource Record (AMHRR) is to protect the interests of both the U.S. Army and the Soldier. In this regard, the AMHRR serves to maintain an unbroken, historical record of a Soldier's service, conduct, duty performance, and evaluations, and any corrections to other parts of the AMHRR. Once placed in the AMHRR, the document becomes a permanent part of that file and will not be removed from or moved to another part of the AMHRR unless directed by an appropriate authority.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable

decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	█	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	:	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

█

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

REFERENCES:

1. 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.
 - a. 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.

b. 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.

c. 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.

2. Army Regulation 623-3 (Evaluation Reporting System), prescribed the policies for completing evaluation reports and associated support forms that are the basis for the Army's Evaluation Reporting System.

a. Paragraph 2-12 (The Rater) stated the rater will provide a copy of his or her support form, along with the senior rater's support form, to the rated Soldier at the beginning of the rating period. For officers in grades warrant officer 1 through COL, the DA Form 67-10A is mandatory for use throughout the rating period.

b. Paragraph 2-14 (The Senior Rater) stated senior raters and reviewing officials will ensure support forms are provided to all rated Soldiers they senior rate at the beginning of and throughout the respective rating periods.

c. Paragraph 3-4 (The Support Form Communication Process) stated the initial and follow-up counseling between the rater and the rated Soldier that is documented in the support forms assures a verified communication process throughout the rating period.

(1) The support form communication process is characterized by initial and follow-up face-to-face counseling between the rater and the rated Soldier throughout the rating period. The initial face-to-face counseling assists in developing the elements of the rated Soldier's duty description, responsibilities, and performance objectives. The follow-up counseling enhances mission-related planning, assessment, and performance development.

(2) Through the communication process, rated Soldiers are made aware of the specifics of their duties and may influence the decision on what is to be accomplished. Thus, the rated Soldier is better able to: direct and develop their subordinates plan for accomplishing the mission gain valuable information about the organization find better ways to accomplish the mission

(3) Although the support or form is an official document covered by regulation, it will not become part of the official file used by selection boards or career managers. Failure to comply with any or all support form or counseling requirements will not constitute the sole grounds for appeal of an evaluation report. The senior rater will ensure that a completed support form is returned to the rated Soldier when the OER is forwarded to Headquarters, Department of the Army (HQDA).

d. Paragraph 3-36 (Modifications to Previously Submitted Evaluation Reports) addressed requests for modifications to both completed evaluation reports that are filed in a Soldier's AMHRR and evaluation reports that are being processed at HQDA prior to completion.

(1) An evaluation report accepted by HQDA and included in the official record of a rated Soldier is presumed to be administratively correct, to have been prepared by the properly designated rating officials who meet the minimum time and grade qualifications, and to represent the considered opinions and objective judgment of the rating officials at the time of preparation.

(2) Requests for modifications to evaluation reports already posted to a Soldier's AMHRR require use of the Evaluation Report Redress Program.

(3) Requests that a completed evaluation report filed in a Soldier's AMHRR file be altered, withdrawn, or replaced with another report will not be honored if the request is based on the following:

- statements from rating officials that they underestimated the rated Soldier
- statements from rating officials that they did not intend to assess the rated Soldier as they did
- requests that ratings be revised
- statements from rating officials claiming administrative oversight or typographical error in checking blocks on forms for professional competence, performance, or potential
- statements from rating officials claiming OERs were improperly sequenced to HQDA by the unit or organization
- a subsequent statement from a rating official that he or she rendered an inaccurate evaluation of a rated Soldier's performance or potential in order to preserve higher ratings for other officers (for example, those in a zone for consideration for promotion, command, or school selection)

(4) For evaluation reports that have been completed and filed in a Soldier's AMHRR, substantive appeals will be submitted within 3 years of an evaluation report "THRU" date. Administrative appeals will be considered regardless of the period of the

evaluation report; decisions will be made based on the regulation in effect at the time reports were rendered.

(5) An exception is granted for evaluation reports when information that was unknown or unverified when the evaluation report was prepared is brought to light or verified and this information is so significant that it would have resulted in a different evaluation of the rated Soldier. The following actions will be accomplished in an effort to modify the evaluation report:

(a) if the information would have resulted in a higher evaluation, the rated Soldier may appeal the evaluation report and rating officials may provide input to support this point; or

(b) if the information would have resulted in a lower evaluation, rating officials may submit an addendum to be filed with the OER.

e. Chapter 4 (Evaluation Report Redress Program) stated 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.

(1) Paragraph 4-3 (Applicability) stated that upon receipt of a request for a Commander's or Commandant's Inquiry, the commander or commandant receiving the request will verify the status of the OER in question. If the evaluation has been submitted and received at HQDA for processing, but has not been filed in the Soldier's AMHRR, the commander or commandant will notify the Evaluations Appeals Office via email with a request to have the evaluation placed in a temporarily administrative holding status until completion of the inquiry.

(2) Paragraph 4-8a (Timeliness) stated because evaluation reports are used for personnel management decisions, it is important to the Army and the rated Soldier that an erroneous report be corrected as soon as possible. As time passes, people forget and documents and key personnel are less available; consequently, preparation of a successful appeal becomes more difficult.

(3) Paragraph 4-11 (Burden of Proof and Type of Evidence) stated the burden of proof rests with the applicant. Accordingly, to justify deletion or amendment of an evaluation report, the applicant will produce evidence that establishes clearly and convincingly that:

(a) the presumption of regularity referred to in paragraphs 3-36a and 4-7a will not be applied to the report under consideration; or

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

(4) Paragraph 4-11d stated 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 applicant'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 applicant'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.

3. Army Regulation 600-8-104 (Army Military Human Resource Records Management), prescribed policies governing the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to the Official Military Personnel File, finance-related documents, and non-service-related documents deemed necessary to store by the Army.

a. Paragraph 3-6 provided that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or other authorized agency.

b. Appendix B (Documents Required for Filing in the Army Military Human Resource Record and/or Interactive Personnel Electronic Records Management System) contains the list of all documents approved by Department of the Army and required for filing in the AMHRR and/or interactive Personnel Electronic Records Management System and shows the DA Form 67-10-2 is filed in the performance folder.

//NOTHING FOLLOWS//